

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a receiving state may determine that a supervised individual is not in substantial compliance in the sending state, and therefore deny a mandatory transfer based solely on the supervised individual's arrest, pending charges, or outstanding warrants in the receiving state during the investigation period.

Requesting State: Illinois

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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At Issue

Whether a receiving state may determine that a supervised individual is not in substantial compliance in the sending state, and therefore deny a mandatory transfer based solely on the supervised individual's arrest, pending charges, or outstanding warrants in the receiving state during the investigation period.

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

Background:

Pursuant to Rule 6.101 the State of Illinois requested, the State of Illinois requested clarification of Rule 3.101. Illinois asked whether a receiving state may conclude that a supervised individual is not in substantial compliance with the terms of supervision in the sending state when the supervised individual commits a crime in the receiving state during the investigation period, or when the supervised individual has an outstanding warrant in the receiving state.

Illinois reports two situations prompting this request:

1. A supervised individual met transfer criteria and was granted reporting instructions. The receiving state later denied acceptance based on the supervised individual's arrest for a new offense in the receiving state during the investigation period.
2. In another case, the receiving state refused to respond to a transfer request because the supervised individual had been arrested in the receiving state and was therefore "not available," stating it would deny the request if Illinois required an immediate reply.

Illinois maintains that outstanding warrants or pending charges in the receiving state are irrelevant to determining substantial compliance, particularly where the receiving state has taken no action other than arrest or issuance of a warrant.

Applicable Rules

Rule 1.101: Definitions:

> "Substantial Compliance" means that a supervised individual is sufficiently in compliance with the terms and conditions of his or her supervision so as not to

result in initiation of revocation of supervision proceedings by the sending state.

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
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> (c) is in substantial compliance with the terms of supervision in the sending state; and
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> (d) is a resident of the receiving state; or
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> (e)
>
> 1. has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
> 2. can obtain employment in the receiving state or has means of support.

Analysis

As we pointed out in ICAOS Advisory Opinion 7-2004, the intent of Rule 3.101 as derived from its plain meaning, is that the sending state initially controls the decision to allow the supervised individual to transfer under the Compact and the receiving state has no discretion whether or not to accept the case as long as the supervised individual satisfies the criteria provided under this rule.

Rule 3.101 (c) requires that the supervised individual must be in "*substantial compliance*" with the terms of supervision in the sending state. The facts of the Illinois case that prompted this request involved a supervised individual who met the criteria for transfer to the receiving state and had been given reporting instructions; however, the receiving state denied acceptance of supervision based on the supervised individual not being in substantial compliance because of an arrest for a new offense in the receiving state during the period of investigation. In another case, Illinois reported that the receiving state indicated it could not reply to the request for transfer because the supervised individual was not available for supervision due to a new arrest. This resulted in incarceration pursuant to the arrest but prior to either a trial or conviction. The receiving state indicated that if the sending state needed a reply immediately it would send a denial.

While Rule 3.101 places the initial decision to transfer a supervised individual under the compact with the sending state, the addition of the "s*ubstantial compliance*" requirement to the criteria set forth in this rule was to prevent the transfer of supervised individuals who are not in compliance with the terms and conditions of their supervision in the sending state as the result of other pending criminal charges. However, as emphasized in ICAOS Advisory Opinion 7-2004 , such charges pending in the receiving state are "irrelevant to the transfer decision, when the issuing authority has taken no action." While the previous advisory opinion has already addressed the question which Illinois raises as to "outstanding warrants" the question of whether a subsequent arrest for an alleged crime committed during the investigation was not directly considered. However, it appears that the same logic should apply. Whether the charges are pending as the result of an outstanding warrant or an arrest for a new alleged offense, it is not a sufficient basis under the foregoing rules to reject transfer of a supervised individual where the sending state has taken no action and has not specifically determined that a basis exists for revocation proceedings. Such action unjustifiably prohibits supervised individuals who are residents of the receiving states to which they wish to transfer from returning home who in many cases have no resources in the sending state. Notwithstanding this reasoning, the receiving state should report these outstanding warrants and arrests to the sending state which may be considered in the determination as to whether the supervised individual is in substantial compliance with the terms of supervision in the sending state.

Conclusion

Based on the above analysis and the text of the referenced rules of the Compact, unless the sending state has taken action on an outstanding warrant or is actively seeking to take the supervised individual into custody under a new arrest warrant or has specifically determined that these new or pending charges are the basis for a revocation proceeding, then the transfer application should not be rejected only on this basis.