

## Report of the *ad hoc* Committee on Treatment in Other Jurisdictions

The *ad hoc* Committee on Treatment in Other Jurisdictions respectfully submits the following report of its findings and recommendations:

At the 2007 Annual Business Meeting of the Interstate Commission on Adult Offender Supervision, the Commissioners approved a motion by the Commissioners from the District of Columbia, Maryland and Virginia to establish an *ad hoc* committee "to examine whether the Commission should allow neighboring states to agree upon expedited transfer procedures that would allow offenders to report for treatment out of state as quickly as reasonably possible." Chairman Warren Emmer subsequently appointed William Rankin, Commissioner-WI to chair the *ad hoc* committee and specified that the membership would consist of the ICAOS Rules Committee and such other members as determined by the Chair.

On December 18, 2007 Chairman Emmer approved the following charge to the committee and statement of issues:

### Charge to the Committee:

Investigate issues affecting offenders' access to treatment programs in other jurisdictions and, if necessary, recommend appropriate revisions to ICAOS rules. The committee shall report its findings and recommendations to the ICAOS Executive Committee at the April, 2008 meeting.

### Issues:

- 1) Should neighboring states be allowed to agree upon expedited transfer procedures to permit offenders to report for treatment out of state as quickly as reasonably possible?
- 2) [When] may neighboring states make "local agreements" related to offenders' travel across state lines? What authority would such an agreement carry?
- 3) Should a state be required to [immediately] accept supervision of an offender who is, or who requests to be, in that state for the purposes of a specific treatment program?

### Membership:

William Rankin - WI, Chair  
Jeanette Bucklew - IA  
Kevin Dunphy - RI, *ex officio*  
Dori Ege - AZ  
Ed Ligtenberg - SD  
Patrick McGee/Vernon Skuhr/Melanie Brock-MD

Walt Pulliam - VA  
Paul Quander - DC  
Karen Tucker - FL, *ex officio*  
Pat Tuthill - *ex officio*  
Gerald VandeWalle - *ex officio*  
Rick Masters - Legal Counsel

## Committee Activities and Methodology

The *ad hoc* committee met, via WebEx, on January 22, March 10 and March 27, 2008. At the initial meeting, the committee reviewed the charge and statement of issues. A committee work schedule and methodology was adopted. Preliminary discussions identified related questions or issues which may be affected and distinguished issues addressed by the current rules from those which would require new or amended rules.

In order to assure that the committee heard all viewpoints on the issues, the committee posted two discussion threads on the ICAOS website for all compact offices and commissioners. Later, the committee circulated a survey to all Commissioners. The responses to the discussion forum threads and the survey are attached.

The committee next met on March 10, to review the results of the postings and formulate findings and recommendations. Following that meeting, this report was drafted and circulated. The committee's final meeting was March 27, at which time this report was adopted unanimously.

## Discussion

Residential treatment programs have the potential to enhance public safety, but resources are distributed unevenly. Densely populated metropolitan areas may encompass portions of multiple states. An offender within a given metropolitan area may have access to treatment resources which are located within another state's boundaries. Sparsely populated areas may face similar problems where the nearest treatment resource in an offender's home state may be hundreds of miles from the offender's actual residence, while another treatment resource is nearby, but in a neighboring state.

For various reasons, it may be expedient to allow an offender to attend treatment in another jurisdiction without following all the procedures required by existing compact rules. Instead, a state may be willing to allow offenders from another jurisdiction to reside at approved residential treatment programs for more than 45 days, when certain conditions are met. These conditions might include notice, waiver of financial responsibility, agreement to retake, etc.

Commissioners were surveyed to determine the extent of support for increasing offenders' access to treatment in other jurisdictions. Thirty-eight commissioners completed the survey, for a response rate of 71%. The respondents were approximately evenly divided on whether ICAOS should do "all it can" to assure offenders have access to treatment in other jurisdictions. By slight majorities, respondents said:

- Each state should provide resources for its citizens. Allowing offenders to cross jurisdictional lines reduces resources available to citizens in the receiving state. (55%)
- The receiving state would shoulder an unjustified burden of risk while the offender was receiving treatment in that state. (53%)
- Even when the offender has no intention of remaining in the receiving state after treatment, preparing and investigating a transfer request are necessary uses of resources in the sending and receiving states. (56%)

There was much less ambivalence toward two survey items. By 2-1 margins, commissioners said:

- Offenders should not be allowed to attend residential treatment programs in other jurisdictions without a formal transfer of supervision. (68%)
- ICAOS has determined that public safety requires a transfer of supervision when an offender wishes to remain in another state more than 45 consecutive days. Neither the transfer process nor the 45-day threshold should be compromised. (70%)

The transfer process need not be an obstacle to cooperating jurisdictions. Investigation of a transfer request for the purposes of a specific treatment program may not require the time or resources typically needed to investigate residence and employment plans. ICAOS Rule 3.106 grants states discretion to issue reporting instructions in emergency circumstances. A sending and receiving state may agree that immediate access to residential treatment is an emergency in a given case. Further, ICAOS Rule 3.101-2 permits states to accept transfers of offenders, not otherwise eligible, consistent with the purpose of the compact. In such discretionary cases, the receiving state may condition its acceptance on satisfactory performance and immediate return to the sending state upon completion of the treatment program.

Providing for the effective rehabilitation of offenders is a purpose of the compact. A receiving state serves this purpose of the compact when it accepts supervision of an offender who would otherwise be denied access to appropriate treatment. The "spirit of the compact" encourages states to consider how decisions affect the compact members' shared purposes.

### Issues and Findings

*Issue: Should neighboring states be allowed to agree upon expedited transfer procedures to permit offenders to report for treatment out of state as quickly as reasonably possible?*

**Finding:** A majority of the committee agree that the commission should not amend its rules to permit a waiver or modification of the existing transfer process for certain offenders, regardless of the purpose or temporary nature of the offender's proposal to remain in the receiving state. A substantial majority of responses to the Commissioners' Survey indicated that the existing transfer procedure and 45-day threshold should not be compromised.

The committee notes that Rule 3.106 allows a sending state to request expedited reporting instructions when an emergency exists. A receiving state has discretion to agree that immediate access to treatment is an emergency and to issue reporting instructions, if it wishes. However, a complete transfer request is still required by the rule and may not be waived.

*Issue: [When] may neighboring states make "local agreements" related to offenders' travel across state lines? What authority would such an agreement carry?*

**Finding:** The powers and duties of the commission include responsibility to promulgate rules which are binding in the compacting states. The commission is required to adopt rules addressing transfer procedures and eligibility. The compact does not allow states to make separate agreements concerning matters left to the commission. Even were it allowable, a majority of the committee agreed that such an agreement would set an unwise precedent and erode the foundation of the interstate compact.

*Issue: Should a state be required to [immediately] accept supervision of an offender who is, or who requests to be, in that state for the purposes of a specific treatment program?*

**Finding:** The committee finds that the rules should not be amended to require a receiving state to accept a transfer for the purpose of attending treatment in the receiving state. Such a rule could allow another state's offender to compete for scarce resources in the receiving state, while imposing a burden on the receiving state to manage the risk posed by the offender.

The committee finds that existing rules provide an appropriate framework for transferring offenders. Where it is currently allowed, discretion should remain with receiving states.

**Recommendations:**

- ICAOS rules should not be amended to allow local agreements between compacting states. <sup>1</sup>
- ICAOS rules should not be amended to create special procedures or considerations for the purpose of allowing offenders access to treatment in other jurisdictions. <sup>2</sup>



William Rankin, Chair  
March 27, 2008

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<sup>1</sup> Adopted by 5 - 1 vote of the *ad hoc* committee.

<sup>2</sup> Adopted by 4-2 vote of the *ad hoc* committee.

**ATTACHMENTS**

**A. ICAOS DISCUSSION FORUM POSTINGS: TREATMENT IN OTHER JURISDICTIONS**

**B. COMMISSIONER SURVEY RESULTS**

## **A. ICAOS DISCUSSION FORUM POSTINGS: TREATMENT IN OTHER JURISDICTIONS**

[www.interstatecompact.org/About/DiscussionForums](http://www.interstatecompact.org/About/DiscussionForums)

Residential treatment programs have been shown to have a positive impact on recidivism and therefore, increased public safety in every community. Residential treatment programs vary in length and intensity and may require participants to remain in the program longer than 45 days. In some cases, the only available program may be outside the boundaries of the state responsible for supervision.

### **Discussion Thread 1:**

Should the rules of ICAOS be amended to permit an offender to attend a residential treatment program in another jurisdiction, for a period of time greater than 45 days, without formal transfer of supervision, provided that the receiving state has given its consent?

#### ***Colleen Fickel wrote***

No. Most residential treatment programs are not secure facilities and are usually followed by an outpatient component, which requires residency at a halfway house.

Secondly, the Commonwealth of PA has uncovered many non-legitimate programs. It is incumbent upon the sending state's court or supervision staff to confirm that a Pennsylvania program being proffered by an offender is indeed licensed by the Commonwealth and is certified by the county as a legitimate treatment facility. Such offenders must have funding available to pay for the program, either through self-payment, private insurance or family assistance. It is emphasized that any program is unacceptable that requires Pennsylvania welfare monies or medical assistance be provided for an individual's treatment.

The Pennsylvania Department of Public Welfare also has concerns with other states' offenders who are ordered to complete PA residential treatment programs. The DPW regulation regarding residency [55 Pa. Code § 147.23] stipulates that residence is established when a person voluntarily resides in Pennsylvania with the intention of making their home here, and not for a temporary purpose. If an out-of-state offender is instructed by Court order to complete a residential or other facility program in Pennsylvania, the individual is not residing in Pennsylvania voluntarily and fails to meet DPW residency requirements. Additionally, federal regulation [42 USC 862a] prohibits persons convicted of a felony offense related to the use, possession, or distribution of a controlled substance committed after August 22, 1996 as ineligible for cash assistance.

### **Discussion Thread 2:**

Article 1 of the Compact provides that a purpose of ICAOS is to "provide for the effective tracking, supervision and rehabilitation of these offenders by the sending and receiving states." To what extent and in what ways should ICAOS rules facilitate offenders' access to treatment programs in other jurisdictions?

***Art Hegewald wrote***

While I agree that treatment is necessary and of benefit and should be available. I also believe that most states have similar treatment facilities within their own boundaries. Whereas out of state treatment may be in the best interest in certain cases, I believe the arrangement to attend be kept as simple as possible due to the numerous other duties and activities already required of agents/officers.

I believe the best way to facilitate this is on an individual case basis and would suggest the ICAOS provide a general agreement form between states to waive the 45 day rule to allow enrollment in treatment programs with consent and general stipulations or memoranda of understanding between the two states only.

Keep it simple.

***John Gusz wrote***

Out-of-state treatment continues to be a significant issue facing NJ Probation and the Courts. In the highest densely populated state in the Union, (almost 9 million people) there are a limited number of facilities to provide appropriate treatment. Many in-state beds are dedicated to the highly successful NJ Drug Court Program. Additionally, separated by a river, NJ is located across from two of the countries largest metropolitan cities (Philadelphia and New York City). Within the boundaries of these two cities are an abundance of hospitals (some university research and teaching) with a natural outgrowth of treatment programs that offer both successful and groundbreaking treatment modalities. To suggest that an offender be denied effective addiction treatment because of territorial boundaries, is to ensure a continuation of future criminal behavior. As currently written, ICAOS rules continue to turn a blind eye to one of societies greatest ills; substance abuse as a key contributing factor to criminality. ICAOS needs to fully recognize the gravity and consequence of this issue and begin to effectively address out-of-state treatment. Perhaps a start would be to develop a Rule that permits out-of-state treatment for a period up to 6 months, stipulating that such Program has received appropriate licensing by that respective state. The Interstate Compact on the Placement Children (ICPC) functions in much the same capacity for adjudicated juveniles sentenced to private out-of-state residential treatment facilities. ICPC also requires an Article VI Court Hearing including the formal acknowledgement of responsibility for payment of treatment and retaking responsibilities, should the treatment be interrupted. An ICAOS Rule could also include similar or like provisions or process. Failure to complete treatment as a condition of supervision could solely trigger an amendment to Rule 5.102 or Rule 5.103. To suggest that offenders don't illegally proceed out-of-state for treatment or through the loop-hole provided by the "relocate" definition, is simply being naive.

## B. COMMISSIONER SURVEY RESULTS

The ad hoc Committee on Treatment in Other Jurisdictions is studying whether the rules of ICAOS should be amended to increase offenders' access to residential treatment programs which are longer than 45 days, but which are in other jurisdictions.

### 3. Some of the arguments for and against a change are listed below. Please indicate the degree to which you agree or disagree with each statement.

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
Residential treatment programs have been shown to have a positive impact on recidivism and therefore, increase public safety in every community. ICAOS should do all it can to assure offenders are able to receive necessary treatment, even if it is outside the borders of the Sending State.	6 16%	13 34%	2 5%	10 26%	7 18%
Treatment resources may be clustered in larger cities or near a hospital or university which serves a customer base crossing jurisdictional boundaries. Offenders living in those areas should be allowed to attend those residential treatment programs without requiring a formal transfer of supervision.	2 5%	9 24%	1 3%	13 34%	13 34%
Requiring a formal transfer request to be prepared and investigated, for an offender who has no intention of remaining in the receiving state after completing treatment, is an unnecessary use of resources in both the sending and receiving states.	7 18%	9 24%	1 3%	12 32%	9 24%



ICAOS has determined that public safety requires a transfer of supervision when an offender wishes to remain in another state more than 45 consecutive days. Neither the transfer process nor the 45-day threshold should be compromised.	16	10	3	6	2
	43%	27%	8%	16%	5%
Each state should provide the resources necessary for effective treatments of its own citizenry. Allowing offenders to cross jurisdictional boundaries for treatment reduces the resources available to citizens in the receiving state.	13	8	2	8	7
	34%	21%	5%	21%	18%
Receiving States which have treatment resources would shoulder an unjustified burden of risk while the offender was in the state's residential program.	9	11	2	12	4
	24%	29%	5%	32%	11%

Comment from Pamela Levine

Florida agrees that treatment programs have a positive impact on recidivism and increase public safety; however, we would not want to see the rules amended to make enrollment and participation in a treatment program in the receiving state a mandatory acceptance, if the existing mandatory criteria were not met. The discretionary transfer option is available for this purpose. Florida takes the position that eligible offenders relocating across state lines for 45 days or more should continue to be transferred under the Compact. As long as eligible offenders in treatment are transferred and placed under supervision, the receiving state would not shoulder an unjustified burden of risk. In accordance with Rule 4.101, other state offenders accepted for supervision in Florida under the Compact have the same level of access to contracted treatment programs, at the same pre-negotiated rates, as Florida offenders. Florida would not be in favor of allowing states that do not provide access to treatment for their offenders to transfer offenders to Florida for the sole purpose of receiving treatment.