

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a receiving state may exceed the 45-day investigation period under Rule 3.104 when additional steps are required for sex offender cases (e.g., res restrictions, risk level determinations, community notification). Whether a receiving state may require the sending state to complete sex-offender risk levels community notification before accepting a transfer under Rule 4.101.

Requesting State: North Dakota

Issued By:

Harry Hageman, Executive Director
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At Issue

Whether a receiving state may exceed the 45-day investigation period under Rule 3.104 when additional steps are required for sex offender cases (e.g., residency restrictions, risk level determinations, community notification). Whether a receiving state may require the sending state to complete sex-offender risk levels or community notification before accepting a transfer under Rule 4.101.

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

Background:

Pursuant to Rule 6.101 (c) North Dakota has requested an advisory opinion concerning the application of Rule 3.104 - Time allowed for investigation by Receiving State and Rule 4.101 - Manner and degree of supervision.

North Dakota poses the following:

> *"May the receiving state exceed the 45 calendar day rule, under Rule 3.104, to determine if the supervised individual's supervision plan is valid for sex offenders? Many states have either a state law or internal policies that require clarification of residency restrictions, establishing of sex offender risk levels or community notification requirements. May the receiving state exceed the 45 calendar rule, under Rule 3.104, by citing their right to determine whether the supervised individual's supervision plan is valid by conducting residency restrictions, establishing of sex offender risk levels, or community notification requirements before they respond to the sending state's transfer investigation request?"*
>
> *"Under Rule 4.101, may the receiving state require prior to acceptance of a sex offender the establishing of a sex offender risk level or community notification on sending states probationers when the receiving state does not require the establishing of a sex offender risk level or community notification on their own probationers.?"*

Applicable Rules

Rule 3.104 Time Allowed for Investigation by Receiving State:

(a) A receiving state shall complete an investigation and respond to a sending state's request for a supervised individual's transfer of supervision no later than the 45th calendar day following receipt of a completed transfer request in the receiving state's compact office.

(b) If a receiving state determines that a transfer request is incomplete, the receiving state shall notify the sending state by rejecting the transfer request with the specific reason(s) for the rejection. If
the supervised individual is in the receiving state with reporting instructions, those instructions shall remain in effect provided that the sending state submits a completed transfer request within 15 business days following the rejection.

(c) If a receiving state determines that a supervised individual's plan of supervision is invalid, the receiving state shall notify the sending state by rejecting the transfer request with specific reason(s) for the rejection. If the receiving state determines there is an alternative plan of supervision for investigation, the receiving state shall notify the sending state at the time of rejection. If the supervised individual is in the receiving state with reporting instructions, those instructions shall remain in effect provided that the sending state submits a completed transfer request with the new plan of supervision within 15 business days following the rejection.

Rule 4.101 Manner and Degree of Supervision in Receiving State:

(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.

(b) If a supervised individual violates conditions of supervision, the individual may be sanctioned in the receiving state during the term of supervision in a manner consistent with similarly sentenced individuals in the receiving state.

(c) Receiving states shall document the use of incentives, corrective actions, graduated responses, and other supervision techniques.

Relevant Case Law

- *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole* (E.D. Ky. 2005)

- *Doe v. Ward*, 124 F. Supp. 2d 900 (W.D. Pa. 2000)

Analysis

The plain meaning of Rule 3.104 is that states have 45 days to complete investigations once the application has arrived in the receiving state compact office.

North Dakota's justification for its inquiry is premised on the assumption that many states have special laws or policies pertaining to sex offenders which require clarification of residency restrictions and establishing sex offender risk levels or community notification requirements. Under the current rules as referenced herein there is no provision for using the type of crime to define how the above referenced rule will be applied as to the stated time period.

The receiving state's investigation as contemplated under Rule 3.104 is in part to determine if the transfer request meets the criteria under Rule 3.101 and if the sending state has presented a valid plan of supervision. While there is no question that the receiving state has the authority to substantiate the validity of the transfer, the rule gives no discretion to extend the time frame of 45 days to complete the review.

With respect to the requested opinion concerning Rule 4.101 North Dakota asks if the receiving state may require the sending state to establish the sex offender's risk level or community notification when the receiving state does not require the establishment of either risk level or community notification on its own supervised individuals.

The provisions of Rule 4.101 clearly refer to a supervised individual who has already been "transferred" to a receiving state and requires such a supervised individual to be supervised ". . . in a manner consistent with the supervision of other similar individuals sentenced in the receiving state." This rule must be read together and consistently with Rule 3.101 which unequivocally provides that once a sending state grants permission, the receiving state must assume supervision over the supervised individual and any state which attempts to condition the acceptance of such a supervised individual on a special condition to be imposed prior to the transfer violates the Compact. See also *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole et al, (U.S. District Court, Eastern District of Kentucky#04-526-KSF, 2005)*, see also *Doe v. Ward, 124 F. Supp.2d 900 (W.D. Penn. 2000)*. Under Rule 4.101, as interpreted by at least two federal courts, states which have statutes, policies, memorandum of understandings, assessments and other restrictions which are imposed on their own supervised individuals may only be applied to compact supervised individuals once the transfer request has been accepted as provided in Rule 4.103 (a). States cannot impose such restrictions prior to the acceptance of the transfer.

Conclusion

Based on the literal language and plain meaning of the Rule 3.104 (a) 45 calendar days is the maximum time a receiving state has under the rules to respond to a sending state's request for transfer.

The provisions of Rule 4.101 only apply to the manner in which a receiving state supervises a supervised individual who has already been transferred in compliance with the provisions of the compact and the rules. Specifically, Rule 3.101 does not permit a receiving state to place conditions and requirements on supervised individuals prior to transfer under the compact. The clear language of Rule 4.103 (a) states that special conditions may be imposed by the receiving state after a supervised individual has transferred. (See *ICAOS v. Tennessee Board of Probation and Parole, supra*; see also *Doe v. Ward, supra*.)

Moreover, Rule 4.101 plainly requires the receiving state to supervise an individual transferred in a manner "**consistent with the supervision of other similar supervised individuals sentenced in the receiving state.**" Clearly, this portion of the rule does not permit a receiving state to impose the establishment of sex offender risk level or community notification on supervised individuals transferred under the compact if it does not impose these same requirements on supervised individuals sentenced in the receiving state.