(Minority Position from the states of Pennsylvania, New York and New Jersey)

These remarks will serve as the minority position to the Rules Committee's recommendation that the proposed amendment to section 2.105, *Misdemeanants*, be acted upon prior to the full Commission meeting scheduled for October 25 – 27, 2004.

The preamble to the Interstate Compact for Adult Offender Supervision refers to the following concepts: expanded supervision expectations, public safety concerns, offender accountability, and the regulation of requirements such as victim notification and sex offender supervision. Considering the preceding, the Rules Committee dissenters (New Jersey, New York and Pennsylvania) move that in the interest of public and victim safety, the Interstate Commission should strengthen the regulation of transfer procedures and the interstate movement of offenders. To exclude a population of convicted and adjudicated misdemeanant offenders from compact supervision eligibility is inconsistent with public safety, community interests, and the foundation of this compact. It is the dissenters’ position that the fiscal constraints of a state ought not jeopardize or outweigh safety concerns. A primary concern used to support the drafting of the new compact was the precise issue of some states refusing to accept misdemeanant offenders.

The dissenters contest the following points to the proposed Misdemeanant amendment.

This amendment is difficult to understand and subject to various interpretations, most notably sections 2.105(a)(3) and 2.105(b). This is a general provision rule and it must be clearly understandable to compact office personnel who are charged with implementing the rule, field supervision staff who will use the rule to interpret offender eligibility and court staff and prosecutors who assist the court in determining the rule’s significance in sentence recommendations. The rule as written fails to give the receiving state any say in whether a misdemeanant residing in their state should be under supervision.

Subsection (b) fails to specifically define a “minor offense.” Rather, it cites only exceptions by which an offense cannot be considered “minor.” The enumerated criteria under subsection (b) are narrow in content and therefore subject to different interpretations.

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1 During the promulgation of rules at the November 2003 Interstate Commission Meeting, the practice of including definitions within rules was struck down by a majority of the States’ Commissioners. It was agreed, that compact rule definitions are to be placed within Chapter 1 Definitions section of the Interstate Commission for Adult Offender Supervision Rules.
The proposed amendment to the misdemeanant rule as specified in sections 2.105(a)(1) and 2.105(a)(2) relies on periods of measurement. As a result, this amendment is inconsistent with section 3.101(a), which refers to the duration of time an offender has remaining under supervision. Section 3.101(a) allows a sending state to request transfer of supervision for “an offender who has three months or more … remaining.”

For offenders who do not (or is it “does mean”?) meet the time frame criteria listed in sections 2.105(a)(1) and 2.105(a)(2), the Rules Committee has proposed examples of “non-minor offenses,” delineated in section 2.105(b). These examples are vague, incomplete, and subject to varying interpretations. Additionally, the aforementioned remedy contradicts the purpose of the Interstate Compact for Adult Offender Supervision, which does not provide for the exclusion of any category of offenders.

It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compact states; to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders… [T]his compact will create an Interstate Commission … which will promulgate rules to achieve the purpose of this compact.

The Interstate Commission is obligated to promulgate rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. § 552(b). Rulemaking must also conform to the principles of the "Federal Administrative Procedure Act," 5 U.S.C. § 551 et seq., and the "Federal Advisory Committee Act," 5 U.S.C. app. 2, § 1 et seq. It is the minority position that the convening of the Commission body for promulgating amendments to one definition and two general provision rules is not conducive to a full deliberative debate necessary for such a sensitive and obviously controversial and divisive area of issue that has caused states to threaten to withdraw from the compact and could establish an unintended precedent. It is understood that it is within the Commission's purview to vote by means of telecommunications. However, such a setting does not provide for the deliberative process of unhurried contemplative discussion nor truly permit public input regarding the rules prior to their promulgation. Additionally, the Interstate Commission has not presented or explained the purpose of the need to modify this rule at this time.

It is the minority position that the Commission implement the full body of rules as adopted November 3 – 4, 2003 at the public Commission meeting held in Little Rock, Arkansas. We assert that the respective Commissioners who now realize that their states may experience difficulty
with meeting the specification of section 2.105, *Misdemeanants*, should seek assistance from the Commission and its Compliance Committee. It cannot be assumed that all states are able to readily meet every provision of the promulgated rules. **In lieu of amending this rule prior to the next Commission meeting, the dissenter**s recommend that states earnestly work towards compliance with the oversight and assistance of the Commission. The Commission’s actions may include training, meeting with key legislators, and if necessary, drafting corrective legislation. This rule, and any potential amendment, can then be discussed in a proper forum at the full Commission meeting in October 2004.