INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a supervised individual seeking transfer under the Compact may lack a “valid plan of supervision” under Rule 3.101(b) solely because they intend t
reside in federally subsidized Section 8 housing.

Requesting State: New Jersey

Issued By:

Harry Hageman, Executive Director
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At Issue

Whether a supervised individual seeking transfer under the Compact may lack a “valid plan of supervision” under Rule 3.101(b) solely because they intend to reside in federally subsidized Section 8 housing.

Issued by: Don Blackburn, Executive Director & Richard L. Masters, Legal Counsel

Background

New Jersey has requested clarification regarding the interaction of federal statutes, rules, and regulations with Compact transfer eligibility when a supervised individual plans to reside in Section 8 housing. Some states have taken the position that any such transfer is precluded on this basis.
Federal regulations prohibit only two specific categories of individuals from residing in federally subsidized housing:

1. Lifetime-registration sex offenders, and
2. Individuals convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.(24 C.F.R. § 960.204(a)(3); 42 U.S.C. § 13663(a))

Applicable Rules

Rule 1.101 Definitions:

> ‘Plan of supervision’ means the terms under which a supervised individual will be supervised, including proposed residence, proposed employment or viable means of support and the terms and conditions of supervision.

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

Analysis

Except for the two specific categorical prohibitions under federal law—lifetime-registration sex offenders and individuals convicted of manufacturing methamphetamine in federally assisted housing— supervised individuals are otherwise eligible to reside in Section 8 housing. Compact Rule 3.101 does not create a *per se* prohibition to transfer on this basis. Therefore, a receiving state may deny transfer only if it can substantiate that the individual is specifically ineligible for the particular housing development. As noted in *ICAOS v. Tennessee Bd. of Prob. & Parole, 04-cv-526-KSF* (E.D. Ky. 2005), a receiving state cannot impose additional conditions or requirements before accepting a mandatory transfer. Likewise, a state may not blanket deny transfer solely because the individual plans to reside in Section 8 housing.

Conclusion

A receiving state is not authorized to deny a transfer of a supervised individual based solely on the fact that the individual intends to reside in Section 8 housing.