

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether supervised individuals subject to Washington's "deferred prosecution" statute, Chapter 10.05.020 et seq. RCW, are subject to the Interstate Compa
Adult Offender Supervision and therefore eligible for transfer of supervision under Rule 2.106.

Requesting State: Washington

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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At Issue

Whether supervised individuals subject to Washington's "deferred prosecution" statute, Chapter 10.05.020 et seq. RCW, are subject to the Interstate Compact for Adult Offender Supervision and therefore eligible for transfer of supervision under Rule 2.106.

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

Background:

Pursuant to Rule 6.101 the state of Washington has requested an advisory opinion as to whether or not supervised individuals subject to the state's "deferred prosecution" statute as described in Chapter 10.05.020 et. seq. RCW are subject to the Interstate Compact for Adult Offender Supervision ("Compact") and are, therefore, eligible for transfer of supervision under Rule 2.106. In its request for opinion, Washington points out that under this state statute "deferred prosecution" only applies to misdemeanors.

The statute in question provides a procedure by which a person alleges under oath in a petition for deferred prosecution that the wrongful conduct charged is the result of drug or alcohol addiction or mental problems for which treatment is needed and that without treatment recurrence of the wrongful conduct is likely. If determined to be eligible for deferred prosecution based on these standards, the petitioner stipulates to the admissibility of the facts in the police report and waives constitutionally guaranteed rights to a jury trial, to testify and to confront accusers and present exculpatory evidence.
The court sends the supervised individual to treatment and remands the case from its regular docket for a period of up to ten years.

If the petitioner violates the treatment plan conditions, the court conducts a hearing to determine whether the supervised individual should be removed from deferred prosecution and if removal is warranted, simply enters judgment based on the facts previously stipulated in the petition. As the result of the prior stipulation and waivers, Washington indicates that the proceeding is analogous to a guilty plea in which the only remaining step is sentencing by the court.

Applicable Rules

Rule 1.101 Definitions:

> "Supervised individual" 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.

Rule 2.106: Supervised Individuals Subject to Deferred Sentences:

> (a) Supervised individuals subject to deferred sentences are eligible for transfer of supervision provided that all other criteria for transfer, as specified in Rule 3.101 (a), (b), and (c) have been satisfied and the:
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> 1. supervised individual has waived their right to trial and entered plea of guilt or no contest, and
> 2. plea has been accepted by the court.

Analysis

While neither definition makes reference to a specific type of adjudication or plea, Rule 2.106 applies when the defendant has entered a plea of guilty or no contest to the charge(s) and the court has accepted the plea but suspended entry of a final judgment of conviction in lieu of placing the individual in a program of conditional release, the successful completion of which may result in the sealing or expungement of the criminal record.

Based on the statutory provisions described in Chapter 10.05.020 et. seq., RCW, Rule 2.106 applies to persons released under its terms. The operative consideration here is that the transaction which occurs under this statute, although labeled as a "deferred prosecution" is the

equivalent of a “deferred sentence.” The supervised individual is required as a condition of participation in the “deferred prosecution” program to stipulate to the admissibility of the facts charged against him or her in the police report and is required to execute waivers of the right to a jury trial, the right to testify and the right to present exculpatory evidence to refute the charges by the state. If the supervised individual violates the terms of the deferred prosecution program, the proceedings by the court are the same as if a plea of guilt had been entered; all that appears left is for the court to impose sentence.

As we have previously noted in other advisory opinions, individual states’ statutory schemes can vary remarkably across the nation. In determining that Rule 2.106 applies here, we are considering the action actually taken by the supervised individual and the court rather than the label used by the legislature. Given these facts, the overall purposes of the Compact, its status as federal law and the previous advisory opinion on this subject, we find little to distinguish a “deferred prosecution,” under the Washington statutory scheme, from a “deferred sentence,” a practice we have previously found covered by the Compact. To find otherwise would lead to disruptions in the movement of supervised individuals and the uniform application of the provisions of the Compact and the rules to the states.

Conclusion

Individuals supervised under Washington’s deferred prosecution statute are subject to the Compact and eligible for transfer under Rule 2.106. Although labeled “deferred prosecution,” the process functions as a deferred sentence for Compact purposes, and treating it otherwise would undermine uniform application of the Compact.