

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a receiving state may prohibit a compact-supervised sex offender from traveling out of state when such restrictions apply to individuals sentenced v
the receiving state, and whether the sentencing court in the sending state retains authority to authorize such travel once supervision has transferred under I

Requesting State: Massachusetts

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At Issue

Whether a receiving state may prohibit a compact-supervised sex offender from traveling out of state when such restrictions apply to individuals sentenced within the receiving state, and whether the sentencing court in the sending state retains authority to authorize such travel once supervision has transferred under ICAOS.

Background

Pursuant to Commission Rule 6.101(c) the Commonwealth of Massachusetts has requested an advisory opinion regarding out of state travel for sex offenders. In its request Massachusetts states as follows:

The Massachusetts Probation Service ('MPS') prohibits sex offenders from traveling out-of-state while under probation supervision. An exception to this prohibition may occur where the probationer seeks, and is granted, permission for such travel from the sentencing court.

A sex offender whose probation supervision was transferred to Massachusetts pursuant to the Interstate Compact for Adult Offender Supervision ('ICAOS') sought permission from the MPS interstate compact office to travel out-of-state for work purposes. The request was denied on the basis that sex offenders under probation supervision in Massachusetts are prohibited from out-of-state travel. The sex offender's attorney then appeared before the sentencing court in the sending state to request permission for the individual to travel. The court thereafter authorized the individual to travel outside of Massachusetts for work purposes.

MPS believes that under ICAOS, once supervision is transferred to a receiving state, the receiving state's supervision authority has sole responsibility for making decisions as to a supervised individual's supervision, including out-of-state travel, and that the sentencing court in the sending state has no authority to grant permission to travel in contravention of a decision of the receiving state's supervision authority.

Based upon this factual predicate, the Commonwealth of Massachusetts seeks an advisory opinion of the Commission on the following issues:

1. Whether a receiving state's compact administrator may prohibit a supervised individual, whose supervision was transferred to the receiving state pursuant to ICAOS, from traveling

outside of the receiving state while under supervision in the receiving state?

2. Whether the sentencing court in the sending state retains the authority, in light of ICAOS and its attendant rules and regulations, to authorize out-of-state travel for work purposes once his or her supervision has been transferred to another state pursuant to ICAOS?

Applicable Rules

Rule 4.101 Manner and degree of supervision in receiving state

> 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.

Analysis

With regard to the first issue, if the receiving state prohibits its own sex offenders from traveling out of state while under probation supervision the plain language of the foregoing provisions of ICAOS Rule 4.101 contemplate that compact supervised individuals may be prohibited from travel in the same manner. However, in its request for an advisory opinion the MPS concedes that an exception to this prohibition arises if a probationer who is sentenced in Massachusetts seeks and is granted permission for such travel by the sentencing court. Since ICAOS Rule 4.101 requires that a receiving state shall supervise a compact supervised individual " **consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state"** then compact supervised individuals should be subject to the same exception as individuals sentenced in the state. *See also ICAOS Advisory Opinion 5-2006.*

With respect to issue # 2 and contrary to the position of MPS in this regard, although the provisions of the ICAOS rules provide that the manner and degree of supervision of compact supervised individuals is determined by the receiving state, the sentencing court in the sending state does not surrender its' jurisdiction over an individual whose supervision is transferred to another state. For example, ICAOS Rule 4.102 provides that it is the sending state which determines the duration of the supervision. Similarly, Rule 5.101 vests sole discretion in the sending state to retake a supervised individual at any time, subject to the exceptions noted in that rule. As pointed out in the *ICAOS Bench Book for Judges and Court Personnel* "whether the sending state continues to exercise jurisdiction over a supervised individual or has relinquished or forfeited that jurisdiction is a matter determined solely by the sending state. Accordingly, the sending state court continues to exercise some authority over a compact supervised individual for the duration of the period of supervision.

Conclusion

Based on the above analysis and legal authority, to the extent the Commonwealth of Massachusetts, through the MPS, recognizes an exception to its policy prohibiting out of state travel for sex offenders when such a supervised individual seeks and is granted permission for such travel by the sentencing court in Massachusetts, then the same exception should apply to such a supervised individual transferred to Massachusetts pursuant to ICAOS vis-à-vis the sentencing court in the sending state.