

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

# ADVISORY OPINION

**At Issue**

What is the legal effect on Compact eligible cases when a Washington statute prohibits the Department of Corrections from supervising individuals sentenc community custody, community placement, or community supervision?

**Requesting State: 4-2010 - Effect of a Washington statute prohibiting the Department of Corrections to supervise certain supervised individuals eligible for the Compact**


Issued By:

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**4-2010**

## At Issue

What is the legal effect on Compact eligible cases when a Washington statute prohibits the Department of Corrections from supervising individuals sentenced to community custody, community placement, or community supervision?

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

### Background

In 2009, Washington enacted a statute limiting Department of Corrections (DOC) community supervision to individuals convicted of certain felony and misdemeanor crimes. To prioritize resources required for the highest risk supervised individuals, the department evaluates offenses and supervision requirements using evidenced-based practices and a static risk assessment tool developed by the Washington State Institute for Public Policy (WSIPP). Under the provisions of this statute, the DOC only has authority to supervise individuals either convicted of a specific crime or with an assessed high risk to re-offend.

Under the terms of the statute, and pursuant to ICAOS Rule 4.101, Washington matches the out-of-state conviction to a similar Washington criminal offense. In conjunction with the criminal history and risk level of the individual, Washington then determines the level of supervision required for a transferring supervised individual.

Individuals on supervision for the following similar convictions have regular contact with a Washington community corrections officer:

- Murder, First and Second Degree;
- Homicide by Abuse;
- Manslaughter First Degree;
- Assault First Degree;
- Kidnapping in the First Degree;
- Rape in the First Degree;
- Assault of a Child in the First Degree;

- An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies;
- Federal or out of state conviction for an offense that under the laws of Washington would be a felony as classified above; and/or
- Sex offense(s).

The Washington DOC also indicated that supervised individuals convicted of a felony transferred from another state for the following similar convictions are under kiosk-only reporting requirements (unless the individual scores at a high risk to re-offend based on Washington's risk assessment tool):

- Arson First and Second;
- Bail Jumping with Murder First Offense;
- Burglary First Degree;
- Homicide by Watercraft by being under the influence of intoxicating liquor or drugs, by a disregard for the safety of others, or by operating a vessel in a reckless manner;
- Leading Organized Crime;
- Malicious Explosion First or Second;
- Malicious Placement of Explosives First Degree;
- Over 18 and Delivering Heroin, Methamphetamine, or Narcotic from Schedule I/II, or Flunitrazepam from Schedule IV to Under 18;
- Robbery First and Second Degree;
- Trafficking First and Second Degree;
- Treason;
- Use of Machine Gun in Commission of Felony;
- Vehicular Homicide by being under the influence of intoxicating liquor or any drug, by a disregard for the safety of others, by the operation of a vehicle in a reckless manner;
- Assault Second and Third Degree;
- Drive-by Shooting;
- Extortion First and Second Degree;
- Kidnapping Second Degree;
- Manslaughter Second Degree;
- Vehicular Assault under the influence or by operation in a reckless manner, or driving a vehicle with disregard for the safety of others;

- Identity Theft First and Second Degree;
- Promoting Prostitution First Degree;
- Intimidating a Juror;
- Intimidating a Witness;
- Intimidating a Public Servant;
- Bomb threat (if against a person);
- Unlawful imprisonment;
- Promoting a Suicide Attempt;
- Riot (if against a person);
- Stalking;
- Custodial Assault;
- Certain Domestic Violence Court Order Violations;
- Counterfeiting—Endangering Public Health and Safety;
- Felony Driving a motor vehicle under the influence of intoxicating liquor/drug;
- Felony Physical control of a motor vehicle under the influence of intoxicating liquor/drug; or
- Other drug offenses not listed previously.

And finally, individuals convicted of a misdemeanor in another state transferred to Washington receive kiosk-only reporting instructions unless the conviction meets the following criteria:

- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct Second Degree;
- Sexual Misconduct with a Minor Second Degree;
- Failure to Register as a Sex Offender;
- Assault Fourth Degree or Violation of a Domestic Violence court order and a prior conviction for:
    - A Violent Offense (the first nine offenses listed);
    - Sex offense;
    - Above listed felony offenses, excluding drug offenses;
    - Assault Fourth Degree;
    - Violation of a Domestic Violence court order

All other convictions not listed receive kiosk-only reporting.

## Applicable Rules

Rule 1.101 provides:

> '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 4.101 provides:

> (a) A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state.

Rule 4.102 Duration of Supervision:

> A receiving state shall supervise individuals transferred under the interstate compact for a length of time determined by the sending state

## Analysis

Because Washington provides only limited or no DOC supervision for many individuals, receiving states must recognize that some supervised individuals from Washington who previously reported to probation or parole officers may now be supervised only through kiosk reporting or not supervised at all. Individuals no longer subject to any community supervision in Washington are not subject to the Compact and may relocate without notice.

This law does not prevent other states from transferring supervision to Washington, but it does affect how Washington administers supervision. Even for crimes that ordinarily involve active reporting, Washington may impose only kiosk-based or minimal supervision. Under ICAOS Rule 4.101, however, a receiving state must supervise transferred individuals in a manner consistent with other similarly sentenced individuals in that state, meaning Washington must provide whatever level of supervision it applies to comparable in-state cases.

Although the statute restricts DOC authority, it does not bar sentencing courts from imposing conditions requiring reporting directly to the court or completing behavioral programs. When

such court-ordered conditions exist, the case still meets the Compact's definition of "supervision."

## Conclusion

Washington's statute limits DOC supervision for many individuals, placing some cases outside the Compact's scope entirely. However, when a court imposes any conditions of supervision, Washington must still supervise the individual at the level applied to similarly situated individuals under Rule 4.101 and for the duration of supervision as determined by the sending state under Rule 4.102 when such cases continue to meet the Compact's definition of "supervision."