INTERSTATE COMMISSION FOR
ADULT OFFENDER SUPERVISION

WHITE PAPER

Discharge of Sentences in Lieu of Retaking is a Violation of the Compact and the ICAOS Rules

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EXECUTIVE SUMMARY

This paper addresses instances in which member states fail to comply with the mandatory retaking requirements of the ICAOS by discharging a supervised individual's sentence or terminating supervision rather than completing the retaking process as required under Chapter 5 of the Compact Rules. Discharging a sentence or ending supervision in place of retaking directly violates ICAOS Rules and the Compact's fundamental purpose to ensure accountability, public safety, and consistent supervision standards across all member states. The Compact and its rules carry the force and effect of federal law. States that disregard retaking obligations not only act outside the Compact's authority but also risk enforcement actions and sanctions under Articles V and XII. The Commission has the duty and authority to ensure compliance, impose corrective measures, and, when necessary, pursue judicial enforcement.

1. BACKGROUND AND LEGAL OBLIGATIONS UNDER THE COMPACT

The Interstate Compact for Adult Offender Supervision (the "Compact") establishes a uniform legal framework for the supervision of individuals transferred between states. It is a formal agreement between member states to promote public safety by systematically controlling the movement of qualifying individuals under supervision by virtue of their conviction for a criminal offense. Through the Compact, all 50 states, the District of Columbia, and two U.S. territories agree to follow standardized procedures for supervision, violation response, and retaking.

Importantly, as an interstate compact with congressional consent under the Compact Clause of the United States Constitution, the Compact carries the force and effect of federal law. *See Cuyler v. Adams,* 449 U.S. 433, 440 (1981); see also *M.F. v. State of N.Y., Exec. Dep't Div. of Parole,* 640 F.3d 491 (2d Cir. 2011) ("… the Compact, as a congressionally sanctioned interstate compact is federal as well as state law.") This further extends to the Commission's Rules. *See Carchman v. Nash*, 473 U.S. 716, 719 (1975) (a compact's adopted "administrative rules … function as a law of the United States to the member states under the terms of the Compact and through operation of the Supremacy Clause.").

The Compact and its Rules are accordingly legally enforceable upon Compacting States and preempt conflicting substantive state law. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951). And this obligation is binding to all branches of state government, including state courts,

corrections, and supervision authorities. Id.; see also *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). This legal obligation is further reflected in the text of the Compact itself. The "courts and executive agencies in each compacting state" are expressly required to enforce the Compact" and "take all actions necessary and appropriate to effectuate the Compact's purposes and intent." Compact, Article IX(A). Even clearer, "all lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the Compacting States." Compact, Article XIV(B).

DISCHARGE OR TERMINATION IN LIEU OF RETAKING IS CONTRARY TO COMMISSION RULES

Chapter 5 of the Commission's Rules directly addresses retaking individuals under supervision in a receiving state. This set of rules establishes a sending statues authority and *obligation* to retake individuals under certain conditions, such as new criminal convictions in the receiving state, absconding, or other behavior "requiring retaking." Mandatory retaking is an important component of the Compact and is the vehicle through which a sending state enforces its terms of supervision and ensures public safety.

Though the Commission's rules also address instances where retaking may be discretionary, Rules 5.101 through 5.103-1 establish the sending state's continued jurisdiction and legal responsibility to retake for cases involving mandatory retaking. And, in turn, those Rules further outline the procedures for warrants, probable cause hearings, and transfers of custody for these cases. These are required processes sending states are expected to follow when notified of an individual's violation of the terms of his supervision and the necessity for retaking.

Despite the legal obligation to fully enforce the Compact and its Rules, in some instances where an individual is awaiting retaking in the receiving state, some sending states have terminated supervision and discharged the individual from probation in lieu of retaking. Sending states cannot bypass their retaking obligation simply by discharging supervision or terminating a sentence. This is contrary to the state's continuing obligations under the Compact and the principle of reciprocal accountability between Compacting States. Substituting discharge for retaking eliminates accountability and erodes public safety. It further leaves the receiving state without lawful recourse while weakening the overall integrity of interstate supervision.

This practice is also contrary to established law, due to the statutory and contractual nature of interstate compacts. The United States Supreme Court has made clear that an interstate compact cannot be "… given final meaning by an organ of one of the contracting states." *Sims*,

341 U.S. 22. Indeed, there is a long line of cases holding that member states to an interstate compact may not take unilateral actions, such as adopting conflicting legislation or issuing executive orders or court rules that circumvent the terms of the compact. Moreover, due to the contractual nature of interstate compacts, the Contracts Clause of the United States Constitution further precludes member states from adopting laws "impairing the obligation of contracts," including a contract adopted through the Compact Clause. U.S. Const., art. I, § 10, cl. 1; *Sims*, 341 U.S. at 33.

Because of this, when retaking is mandatory under Commission Rules, no individual state may simply discharge supervision to circumvent its obligation to retake under the Rules.

2. THE COMMISSION MAY ENFORCE COMPLIANCE

When a Compacting State fails to discharge its duties under the Compact, the Commission may impose sanctions for noncompliance, which may be judicially enforced. See *Alabama v. North Carolina*, 560 U.S. 330 (2010). This too is expressed in both the Compact and Commission Rules. Article V of the Compact provides that the Commission is empowered not only to adopt rules, but also to enforce their adherence by "all necessary and proper means." This includes imposition of sanctions. See Compact, Article XII. Indeed, among the express purposes of the Compact is to "monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance." Compact, Article I.

Consistent with this delegated authority, Rule 6.103 charges the Commission with the duty to determine whether "any state has at any time defaulted … in the performance of any of its obligations or responsibilities." And when default occurs, the Commission may impose a range of sanctions, including:

- Technical assistance or remedial training;
- Fines, fees, or costs;
- Suspension or termination of Compact membership; and
- Judicial enforcement in federal court, including recovery of attorney's fees.

Each of these—and especially judicial enforcement—are powerful tools to secure compliance with the Compact and its Rules. Thus, sending states that disregard their legal obligation to carry out mandatory retaking are subject to this spectrum (and escalating scale) of corrective action.

STATE LIABILITY AND JUDICIAL IMMUNITY

While judicial and qualified immunity protect individual state officials from personal liability, they do not shield the state itself from responsibility for Compact violations. Once a state enacts the Compact into law, it assumes full legal and financial accountability for compliance.

The United States Supreme Court has repeatedly affirmed that states may be held liable for violating compact obligations. *Texas v. New Mexico,* 462 U.S. 554 (1983); *Kansas v. Colorado*, 533 U.S. 1 (2001). Retaking obligations therefore cannot be avoided through administrative or judicial discretion, nor by asserting immunity defenses.

3. CONCLUSION

States must comply with the mandatory retaking requirements established under the ICAOS. Discharging a supervised individual's sentence or terminating supervision in place of retaking is contrary to the Compact and its rules. Retaking is required when mandated by law and this process is important to ensure accountability, uniform supervision, and public safety.

The Compact's provisions have the force and effect of federal law, and noncompliance may result in sanctions or judicial enforcement under Articles V and XII. As outlined in the ICAOS White Paper on State Liability and Enforcement, states cannot avoid responsibility for Compact violations through local administrative or judicial actions. To maintain consistency and uphold the Compact's integrity, states must ensure that all courts, correctional and supervision personnel, as well as compact offices understand and adhere to the established retaking procedures in every case requiring compliance.