

“Why the Interstate Compact on Adult Offender Supervision Does Not Restrict Temporary Travel Permits”

By Greg Westfall

As most know by now, several probation departments and judges across the state have suddenly disallowed all out-of-state travel by probationers. As far as I can tell, this was brought on by an Assistant Attorney General giving a speech at a seminar or conference attended by several probation department heads, wherein he said any out of state travel violates the Interstate Compact on Adult Offender Supervision (ICAOS) and that if any probationer is out of state and commits a crime, the probation department and the judge supervising his probation can be held liable.

The genesis for this new revelation, again, as far as I can tell, was a case out of Harris County where a probationer went to another state and committed a violent crime and the Harris County Probation Department ended up having to pay a fine. My understanding was that the probationer was in the other state for an extended period of time.

My research convinces me that the ICAOS in no way restricts temporary interstate travel by probationers and that the Attorney General’s interpretation (if, indeed, it was his interpretation rather than a misunderstanding on the part of the probation departments) is incorrect, as I will set out below. The good news (I hope) is that the Interstate Commission for Adult Offender Supervision (Commission), which oversees the ICOAS and issues advisory opinions, has been requested to issue an expedited advisory opinion on this issue. If the Commission just interprets the plain meaning of the rules, then this issue should be resolved favorably to our clients.

For anyone who wants to do independent research on this matter, you need look no further than the Commission’s website – www.interstatecompact.org – to find everything you will need. On that site are .pdf versions of not only the ICOAS Rules and the ICOAS Bench Book, but also training materials and an interactive page containing all of the Commission’s advisory opinions. The ICOAS in Texas is administered by the Texas Interstate Compact Office, which is a part of the TDCJ – Parole Division.

The Rules

“As a creature of an interstate compact, the Commission is a quasi-governmental administrative body vested by the states with broad regulatory authority.” ICOAS Rules, Introduction. As such, the Commission has rulemaking authority, as any body of its type would.

What Types of Offenses Are Covered?

You can safely assume that anyone under active supervision on a felony offense is covered by the ICOAS.¹ I think there is a good argument that an unsupervised (*pro forma*) deferred adjudication might not be covered, but otherwise felonies are all pretty much included. *See generally*, ICOAS Rules, Chapter 3.

Some misdemeanors are also covered. In determining whether a misdemeanor is covered, you have to read Chapter 3 as well as Rule 2.105, which is attached to this memorandum.

From a review of 2.105, you can see, a second or subsequent offense for DWI will be covered. An advisory opinion directly on point says that it doesn't matter that the subsequent offense was charged as a DWI-First. That opinion is appended to the end of this memorandum. The fact that it was actually *not* the probationer's first offense is all that matters.

What is covered by the ICOAS is quite broad, and, unless we are talking about a misdemeanor that does not fit Rule 2.105, one should assume that their client's offense is covered by the ICOAS.

So What Does That Mean?

Well, therein lies the rub. In every statute, you try to look for the section that sets out the statute's "applicability." For the ICOAS, the closest thing you can find to an express applicability provision is Rule 2.110, which is attached to this memorandum, but states in pertinent part as follows:

“No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.”

Attached also are the definitions from the ICOAS Rules, many of which appear in the actual compact itself (which is also available on the ICOAS website).

The word “relocate” in Rule 2.110(a) is a defined term. It means “to remain in another state for more than 45 consecutive days in any 12 month period.”

Thus, by its express terms, the ICOAS does NOT apply to interstate movement of a probationer unless that probationer is going to stay in that other state for more than 45 consecutive days. Therefore, by its own terms, the ICOAS does NOT apply to temporary travel permits. The ICOAS, however, does not actually say whether or not temporary travel permits are generally allowed or disallowed. I suspect that will be the point of the expedited advisory opinion.

As you can see, though, the terms “Temporary travel permit” and “Travel permit” are also defined terms. This, however, does not affect the analysis for the type of travel permits we are talking about. “Temporary travel permit” is defined specifically to apply to probations which have been “designated” as “victim sensitive.” Thus, it deals with a specific type of travel permit. Importantly, that provision does not even disallow travel.

“Travel permit” is also defined and means “the written permission granted to an offender authorizing the offender to travel from one state to another.” Aside from the “written” part, that definition would appear to apply to our cases. However, that definition must be read in conjunction with Rule 2.110, which the Commission has done in 2 separate advisory opinions, both of which are attached to this memorandum.

There is a specific procedure which must be followed when a probationer seeks to change his residence from one state to another. Part of that procedure involves a waiting period for the receiving state to conduct an investigation. For one reason or another, the sending state is not allowed to issue a travel permit to the probationer to travel from the sending state to the receiving state during the pendency of that investigation without the permission of the receiving state.

Aside from these limited circumstances, the ICOAS is completely silent on temporary, interstate travel permits. From a reading of the plain language of the Rules, I believe the ICOAS cannot be used as a reason to forbid them.

So What Happened in Harris County?

I believe they just let the guy move to another state without going through the procedures required under the ICOAS. If you violate Rule 2.110(a) and allow someone to relocate to another state (stay longer than 45 consecutive days) then you violate the compact. If you violate the compact, then you don't get judicial immunity. Thus, you can be sued.

But the opposite would also be true. If you don't let someone go to another state for longer than 45 consecutive days then you don't violate the compact and judicial immunity would be fully intact. Simple as that.

I believe it would take a tortured reading of the ICOAS and ICOAS Rules to actually hold that temporary interstate travel is banned. I am hopeful that the Commission will just read the plain words and come to the correct result.

In the meantime, use these rules to explain the issue to the judge overseeing your client and try to get permission directly from the judge on a case-by-case basis.

Attachments:

ICOAS Rule 2.110

ICOAS Definitions

ICOAS Rule 2.105

Advisory Opinion 7-2006

Advisory Opinion 3-2004

Advisory Opinion 9-2006

1. There are several technical requirements for what offenses are subject to mandatory transfer, temporary transfer, etc. To really get this, you must read Chapter 3. For instance, there has to be at least 90 days of supervised probation left to qualify for mandatory transfer. These rules are unimportant for our analysis of travel permits, however, so I say just assume that your client is covered and focus on the word "relocate." Unless your client has a misdemeanor probation, though, for all practical purposes he is probably covered by the ICOAS. This does not affect the analysis of travel permits, though.

Rule 2.110 Transfer of offenders under this compact

- (a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.
- (b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision.

References:

ICAOS Advisory Opinions

3-2004 [Offenders relocating to another state shall not be issued travel permits without the permission of the receiving state as provided by ICAOS rules]

9-2006 [States which allow eligible offenders to travel to a receiving state pending an investigation are in violation of Rule 2.110 and Rule 3.102. In such circumstances the receiving state may properly reject the request for transfer]

History: Adopted November 3, 2003; amended September 13, 2005.

Chapter 1 Definitions

Rule 1.101 Definitions

As used in these rules, unless the context clearly requires a different construction-

“Abscond” means to be absent from the offender’s approved place of residence or employment with the intent of avoiding supervision.

“Adult” means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

“Application fee” means a reasonable sum of money charged an interstate compact offender by the sending state for each application for transfer prepared by the sending state.

“Arrival” means to report to the location and officials designated in reporting instructions given to an offender at the time of the offender’s departure from a sending state under an interstate compact transfer of supervision.

“By-laws” means those by-laws established by the Interstate Commission for Adult Offender Supervision for its governance, or for directing or controlling the Interstate Commission’s actions or conduct.

“Compact” means the Interstate Compact for Adult Offender Supervision.

“Compact administrator” means the individual in each compacting state appointed under the terms of this compact and responsible for the administration and management of the state’s supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission for Adult Offender Supervision, and policies adopted by the State Council under this compact.

“Compact commissioner” or “commissioner” means the voting representative of each compacting state appointed under the terms of the Interstate Compact for Adult Offender Supervision as adopted in the member state.

“Compliance” means that an offender is abiding by all terms and conditions of supervision, including payment of restitution, family support, fines, court costs or other financial obligations imposed by the sending state.

“Deferred sentence” means a sentence the imposition of which is postponed pending the successful completion by the offender of the terms and conditions of supervision ordered by the court.

“Detainer” means an order to hold an offender in custody.

“Discharge” means the final completion of the sentence that was imposed on an offender by the sending state.

“Extradition” means the return of a fugitive to a state in which the offender is accused, or has been convicted of, committing a criminal offense, by order of the governor of the state to which the fugitive has fled to evade justice or escape prosecution.

References:

ICAOS Dispute Resolution

2-2004 [Offenders not transferred through the ICAOS must be returned through the extradition clause of the U.S. Constitution]

“Offender” means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

References:

ICAOS Advisory Opinion

9-2004 [CSL offenders seeking transfer of supervision are subject to ICAOS-New Jersey]

“Plan of supervision” means the terms under which an offender will be supervised, including proposed residence, proposed employment or viable means of support and the terms and conditions of supervision.

“Probable cause hearing” a hearing in compliance with the decisions of the U.S. Supreme Court, conducted on behalf of an offender accused of violating the terms or conditions of the offender’s parole or probation.

“Receiving state” means a state to which an offender requests transfer of supervision or is transferred.

“Relocate” means to remain in another state for more than 45 consecutive days in any 12 month period.

“Reporting instructions” means the orders given to an offender by a sending or receiving state directing the offender to report to a designated person or place, at a specified date and time, in another state. Reporting instructions shall include place, date, and time on which the offender is directed to report in the receiving state.

“Resident” means a person who—

- (1) has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision; and
- (2) intends that such state shall be the person’s principal place of residence; and
- (3) has not, unless incarcerated, remained in another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.

“Resident family” means a parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who--

- (1) has resided in the receiving state for 180 days or longer as of the date of the transfer request; and
- (2) indicates willingness and ability to assist the offender as specified in the plan of supervision.

“Retaking” means the act of a sending state in physically removing an offender, or causing to have an offender removed, from a receiving state.

“Rules” means acts of the Interstate Commission, which have the force and effect of law in the compacting states, and are promulgated under the Interstate Compact for Adult Offender Supervision, and substantially affect interested parties in addition to the Interstate Commission,

“Sending state” means a state requesting the transfer of an offender, or which transfers supervision of an offender, under the terms of the Compact and its rules.

“Sex offender” means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to register as a sex offender either in the sending or receiving state and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

“Shall” means that a state or other actor is required to perform an act, the non-performance of which may result in the imposition of sanctions as permitted by the Interstate Compact for Adult Offender Supervision, its by-laws and rules.

“Significant violation” means an offender’s failure to comply with the terms or conditions of supervision that, if occurring in the receiving state, would result in a request for revocation of supervision.

“Special condition” means a condition or term that is added to the standard conditions of parole or probation by either the sending or receiving state.

“Subsequent receiving state” means a state to which an offender is transferred that is not the sending state or the original receiving state.

“Substantial compliance” means that an offender 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.

References:

ICAOS Advisory Opinion

7-2004 [determining “substantial compliance when there are pending charges in a receiving state]

“Supervision” means the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.

References:

ICAOS Advisory Opinions

9-2004 [CSL offenders released to the community under the jurisdiction of the Courts]

8-2004 [Suspended sentence requiring payment of monitored restitution]

3-2005 [Requirement to complete a treatment program as a condition of supervision]

“Supervision fee” means a fee collected by the receiving state for the supervision of an offender.

“Temporary travel permit” means, for the purposes of Rule 3.108 (b), the written permission granted to an offender, whose supervision has been designated a “victim-sensitive” matter, to travel outside the supervising state for more than 24 hours but no more than 31 days. A temporary travel permit shall include a starting and ending date for travel.

“Travel permit” means the written permission granted to an offender authorizing the offender to travel from one state to another.

“Victim” means a natural person or the family of a natural person who has incurred direct or threatened physical or psychological harm as a result of an act or omission of an offender.

“Victim-sensitive” means a designation made by the sending state in accordance with its definition of “crime victim” under the statutes governing the rights of crime victims in the sending state. The receiving state shall give notice of offender’s movement to the sending state as specified in Rules 3.108 and 3.108-1.

“Waiver” means the voluntary relinquishment, in writing, of a known constitutional right or other right, claim or privilege by an offender.

History: Adopted November 3, 2003; “Compliance” amended October 26, 2004; “Resident” amended October 26, 2004; “Resident family” amended October 26, 2004; “Substantial compliance” adopted October 26, 2004; “Supervision” amended October 26, 2004; “Travel permit” amended September 13, 2005; “Victim” amended September 13, 2005; “Relocate” adopted September 13, 2005; “Compact” adopted September 13, 2005; “Resident” amended September 13, 2005; “Relocate” amended October 4, 2006; “Sex offender” adopted September 26, 2007.

Rule 2.105 Misdemeanants

- (a) A misdemeanor offender whose sentence includes one year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following—
- (1) an offense in which a person has incurred direct or threatened physical or psychological harm;
 - (2) an offense that involves the use or possession of a firearm;
 - (3) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;
 - (4) a sexual offense that requires the offender to register as a sex offender in the sending state.

References:


ICAOS Advisory Opinion

4-2005 [Misdemeanant offender not meeting criteria of 2.105 may be transferred under Rule 3.101-2, discretionary transfer]

7-2006 [There are no exceptions to applicability of (a)(3) based on either the time period between the first and subsequent offense(s) or the jurisdiction in which the convictions occurred.]

16-2006 [If the law of the sending state recognizes the use of an automobile as an element in an assault offense and the offender is so adjudicated, Rule 2.105 (a)(1) applies.]

History: Adopted November 3, 2003; amended March 12, 2004; amended October 26, 2004.

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State Requesting Opinion <p align="center">Pennsylvania</p>		Dated: 4/26/2006	
Description Clarification of Rule 2.105 Determination of second or subsequent misdemeanor DUI offense.			

Background & History


Pursuant to Commission Rule 6.101 (c) The Commonwealth of Pennsylvania has requested assistance in the interpretation of Rule 2.105 (a)(3), specifically the determination of what constitutes “a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol.” As Pennsylvania phrases the question:

Is it simply the total number of convictions for DUI in a lifetime or is it the manner in which the DUI was sentenced that determines a second or subsequent DUI offense for the purpose of Rule 2.105? If the sentence imposed by a court for a DUI specifically indicates that the DUI is being treated as a first offense for sentencing purposes, should that case be considered a first offense for compact purposes and thus not eligible for transfer under Rule 2.105?


In order for states to make uniform decisions regarding the transfer and acceptance of DUI cases, it would be helpful to have clarification on this issue thorough an Advisory Opinion from the Commission.

Analysis and Conclusion

Commission Rule 2.105 defines the types of misdemeanor offenses for which a convicted offender “shall be eligible for transfer under the Compact. Rule 2.105 (a) (3) specifies one of those types of offenses as: “a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;” Several states have statutory provisions under which a Judge can sentence a current DUI as a first offense when there has been a specified period of time between the instant DUI offense and prior DUI convictions. Rule 2.105 (a) (3) provides no such discretion but unequivocally provides that if the “instant offense includes . . . a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol” that such a misdemeanor offender “shall be eligible for transfer.” The rule provides no exceptions to applicability based on either the time period between the first and subsequent offense(s) or the jurisdiction in which the

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convictions occurred. Because the Compact has been granted Congressional consent, its provisions as well as its authorized rules are equivalent to and have the effect of federal law. See *Cuyler v. Adams*, 449 U.S. 433 (1981); *Texas v. New Mexico*, 482 U.S. 124 (1987). Thus, both the compact and rules are enforceable on the states under both the Supremacy Clause and the Contract Clause of the federal Constitution and take precedence over conflicting statutes, executive actions or judicial orders. See *WMATA v. One Parcel of Land*, 706 F.2d 1312 (4th Cir. 1983), also *Doe v. Ward*, 124 F. Supp.2d 900 (W.D. Penn. 2000). See also *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole, et al.* (U.S. Dist. Ct. E. D. KY. 2005). Thus, even if the sentencing court considers the DUI conviction to be a “first offense” for “sentencing purposes,” the provisions of Rule 2.105 (a)(3) prevail and any offender who has in actuality been previously convicted of a DUI misdemeanor offense shall be eligible for transfer under the Compact based on the plain meaning of this rule.

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<p style="text-align: center;">ICAOS Advisory Opinion Issued by: Executive Director-Don Blackburn Chief Legal Counsel: Richard L Masters</p>			
State Requesting Opinion Utah		Dated: <u>April 15, 2004</u>	
Description Issuing travel permits to the Receiving state during the investigation period.			

Background

The State of Utah Deputy Compact Administrator reported that during the investigation pursuant to the Transfer Request from Minnesota, the above offender reported to the field office. Utah had previously denied reporting instructions for the offender. Utah argues that it was their interpretation of the compact that offenders could not travel to the receiving state once an application for Compact had been sent.


The State of Minnesota Deputy Compact Administrator reported the transfer request had been submitted to Utah on March 9, 2004. On March 30th, 2004 the agent issued a 15 day travel permit for the offender to travel to Utah for a family visit from April 7, 2004 returning April 21, 2004. The offender had to have a return bus ticket before the agent would consider allowing him to visit Utah. The Minnesota compact office received the email from Utah on April 14th indicating that the offender had been issued the 15 day travel permit to visit his family pending investigation. The offender did return to Minnesota on April 21, 2004 as his travel permit indicated.

Minnesota argues that the current rules are silent on temporary travel except in victim sensitive cases. Minnesota claims that they and their surrounding border states were unaware that offenders could not temporarily visit a state during the investigation as long as the offender did not relocate.

Discussion

The rules that currently govern the Interstate Compact for Adult Offender Supervision are the transition rules adopted by the commission in November 2002. This issue is partially addressed in rule 4-106

2) *Provisional travel permits may be issued by a sending state to allow a parolee or probationer to proceed to a receiving state prior to completion of an investigation and formal acceptance of the case in emergency situations.*

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Rule 4-106(1) refers to travel permits being authorized by the receiving state in appropriate cases to *make temporary visits out of the receiving state, not exceeding thirty days in length.*

Rule 4-106(2) states that provisional travel permits may be used when travel is authorized by a sending state to proceed to a receiving state. It emphasizes *the precautions outlined in Section 3-101 shall be observed by the sending state Administrator before authorizing travel in these cases.*


Rule 3-101 states *in all cases except emergency and court ordered transfers, the receiving state shall be given the opportunity to investigate the prospective plan of the individual prior to movement to the receiving state.*

While it may be argued the transition rules governing the compact until August 1, 2004 are not entirely clear in regards to temporary travel to the receiving state during the investigation, practice has set forth that it is not acceptable. To the best of the Executive Director's knowledge since 1989 and the knowledge of Milt Gilliam, former rules committee chair, the practice that has been consistently taught is that once an offender has made application through the compact they may not travel to the prospective receiving state during the investigation without the permission of the receiving state. I believe this is consistent with the intent under 3-101 and 4-106 when it refers to "emergency situations".

If this was not the practice states would issue travel permits to get around the requirements for reporting instructions. The intent behind the rule of not allowing an offender to proceed prior to the receiving state having an opportunity to investigate was to not have the offender in the receiving state prior to supervision without the receiving states permission, knowledge or have the opportunity to investigate.

New Rules

There is little question what the intent is regarding this matter under the new rules that will take effect August 1, 2004.

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“SEC 2.110:

No state shall permit a person who is eligible for transfer under this compact to relocate to another state except as provided by the Interstate Compact for Adult Offender Supervision and these rules.”

“SEC 3.102


- (a) *Subject to the exception in sec 3.103 (b), a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to **LEAVE** the sending state. Emphasis added.*
- (b) *Subject to the exception in sec 3.103, the receiving state shall be given the opportunity to investigate the proposed plan of supervision prior to allowing the offender to **LEAVE** the sending state.” Emphasis added.*

The emphasis in the new rules is to establish a continuum of supervision. There is emphasis on the word leave because the drafting team did not want the offender to be in the receiving state during the investigation without the receiving state’s permission.

The new rules have attempted to ensure a continuum of supervision by means of the receiving state assuming the supervision when the offender leaves the sending state. Sec.3.103 (b)(3) of the new rules states, “*Upon receipt of notification and verification by the sending state of residency, a receiving state shall assume responsibility for supervision of an offender who is granted a travel permit during the investigation of the offender’s plan of supervision.*”

The proposed practice by Minnesota would undermine the issuance of reporting instructions. Why would a sending state even ask for reporting instructions if they could issue temporary travel permits during the investigation? An agent could conceivably continue to issue travel permits during the entire time of the investigation.

There does seem to be some confusion created by the definition of Temporary Travel permits in Sec. 1.101. (cc). “*Temporary travel permit means, for the purposes of sec. 3.108 (b), the written permission granted to an offender, whose supervision has been*

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designated a “victim-sensitive” matter, to travel outside the supervising state for more than 24 hours but no more than 31 days. A temporary travel permit shall include a starting and ending date for travel.”

There seems to be a need to clarify in the rules when temporary travel is permitted or not permitted in non-victim sensitive cases. Under Sec. 3.103, regarding exceptions, it states:

“(B) The receiving state shall issue provisional reporting instructions no later than two business days following receipt of such notification and request from the sending state.”

“(C) No travel permit shall be granted by the sending state until provisional reporting instructions are received from the receiving state.”


In Section 1.101, “travel permit” is defined as:

“The written permission granted to an offender authorizing the offender to relocate from one state to another.”

In regard to this matter, states have argued that relocation is not defined; consequently, a temporary travel permit is not to relocate but to visit another state.

There seem to be several areas within the rules discussed that needs to be clarified by the Commission. One has to do with the use of temporary travel permits during the period of investigation and the other is in regard to the definition of relocate.

The Executive Director’s duty is to attempt to preserve the integrity of the intent of the rules as they have been written until they can be changed if necessary. In regard to temporary travel, it is clear from my consulting with the chair of the Rules Committee that the intent was that an offender not be allowed to travel to the receiving state once a transfer request had been submitted. I believe the use of temporary travel permits undermines the integrity of the exception put forth in rule Sec. 3.103 (b). In the past many states passed laws prohibiting an offender from being in their states without permission, and one could argue that they would not request reporting instructions if they could issue temporary travel permits during the investigation period.


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Description Issuing travel permits to the Receiving state during the investigation period.			

If that is a concept the Commission wants to allow, I would suggest specifics need to be written into a rule governing the length, frequency, and notification of temporary travel. States made it quite clear during the rule drafting process that they did not want offenders in their states without permission. They were frustrated with the practice of allowing offenders to travel prior to the completion of the investigation and finding them in their state during the investigation without their permission. The Commission will have to determine the specific direction they want to pursue in this regard.

For the purpose of this decision, I feel obligated to protect the integrity of the intent of the rules as drafted and not make a decision that would obviously have tremendous impact on the "Request for Reporting Instructions" requirements. I am recommending to the Executive Committee that they assign the Rules Committee to address these issues brought forth.

Conclusion

The opinion of the Executive Director is that under the transition rules practice and under the new rules to take effect August 1, 2004, once an application has been made under the compact the offender may not travel to the receiving state without the receiving state's permission.

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State Requesting Opinion Minnesota		Dated: 8/7/2006	
Description An offender being in the receiving state prior to investigation as a valid reason for rejection.			

Background & History


Pursuant to Commission Rule 6.101(c) the State of Minnesota has requested an Opinion regarding Commission 2.110. Minnesota states the following:

Minnesota is requesting a formal opinion regarding an offender being in the receiving state prior to the investigation being completed as a valid reason for rejection. Does it matter if the case is a mandatory case or not? Does the Compact allow for the receiving state to hold the investigation until the sending state returns the offender at which time the receiving state can start the investigation?

Commission Rule 2.110 States:

- (a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.*
- (b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision.*

Rule 2.110 contains a mandatory requirement of compliance with the provisions and procedures of the compact and the rules as a condition of permitting an offender to relocate from a sending state to a receiving state. This prerequisite to mandatory transfers of offenders under supervision under Rules 3.101 and 3.101-1 as well as discretionary transfers of offenders under Rule 3.101-2. The rules governing compact transfers are set forth in Rules 3.102, 3.103, 3.104, 3.104-1, 3.105, 3.106, 3.107 3.108, 3.108-1, and 3.109. These rules provide the procedures which must be followed with regard to applications for transfer, transfer requests, investigations, acceptance of transfers, reporting instructions, expedited transfers and victim notification. Among these requirements are specific provisions such as Rule 3.103 (a) which prohibits a sending state from allowing a supervised offender to relocate to a receiving state without the receiving state's acceptance, with the exception of travel permits which may be

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State Requesting Opinion Minnesota		Dated: 8/7/2006	
Description An offender being in the receiving state prior to investigation as a valid reason for rejection.			

granted but which are also subject to procedural requirements set forth in that rule. Such acceptances are premised on investigations which the receiving states are required to be given a reasonable opportunity to conduct prior to the offender being allowed to leave the sending state under the provisions of Rule 3.102(b), with the exception of travel permits under Rule 3.103(b). It is presumed in Rule 3.103 (a) that a sending state will not allow a compact offender to relocate to a receiving state and therefore this subsection is silent on the subject of the sending state retaking the offender if in violation this provision; however, when read together with subsection 3.103(b)(5)(B) it is clear that the intent of this rule is to require the sending state to initiate the retaking of an offender whose transfer request is rejected and who relocates in violation of these provisions by issuing a warrant or an order to return to the sending state.

Analysis and Conclusion

Both the language and intent of the above rules, including Rule 2.110 unequivocally require that the above referenced procedures set forth in the Rules must be followed in all transfers of eligible offenders and the failure to do so is a violation of the compact and the Rules. Unquestionably, states which allow eligible offenders to transfer prior to the receiving state having an opportunity to investigate are in violation of the Compact under Rule 3.102(b) and Rule 2.110. In such circumstances the receiving state can properly reject the request for transfer of such an offender, until returned to the sending state, due to the prior failure of the sending state to comply with the requirements of the compact and the rules as referenced above.