

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

May a state reject a transfer request for a supervised individual, who is a resident of the receiving state and has verified employment, when there are warra
pending charges in the receiving state?

Requesting State: Wisconsin

Issued By:

Harry Hageman, Executive Director
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At Issue

May a state reject a transfer request for a supervised individual, who is a resident of the receiving state and has verified employment, when there are warrants or pending charges in the receiving state?

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

Background

Pennsylvania, Minnesota and several other states have asked for a ruling by the national office to establish consistency in the application of this process.

> “Wisconsin states that in one case, the supervised individual was an inmate awaiting release from prison. The transfer request was denied when it was discovered that there were three municipal warrants for the individual in the receiving state. The rejection included the statement that the case would not be accepted until all charges were resolved.
>
> In the second case, reporting instructions were denied due to an outstanding warrant in the receiving state. The supervised individual was allowed to travel to the receiving state to answer the charge against him. The court released the supervised individual with orders that he not leave the state. The charge is still pending. The receiving state rejected his transfer request and has demanded that he be order back to Wisconsin. The receiving state has said he will not be accepted if he has a pending charge. “
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> Wisconsin maintains that the existence of warrants or pending charges in the receiving state is irrelevant to the transfer decision, when the issuing authority has taken no action to enforce the warrant and/or the supervised individual has been released pending final disposition. If the supervised individual is not in custody, the individual must still be supervised. And, if eligible for transfer under 3.101(a), then the receiving state must accept supervision… To permit this is to allow a state to effect a “banishment order” by simply issuing a warrant, but refusing to have it enforced."

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:
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> (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)
>
> 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.

The intent of this rule, as derived from its plain meaning, is that while the "sending state" initially controls the decision to allow the supervised individual to transfer under the Compact, the receiving state has no discretion in whether or not to accept the case, as long as the individual satisfies the criteria provided in this rule.

Analysis

The intent of adding "substantial compliance" 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. However, Wisconsin and other states requesting the advisory opinion present a valid argument when they emphasize "*pending charges in the receiving state are irrelevant to the transfer decision, when the issuing authority has taken no action…*"

The rejection of transfers of supervised individuals on this basis is unjustifiably prohibiting individuals who are residents of the receiving states to which they wish to transfer from returning

home and who in many cases have no resources in the sending state but are not allowed to transfer due to denial based on outstanding warrants. Many times these warrants are for minor offenses such as driving infractions which have not been resolved.

Conclusion

Accordingly, based on the above analysis and the plain meaning of the above referenced authorized rules of the Compact, if the sending state has taken no action on these warrants and has not specifically determined these warrants or pending charges to be a basis for revocation proceedings, then the transfer application should not be rejected only on this basis.