



# Best Practice 3-2015

## What Jails Need to Know

Issued: July 29, 2015  
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+ **ISSUED:** July 29, 2015  
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+ **TYPE:** Training  
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## Interstate Compact for Adult Offender Supervision

### *What Jails Need to Know*

#### What is ICAOS?

The Interstate Compact for Adult Offender Supervision provides for the orderly transfer of probation or parole supervision from one state to another. It does *not* provide for the transfer of legal jurisdiction, which is retained by the sending state. For example, if an offender is placed on probation supervision in Florida and transfers through the Compact to New York, New York State (the receiving state) provides supervision; the sentencing court in Florida (the sending state) retains legal jurisdiction over the offender. The courts in New York would have no legal authority over this probationer's interstate transfer case. Similarly, the Parole Board in Florida would retain legal jurisdiction over the transfer of the parolee.

The regulations of the Interstate Compact for Adult Offender Supervision (ICAOS) have the force and effect of federal law. Currently, all 50 states, Washington D.C., Puerto Rico and the U.S. Virgin Islands are members of the Compact. Effective January 1, 2004, New York State became a member state of the Compact with the implementation of NYS Executive Law §259-mm. Accordingly, probation and parole agencies, law enforcement, the courts, parole boards, jails and other executive agencies within New York State are subject to the rules of ICAOS. Compliance with the Compact is enforced by the ICAOS National Office.

#### How does ICAOS affect county correctional facilities?

When an offender applies for transfer under the Compact he/she is required to sign the **Offender Application for Interstate Compact Transfer**. This form is often referred to as the "waiver of extradition" as it is signed by the offender and clearly states, "...I will not resist or fight any effort by any state to return me to the sending state and I AGREE TO WAIVE ANY RIGHT I MAY HAVE TO EXTRADITION. I WAIVE THIS RIGHT FREELY, VOLUNTARILY AND INTELLIGENTLY."

If an interstate offender is non-compliant with the conditions of their supervision in the receiving state, the receiving state may submit an Offender Violation Report to the sending state. The sending state may issue an interstate warrant for the offender. The warrant is then uploaded into NCIC, with nationwide pick-up radius with *no* bond amount set.

Upon execution of the interstate warrant by the receiving state, the offender must be held in custody until he/she is retaken by the sending state. **ICAOS Rule 4.109, Authority to Arrest and Detain**, states "An offender in violation of the terms and conditions of supervision may be taken into custody or continued in custody by the receiving state." County correctional facilities must take the probation or parole violator into custody and detain him/her until the sending state retakes them.

The offender, who has previously waived his/her right to extradition via the Offender Application for Interstate Compact Transfer, is *not* a fugitive from justice and must not be charged as a fugitive under CPL § 570.

Since the courts in New York State have no authority over an offender's interstate transfer case, an interstate offender should *not* be brought to a New York court after an interstate warrant has been executed. Instead, the interstate offender must be taken directly to the county correctional facility and



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held for retaking. Retaking is the act of a sending state in physically removing an offender, or causing to have an offender removed, from a receiving state.

**Authority to Arrest and Detain**

- An offender in violation of the terms and conditions of supervision may be taken into custody or continued in custody by the receiving state.

– Rule 4.109-1

**“Retaking” vs. “Extradition”**

Offender Application for Transfer (Waiver of Extradition)

- MUST be signed PRIOR to leaving/transferring
- States party to this compact waive all legal requirements to extradition of offenders who are fugitives from justice.

Rule 3.109

Retaking	Extradition
➤ The only way an offender can be returned to the sending state under the Compact is if he originally left the sending state through an approved transfer or reporting instructions under the compact.	➤ Fugitives are to be returned under the extradition clause of the constitution. (Article VI Section 2)

Once a county correctional facility has taken custody of the interstate offender, “the sending state shall retake an offender within 30 calendar days after the offender has been taken into custody on the sending states warrant and the offender is being held *solely on the sending state’s warrant.*” ICAOS Rule 5.105



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Offenders who have been charged with a new criminal offense in New York cannot be retaken until the charges have been dismissed, the offender is convicted and sentenced, and that sentence has been satisfied, the offender is convicted and the offender is released to supervision, or the sending and receiving state mutually agree to the retaking or return. **ICAOS Rule 5.101-1**

“The receiving state shall be responsible for the cost of detaining the offender in the receiving state...”  
**ICAOS Rule 5.106**

### Other relevant ICAOS rules:

#### **Rule 5.110 Retaking offenders from local, state or federal correctional facilities**

(a) Officers authorized by the law of a sending state may take custody of an offender from a local, state or federal correctional facility at the expiration of the sentence or the offender’s release from that facility provided that-

- (1) No detainer has been placed against the offender by the state in which the correctional facility lies; and
- (2) No extradition proceedings have been initiated against the offender by a third party state.

#### **Rule 5.111 Denial of bail or other release conditions to certain offenders**

An offender against whom retaking procedures have been instituted by a sending or receiving state shall **not** (emphasis added) be admitted to bail or other release conditions in any state.

Please contact Matthew Charton, NYS Deputy Compact Administrator-Probation at [Matthew.Charton@dcjs.ny.gov](mailto:Matthew.Charton@dcjs.ny.gov) or 518-485-2402 or Felix Rosa, Deputy Compact Administrator-Parole at [Felix.Rosa@doccs.ny.gov](mailto:Felix.Rosa@doccs.ny.gov) or 518-457-7566 with any questions.