

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Are persons who are acquitted by reason of insanity under the applicable New Jersey statute and who are released to the community by New Jersey courts subject to supervision or under conditions imposed by the court, eligible for interstate transfer of supervision under the compact?

Requesting State: New Jersey

Issued By:

Harry Hageman, Executive Director
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Issued by: Harry E. Hageman, Executive Director Richard L. Masters, Legal Counsel

Background

According to the request for opinion and the text of the New Jersey statute in question, N.J.S.A.2 C: 4-6 through 4-9, requires the court to dispose of cases in which persons are acquitted by reason of insanity in the following manner:

"(1) If the court finds that the defendant may be released without danger to the community or himself without supervision, the courts shall so release the defendant; or (2) If the court finds that the defendant may be released without danger to the community or to himself under supervision of under conditions, the court shall so order; or (3) If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed." The New Jersey law also provides that "Each defendant's case shall be specifically reviewed as provided by the law governing civil commitment." See Section 2C:4-9(d).

The opinion request is sought due to a recent case in which New Jersey proposed a transfer of probation supervision under ICAOS involving a person acquitted, by reason on insanity, under the above statute and but the transfer request was denied by the receiving state. New Jersey states that the proposed transfer, assuming the compact applies, meets the requirements of ICAOS Rule 3.101.

Applicable Rules

Rule 1.101 Definitions:

‘Supervised Individual’ means an “offender” defined by Article II of the Interstate Compact for Adult Offender Supervision as an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the Compact;

‘Supervision’ means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community;

Rule 3.101 Mandatory transfer of supervision:

At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:
(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
(b) has a valid plan of supervision; and
(c) is in substantial compliance with the terms of supervision in the sending state; and
(d) is a resident of the receiving state; or
(e)

1. has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
2. can obtain employment in the receiving state or has means of support.

Analysis

As referenced herein, the ICAOS rules define “supervised individual” ……as an adult placed under, or subject to supervision as the result of the **commission of a criminal offense** and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies. Thus it is clear that under this definition that an individual supervised pursuant to the terms of the Compact and its rules must be one who has been determined to have committed a criminal offense. (emphasis added)

"Supervision" is defined as the oversight exercised by authorities of a sending or receiving state over a **supervised individual**, which term, as noted above is defined as a person who is placed under or made subject to supervision **as the result of the commission of a criminal offense**. (emphasis added)

As the U.S. Supreme Court has determined with respect to statutory construction, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." See *Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).*

It is clear from the foregoing definitions that in order for the compact to apply the case must involve interstate transfer of supervision of a person who qualifies as a "supervised individual" under the ICAOS Rules. The ICAOS rules define a supervised individual as one who has been determined to have committed a criminal offense, whether as the result of a conviction, the entry of a plea of guilt or the entry of a 'no contest' plea to the criminal charges of which the individual is accused.

However, the New Jersey statute in question here clearly requires, as a prerequisite to the application of the law, that there must be an "acquittal by reason of insanity." An "acquittal, by definition, is a "*legal certification of the innocence of a person who has been charged with a crime." (See Black's Law Dictionary, 5th Edition)*. Even in cases where, as here, the acquittal has resulted by reason of insanity, in the absence of a determination of guilt or criminal responsibility for the commission of a crime, the person acquitted is not eligible for transfer under the compact because such person has not been judicially determined to have committed a crime. In fact, per the terms of the statute just the opposite has occurred.

A similar analysis was recently used by the Supreme Court of Virginia in reviewing an issue arising under Virginia law as to whether ICAOS is applicable to persons released under the Sexually Violent Predators Act (SVPA). The Court held that the Interstate Compact did not apply to a person released under the SVPA *"because he was not 'an adult placed under, or subject to, supervision as the result of the commission of a criminal offense.' Id., art. II. Rather, he is subject to supervision by the Commonwealth because he has been found to be an SVP under the SVPA—which is a civil, not a criminal, statutory scheme.*" See *Commonwealth of Virginia v. Amerson, 706 S.E2d 879, 884 (2011)*.

Summary

Based on the above facts as set out in the request and considering the provisions of the New Jersey statute, the literal language and plain meaning the applicable definitions and provisions of both the interstate compact and ICAOS rules, and other applicable legal authorities, it is our opinion that persons 'acquitted' by reason of insanity under the New Jersey 'Carter-Krol' statute are not eligible for interstate transfer of supervision under the compact.