

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

# ADVISORY OPINION

**At Issue**

Consider adoption of an emergency rule under Section 2.109 of the Rules pertaining to the supervision of offenders from the Commonwealth of Massachus
 The Compact statute does not provide for an alternative means of compact membership and the previous “transition period” for the applicability of th
under the predecessor compact are now “null and void” based on the explicit provisions of the compact statutes of the member states.

**Requesting State: West**

Issued By:

**Harry Hageman, Executive Director**
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## At Issue

Consider adoption of an emergency rule under Section 2.109 of the Rules pertaining to the supervision of offenders from the Commonwealth of Massachusetts. The Compact statute does not provide for an alternative means of compact membership and the previous “transition period” for the applicability of the rules under the predecessor compact are now “null and void” based on the explicit provisions of the compact statutes of the member states.

**Issued by:** Richard L. Masters, Legal Counsel

### Background

Patricia A. Coyne-Fague (Senior Legal Counsel, Rhode Island DOC) requested that the Interstate Commission for Adult Offender Supervision (“Commission”) consider adoption of an emergency rule under Section 2.109 of the Rules of the Interstate Compact for Adult Offender Supervision (“ICAOS”) pertaining to the supervision of offenders from the Commonwealth of Massachusetts (“MA”). In this regard a number of states have requested an opinion as to the legal effect of a proposed agreement by and between the Commission and MA which has not yet enacted and is not a member of ICAOS. This agreement proposes that the Commission enter into an agreement permitting the transfer of offenders between and among MA and the states which are members of the ICAOS until such time as MA enacts the ICAOS. Currently 49 states and the District of Columbia have enacted the ICAOS. MA is the only jurisdiction in the continental United States which has failed to do so.

### Applicable Rules & Statute

In considering this question reference must be made to the specific provisions of the Compact statute which has been adopted by the member states. Article XI provides that the initial effective date of the Compact occurred “upon enactment into law by the 35th jurisdiction.” This event occurred in June of 2002. Article XI further provides that subsequent to that date the ICAOS becomes “effective and binding as to any other Compacting State, upon enactment of the Compact into law by that State.” This section requires that in order for a state to become a member of the Compact it must be done by legislative enactment. The legislatures of the states which have enacted the Compact have not provided an alternative means of adoption. In at

least one reported case a State's attempted adoption of a compact by an alternative method from the other member states was null and void. ***See Sullivan vs. DOT, 708 A.2d 481 (Pa. 1998)*.**

## Analysis & Conclusion

The agreement which the Commonwealth of Massachusetts seeks from the Commission is for all Compacting States to agree to supervise MA offenders under the same terms as provided under the rules of the ICAOS which became effective August 1, 2004. In essence MA is requesting to become a member of the Compact without enacting the ICAOS into law. Based on the reasoning in ***Sullivan supra***., this proposal raises significant legal questions as to the authority of the Commission to enter into such an agreement as well as the legal validity of such an agreement. Moreover, even if such an agreement were construed to constitute something other than an attempted "adoption" of the Compact by MA through an alternative means not provided under the statute, there are other troubling legal issues presented by such an arrangement. These include questions as to the authority of the Commission to enforce the provisions of the Compact and its Rules against MA in the event of noncompliance and the inequity created by allowing this jurisdiction to participate when it has not and may not be required to make the statutorily required dues payments which all member states have paid since the ICAOS became effective in 2002. In other words, MA will receive the benefits of compact membership without the corresponding financial or other legal accountability which is imposed upon the member states by statutes and the Commission would not have the legal authority to enforce such requirements with respect to a nonmember state.

While the previous Compact administration under the "old compact" the Parole and Probationers Compact Administrators Association (PPCAA) was still functioning a transitional rule was adopted by both the Commission and the PPCAA based upon the provisions of Article VIII of the ICAOS which specifically provided that "The existing rules governing the operation of the previous compact superceded by this Act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder." This statutorily provided "grandfather clause" has now expired and the Commission has adopted new rules which took effect on August 1, 2004.

## Summary

In summary, it is clearly permissible for Massachusetts to enter into individual interstate agreements concerning the transfer of offenders with any other states choosing to do so through Executive action by the Governors of those states or through the process of legislative enactment. However there are significant legal questions as to the authority of the Commission to enter into such an agreement under either the emergency rule provisions of Section 2.109 of the Compact rules or through the Commission's regular rulemaking process, because the Compact statute does not provide for an alternative means of compact membership and the

previous “transition period” for the applicability of the rules under the predecessor compact are now “null and void” based on the explicit provisions of the compact statutes of the member states.