State Council for Interstate Adult Offender Supervision

Meeting—September 16, 2009
10:00 a.m.

Department of Public Safety and Correctional Services
Office of the Secretary
4th Floor Conference Room
300 E. Joppa Road, Towson, Maryland 21286

Attendees:

Patrick McGee, Commissioner/Compact Administrator and Director of Parole and Probation
Anne McCloskey, Chair, Maryland Coalition Against Crime, Inc.
Leo Ryan, Deputy State’s Attorney, Baltimore County State’s Attorney’s Office
Krystel Medley-Greene, Assistant to Delegate Kriselda Valerrama
Melanie Brock, Deputy Compact Administrator, Division of Parole and Probation
Eleanor McMullen, Special Assistant to the DPP Director and Staff to State Council

Agenda Item I: Welcoming Remarks and Introductions

Following introductions, Mr. Patrick McGee explained to the attendees that Secretary Gary Maynard was unable to attend and chair today’s State Council meeting due to his required attendance at a wardens’ meeting on the Eastern Shore. Mr. McGee thanked those members in attendance and then noted the recent passing of Council member William Giuffre on September 9, 2009, following a two and a-half month battle with cancer.

Agenda Item II: Annual Business Meeting—Interstate Commission for Adult Offender Supervision

Mr. McGee explained that the Interstate Commission for Adult Offender Supervision (“Interstate Commission”) will conduct its annual business meeting November 2—5, 2009, in Reno, Nevada. Commissioners, Compact Administrators, Deputy Compact Administrators and staff from all states will attend the annual business meeting. Training sessions will be coordinated by the Interstate Commission for Commissioners and Deputy Compact Administrators. Regional meetings will be conducted and Maryland is part of the Interstate Commission’s South Region. The chairpersons of the committees to the Interstate Commission—Executive, Finance, Compliance, Rules, Technology, Training—will provide reports of committee activity to the gathered representatives, as will the the Counsel to the Interstate Commission and the Interstate Commission’s Victims’ Representative.

Mr. McGee also explained that the second day of the meeting would be dedicated to discussion and voting on proposed amendments to the Rules governing the administration of the Compact. The proposed amendments will be reviewed today. Mr. McGee noted that there will likely be a lot of follow-up discussion regarding the Interstate Compact Offender Tracking System (“ICOTS”), which was implemented October 2008.

Mr. McGee also noted that he is a member of the Interstate Commission’s Technology Committee and that the committee has met (via telephone) almost on a monthly basis since ICOTS was launched to prioritize corrections and enhancements to the system.
**Agenda Item III: Proposed Compact Rule Amendments**

See Attachment A at the end of these minutes for a full discussion of the proposed amendments.

**Agenda Item IV through VI: Maryland Compact activity; ICOTS training update; and Discussion**

Mr. McGee noted that Maryland is mainly an importing state for offenders owing in large part to the classification in Maryland of misdemeanor and felony CDS offenses. Most offenders transferring into Maryland are from the surrounding jurisdictions of Virginia, Pennsylvania, Delaware, and the District of Columbia. As an example, Ms. Brock explained that in Virginia simple CDS possession is a felony and by Rule the supervision of felony offenders must be transferred via the Compact. She noted that Virginia is a major exporting state to Maryland, whereas Maryland does not export as many offenders to surrounding jurisdictions because CDS simple possession is a misdemeanor in Maryland and, generally, not eligible for transfer via the Compact.

Ms. McCloskey asked if sending states are responsible for providing financial support for supervision costs to the receiving state. Mr. McGee stated that they are not. He noted that as a receiving state, Maryland charges in-coming offenders a $45/month supervision fee (the same fee charged to in-state offenders). Ms. McCloskey noted that the $45/month fee probably does not cover all of the expenses involved in supervising an offender and Mr. McGee agreed that it does not.

Ms. McCloskey asked how Maryland’s supervision fees compare with other states. Mr. McGee stated that Maryland's fees are comparable with other states. Ms. McCloskey suggested that the Department try to raise the fees to better cover the cost of supervision. Mr. McGee noted that the fees are statutorily based and it would take an act of the Legislature to change them. He also commented that while some feel that offenders should pay for the cost of their supervision, many judges waive the fee altogether for offenders.

Ms. McCloskey asked who serves as the advocate for increasing offender fees. Mr. McGee stated that the Department would take on that role through the Department’s Legislative Liaison but that the decision to change the fee is often done in consultation with the Governor’s staff and with the budget personnel at the Department of Budget and Management.

Ms. Medley-Greene asked about the Division's collection rate for the supervision fee. Mr. McGee remarked that the collection rate is nowhere near 100% and noted that the court or Parole Commission can waive the supervision fee for offenders. Mr. McGee also explained that the Division does not have a billing system, but something more along the lines of a posting system and that what's collected today from an offender could have been ordered five years ago. He also noted that restitution obligations are paid first to court-identified restitution victims from what's collected. The supervision fee and other ordered fines and costs are paid after the restitution obligation has been satisfied. He noted that that it can be difficult to keep up with victims who change addresses but don’t report the change to the Division. In those cases, restitution monies are collected, dispersed and then returned to the Division because the restitution victim could not be located. Mr. McGee explained that there is a unit of people within the Division who try to track down the location of victims so that the restitution monies that are being held in a suspense account can be disbursed.
Ms. McCloskey asked what percentage of offender transfers into Maryland (Maryland as the receiving state) are mandatory transfers. Ms. Brock stated that the clear majority of transfers to Maryland are mandatory. She added that she would have to ask the support staff at the Interstate Commission's office to help her run a data report from ICTOS to determine exactly how many transfers are mandatory versus discretionary.

Ms Brock also noted that trainers from the national Commission are currently in Maryland to conduct two and a-half days of advanced ICOTS training for the Division’s agents.

Ms. McCloskey asked if there was anything Maryland could do to be a less desirable state for offenders to transfer into. Both Mr. McGee and Ms. Brock agreed that it is very difficult to turn offenders away who meet the Compact’s mandatory transfer rules. Mr. McGee stated that he believes there will be an increase in supervision transfers to Maryland when military personnel and their families move to Maryland in the next several years as part of the Base Closure and Realignment Commission (BRAC) plan.

Ms. McCloskey then asked how State budget cuts have affected the Division of Parole and Probation. Mr. McGee stated that the Division has not lost positions for FY 2010. He noted that in FY 2009, the Division did lose 37 vacant positions and there were reductions to the Division’s budget for training and substance abuse testing which were carried into the current fiscal year. While no new agent positions were gained during the current fiscal year, the Division has been authorized to hire to fill vacant agent positions. Thirty-one new agents graduated from the training academy in August 2009.

Ms. McCloskey asked how the Division will be able to manage the increased demand for supervision without additional agents. Mr. McGee explained that the Division is going forward on several fronts in to create efficiencies. Most notably, the Division is working with officials from the state of New York to implement a kiosk reporting system similar to what New York uses for the lowest risk offenders. He also explained that the courts in Anne Arundel County and Montgomery County are piloting a program to receive reports from the Division’s agents electronically rather than by regular mail. Ms. Brock noted that the cost of postage and paper for her unit has dropped dramatically since the roll-out of ICOTS in October 2008.

Ms. Medley-Greene asked what happens if the ICOTS system goes down. Mr. McGee stated that the ICOTS vendor, Appriss, Inc., has back-up redundant systems in place to handle such a situation. Mr. McGee noted that ICOTS has not gone down since its launch date.

Ms. McCloskey asked whether the Division is still experiencing problems with judges trying to circumvent or override the Compact. Mr. McGee and Ms. Brock noted that the there are still isolated issues with a few judges but that the situation has improved overall. Ms. Brock states that she continues to conduct training for the judges throughout the state because there are new judges coming on the bench all the time.

Ms. McCloskey asked whether there are any victim issues that need to be addressed in terms of victims receiving negative responses from the Division. Mr. McGee stated that there are no issues that he is aware of with respect to the administration of the Compact. He added that Russell Butler, Executive Director with the Maryland Crime Victims Resource Center, is not shy about calling to address victim-specific problems with him.
Agenda Item VII: Adjournment

Mr. McGee asked that Council members feel free to call him (410-585-3525) to discuss Compact-related issues that come up in between the Council meetings. He reiterated that the budget outlook for the Division is fluid and subject to change. He noted that there is a lot of employee turnover due to the fact that agents leave the Division to seek higher salaried jobs with Federal Probation and the Department of Homeland Security.

Mr. McGee stated that the next meeting would likely be to update the Council on the happenings of the national Commission’s annual business meeting.

The meeting was then adjourned at 11:45am.
Agenda Item III: Proposed Compact Rule Amendments

Rule 1.101 Definition of “Business day”

Deputy Compact Administrator Melanie Brock explained that this proposed amendment is intended to tighten-up the definition of business day. As the Interstate Commission’s justification notes, “business day” can mean different things in different states. Generally, “business day” means a day other than Saturday, Sunday, or a legal holiday during hours when an office is open to the public and processing mail. The proposed amendment makes clear that when a state is required to act within a number of “business days”, only the business days recognized in that particular state are counted.

Rule 1.101 Definition of “Supervision”

Ms. Brock explained that court-ordered fines, fees, court costs and restitution are the collection responsibility of the sending state (see Rule 4.108) even when an offender is being supervised by a receiving state. This proposed amendment removes from the definition of “supervision” probation cases in which the only condition of supervision imposed upon the probationer is for the collection of court-ordered monies. Even though these probation cases will not be transferred according to the Compact, the state in which the probationer was sentenced will continue to maintain responsibility for collecting court-ordered monies and reporting a probationer’s compliance with the monetary responsibility to the sentencing court.

Ms. Anne McCloskey asked if Maryland intended to vote in favor of this amendment. Ms. Brock and Mr. McGee replied “yes”.

Rule 2.104 Forms

Ms. Brock explained that existing Rule language provides that compact offices are to communicate with each other via ICOTS and the official Interstate Commission forms. This proposed amendment clarifies that compact office employees are permitted to communicate with one another via phone, email, etc in addition to ICOTS.

Rule 2.106 Offenders subject to deferred sentences

Ms. Brock explained that many states offer defendants pre-trial programs as an alternative to pre-trial detention (pre-trial release) or as a means of deferred prosecution (pre-trial intervention). In both instances, the state may require a defendant to fulfill certain conditions of the pre-trial release or intervention programs (such as payment of restitution, participation in substance abuse or mental health treatment, completion of community service). Mr. Ryan noted that Baltimore County has a deferred prosecution program for first-time defendants charged with misdemeanor marijuana possession.

The rule as currently written excludes from Compact-required transfer defendants who are in the community pre-trial in a bond-like status. The amendment to the rule will specifically exclude defendants in a pre-trial release status from transfer via the Compact; but will not specifically exclude defendants in a pre-trial intervention program.
from transfer via the Compact. Mr. McGee noted that Maryland will likely vote in favor of this bill.

Rule 2.110 Transfer of offenders under this compact

Ms. Brock explained that this amendment will require a sending state to initiate procedures to return an offender to the sending state in instances where an offender has relocated to a receiving state without the receiving state’s permission. Specifically, the sending state will have 15 days to instruct an offender to return. If the offender does not return, the sending state must issue a warrant that is effective in all compact states without limitation as to specific geographic areas.

Mr. Ryan asked who would be responsible for paying the cost of returning an offender to the sending state. He noted that the State’s Attorney’s offices have to carefully consider their extradition budgets when deciding whether or not to return an offender to Maryland for a particular reason. Mr. McGee asked Mr. Ryan if many of his extradition cases involve Interstate Compact offenders. Mr. Ryan noted that Baltimore County’s extradition cases are rarely for Interstate Compact offenders but are mostly for offenders with open cases.

Ms. McCloskey remarked that this matter of funding extraditions goes back several years within the State Council. She noted her suggestion that the Council approach the Governor to increase funds for extradition. Ms. McCloskey added that it concerns her that this suggestion was never forwarded to the Governor.

Mr. Ryan explained that extradition expenses are typically the responsibility of the county State’s Attorney’s office, which in turn, is funded by the county government. Mr. McGee explained that the Department has funds budgeted to cover the retaking of parole violators. Mr. Ryan noted that even with increased budgets there’s still a weighting process for each offender. He did assure Ms. McCloskey that the Baltimore County State’s Attorney’s Office will always fund the cost of returning an offender who is within a five-hour drive of Maryland and he stated that the county has always funded the return of any offender who committed a serious felony.

With regard to the extradition of offenders, it is the expectation of the Interstate Compact that a state will extradite an offender who is out of state and in violation of the terms of his probation or parole. Ms. Brock explained that parolees who are transferred out of Maryland are required to post a parole bond that can then be used toward the costs of their extradition (a service which is performed by the Maryland State Police). She estimated that of the 600 parole cases transferred under the Compact, about 60 involve extradition.

With regard to probationers, the decision to extradite is made at the local level by the State’s Attorneys offices and by local law enforcement because they bear the cost of extradition for probationers. Ms. Brock noted that the local State’s Attorneys usually always agree to extradite felons and that she has rarely encountered difficulty arranging with a State’s Attorney for the return of problematic misdemeanor probation offenders.
Rule 3.101-1 Mandatory transfers of military, families of military, family members employed, and employment transfer

Currently, the provisions for mandatory supervision transfer to a receiving state include: (a) that the offender was a resident of the receiving state at the time of transfer; (b) that the offender is a member of the military and is being deployed to another state; (c) that the offender lives with a family member who is in the military and being deployed to another state; and (d) that the offender lives with a family member who is being transferred to another state by that family member's employer (provided several other conditions are met).

The proposed amendment will: (1) qualify scenario (d) to provide that the family member be subject to involuntary transfer to another state by the family member’s employer; and (2) provide mandatory transfer for an offender if the offender is involuntarily transferred by the offender’s employer to another state.

Rule 3.101-3 Transfer of supervision of sex offenders

Currently, if a sexual offender is a resident of the receiving state at the time of sentencing, the receiving state has five business days to investigate and review the sexual offender’s proposed residence for compliance with local laws or regulations regarding sexual offenders. This provision applies whether the sexual offender is under current supervision for a sexual offense or not.

The proposed amendment will narrow the application of this rule only to those sexual offenders who are currently being supervised for a sexual offense that requires registration in the sending or receiving state as a sexual offender.

Mr. McGee stated that Maryland would not support this amendment.

Rule 3.101 Mandatory transfer of supervision

This proposed amendment would add a new subsection to the provisions governing mandatory transfer of supervision that would deem future transfer requests “discretionary” for any offender who has had “3 returns [to a sending state] for violations and closures within five years”.

Mr. McGee noted that the language of the proposed amendment concerning “closures” is not clear and that some cases close satisfactorily and this amendment would appear to apply to those cases as well as cases that close unsatisfactorily.

Mr. Ryan agreed that the amendment is unclear and noted that this language may discourage a state from reporting technical violations.

Ms. McCloskey stated that she thought the amendment ought to only offer a “two-strikes” chance to offenders who repeatedly violate the conditions of supervision. She then asked Mr. McGee if Maryland would propose some type of solution to the language deficiencies in the proposal.

Mr. McGee replied that the proposed amendment will be put before all Commissioners for discussion, but that the proposal as it is currently written will have to be voted either
up or down. He and Ms. Brock noted that there’s a good intention behind the proposal, but that it’s too broad as drafted.

Mr. Ryan observed that if judges become aware that a receiving state will no longer accept a Maryland offender for supervision transfer, then there’s a possibility that the judge will make the offender’s probation unsupervised so that the case doesn’t have to be transferred via the Compact.

Ms. Greene asked Ms. Brock how often Maryland denies transfers requests for offenders looking to return to Maryland.

Ms. Brock indicated that there are two types of transfer requests: mandatory and discretionary. She noted that most mandatory requests are granted. With the discretionary requests, she has to consider the best interest of Maryland by reviewing the nature of the current offense, the criminal history of the offender, where the victim resides, and whether there is any chance that the offender could have a stable home and employment plan in Maryland.

**Rule 3.102 Submission of transfer request to a receiving state**

This proposed amendment would add a new subsection to allow an offender (except for a sexual offender) to maintain existing employment in a receiving state, without interruption, while a transfer request is being investigated by the receiving state.

Maryland supports this proposed amendment.

**Rule 3.104 Time allowed for investigation by receiving state**

Ms. Brock explained that the transfer request form is an electronic form that is transmitted through ICOTS by the sending state to the receiving state. The ICOTS system will reject transfer request forms that do not contain complete information. In the meantime, the offender may already be in the receiving state with valid reporting instructions. This proposed amendment will allow the reporting instructions to remain in effect for an additional 15 calendar days from the date of rejection in order to allow the sending state the opportunity to correct and resubmit the transfer request form to the receiving state via ICOTS. Ms. Brock noted that Maryland supports this amendment.

**Rule 3.104-1 Acceptance of offender; issuance of reporting instructions**

Ms. Brock explained that this proposed amendment will merely firm up the fact that a receiving state assumes responsibility for supervision once the offender arrives in the receiving state. She noted that Maryland will support this amendment.

**Rule 3.107 Transfer request**

The proposed amendment will require a sending state to maintain and attach a signed copy of the application for transfer with the official transfer request form. Ms. Brock noted that Maryland already abides by this practice and she believes most states will be receptive to this amendment.
Rule 4.105  Arrival and departure notifications; withdrawal of reporting instructions

Ms. Brock explained that this proposed amendment is ICOTS-driven. The proposed amendment directs a receiving state to submit a case closure notice in ICOTS if an offender does not arrive in the receiving state as instructed. Ms. Brock stated that many states already do this as a practical matter for managing cases within ICOTS. She noted that Maryland would be in favor of this amendment.

[Transcriber's Note: the following chart shows the result of the voting by the Commissioners to the Interstate Commission during the Annual Business Meeting on November 4, 2009. All adopted Rule amendments are effective March 1, 2009.]

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<td>Definition of “Business day”</td>
<td>Withdrawn by Rules Committee</td>
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