

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a California statute that classifies certain eligible California parolees as not subject to active supervision or revocation of parole excludes such indiv
from the jurisdiction of the Interstate Compact for Adult Offender Supervision.

Requesting State: Missouri

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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Whether a California statute that classifies certain eligible California parolees as not subject to active supervision or revocation of parole excludes such individuals from the jurisdiction of the Interstate Compact for Adult Offender Supervision.

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

Background

Pursuant to Commission Rule 6.101(c) the State of Missouri has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules with respect to the following: On January 25, 2010, the provisions of a new California statute (California Penal Code § 3000.03) became effective. This statute placed eligible California parolees onto Non-Revocable Parole ('NRP') status.

Individuals who qualify for classification as NRP status are not subject to active supervision by California parole officers and "shall not be subject to parole revocation or the placement of a parole hold." NRP parolees are only subject to search by any law enforcement officer at any time until discharged. Cal Pen Code § 3000.03 applies to all California inmates and parolees under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR), regardless of their conviction date with the following exceptions:

- sex offenders;
- individuals convicted of serious or violent, or sexually violent felonies (serious felonies are not defined except by reference to another statute);
- gang members;
- individuals determined to be at high risk to re-offend;
- individuals with serious disciplinary offenses while incarcerated; or
- individuals who refuse to sign written notifications of parole requirements or conditions.

Accordingly, the State of California asserts that NRP parolees currently under compact supervision in other states or who are seeking a transfer of supervision, from California, to

another state under the compact no longer meet the definition of supervision and are therefore no longer subject to transfer under the compact provisions.

Applicable Rules and Statutes

Rule 1.101 provides:

> 'Supervision' 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
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> ‘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.

Analysis

Under the current definition of supervision set forth in Rule 1.101, oversight exercised over the *supervised* individual required to establish jurisdiction of the compact must include two components:

1. ". . . the supervised individual is required to report to or be monitored by supervising authorities"; and
2. the supervised individual is required "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."

Cal Pen Code § 3000.03 clearly meets the 2nd of these components because the individual is subject to search by any law enforcement officer at any time until discharged; however, the statute eliminates the need to report to supervising authorities. It is doubtful that the ‘subject to search’ requirement of the statute is sufficient to meet Rule 1.101’s definition of supervision that requires monitoring by supervising authorities.

Because monitored is not defined in the provisions of the compact or ICAOS Rules, the accepted maxims of statutory construction require interpretation of such terms according to their common meaning or usage as other words in the English language. See *Diamond v. Diehr, 450 U.S. 175, 182 (1981) ('In all statutory construction,' "[u]nless otherwise defined, "words will be interpreted as taking their ordinary, contemporary, common meaning.") Id at p.182.* In this context, the dictionary's definition of "monitor" means "to oversee, supervise, or regulate, to watch closely for purposes of control, surveillance, etc., keep track of;" *(Random House Dictionary of the English Language, 2nd Ed. 1987).* Through common use, the term *monitor* anticipates active and regular oversight and 'keeping track of' the individual '*monitored by supervising authorities*' under the terms of the compact.

The requirement imposed by Cal Pen Code § 3000.03, that NRP parolees are subject to a random and occasional search, if at all, does not appear consistent with the phrase 'monitored by supervising authorities' as used in the ICAOS Rules. For that reason, a California parolee who, as a result of the type of offense committed, qualifies for classification as an NRP parolee, is not considered under supervision as defined by ICAOS Rule 1.101 and is therefore not subject to transfer under the provisions of the Compact.

However, since the statute applies to all California inmates and parolees under the jurisdiction of the CDCR, in a case in which an individual is seeking transfer of supervision to another state and the Court determines that supervision is warranted, it is still possible for a California court to order direct reporting to the Court or completion of behavioral modification/treatment programs with direct result submission to the Court in lieu of the CDCR.

The potential imposition of such court-ordered terms for an individual seeking transfer to another state can create sufficient basis for supervision under the terms of the compact and the rules, notwithstanding the fact that the California law does not permit the individual's supervision by the CDCR.

Conclusion

ICAOS Rule 1.101 requires both active monitoring by supervising authorities and compliance with non-monetary conditions to establish supervision under the Compact. While Cal. Penal Code § 3000.03 satisfies the condition-compliance component through its search requirement, it eliminates reporting and does not provide the active, regular oversight contemplated by the term "monitored" as commonly understood. As a result, California NRP parolees subject only to random or occasional searches are not considered under supervision for purposes of the Compact and are not eligible for transfer.

However, where a court determines that supervision is necessary, court-ordered reporting or treatment requirements—directly overseen by the court rather than CDCR—may establish sufficient supervision to trigger Compact applicability, despite the statutory limits on CDCR supervision.