

 Interstate Commission for Adult Offender Supervision	Opinion Number 3-2010	Page Number: 1
<p style="text-align: center;">ICAOS Advisory Opinion Issued by: Harry Hageman, Executive Director Richard L Masters, Chief Legal Counsel</p>		
State Requesting Opinion <p style="text-align: center;">Missouri</p>	Dated: <p style="text-align: center;">7/22/2010</p>	
Description: Whether a California statute effective in 2010 which classifies certain eligible California offenders as not subject to active supervision or revocation of parole has the effect of removing such offenders from the jurisdiction of the Interstate Compact for Adult Offender Supervision.		

Background & History:

Pursuant to Commission Rule 6.101(c) the State of Missouri has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules with respect to the following:

Issue:

Whether a California statute effective in 2010 which classifies certain eligible California offenders as not subject to active supervision or revocation of parole has the effect of removing such offenders from the jurisdiction of the Interstate Compact for Adult Offender Supervision.

Applicable Rules:

Rule 1.101 provides:

“Rule 1.101 “Supervision” means the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.”

Background & History:

On January 25, 2010 the provisions of a new California Statute (CA Penal Code 3000.03) became effective. This statute authorizes the placement of eligible California parolees onto Non Revocable Parole (‘NRP’) status. The statute applies to all California inmates and parolees under the jurisdiction of the California Department of Corrections and Rehabilitation regardless

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of conviction date. However, it is important to understand that **this new category of parolees who are not subject to supervision in California does not include:**

- sex offenders;
- offenders convicted of serious or violent, or sexually violent felonies ("serious felonies" are not defined except by reference to another statute);
- gang members;
- offenders determined to be at high risk to reoffend;
- offenders committing serious disciplinary offenses while incarcerated; or
- offenders who refuse to sign written notifications of parole requirements or conditions

In summary those offenders who do qualify for classification as NRP parolees are not subject to active supervision by California parole officers and "shall not be subject to parole revocation or the placement of a parole hold." NRP parolees will only be subject to search by any law enforcement officer at any time until discharged. As a result, the State of California asserts that NRP parolees currently being supervised in other states under the compact or who are seeking a transfer of supervision to another state under the compact "will no longer meet the definition of "supervision" and thus will no longer be an offender eligible for transfer under the provisions of the compact.

Analysis and Conclusion:

In order to determine the validity California's assertion that the NRP parolees will no longer be subject to transfer under the compact a review of the requirements set forth in the compact and ICAOS Rules is required. Under the current definition of the term "supervision" set forth in ICAOS 1.101 it is anticipated that the "oversight exercised" over the offender in order to be subject to the jurisdiction of the compact must include two (2) components, 1) ". . . *the offender is required to report to or be monitored by supervising authorities*" **and** 2) the offender is required "*to comply with regulations and conditions, other than monetary conditions, imposed*

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on the offender at the time of the offender's release to the community or during the period of supervision in the community."

The California law clearly meets the 2nd of these components in that the offender is required to be subject to search by any law enforcement officer at any time until discharged, however the statute eliminates the need to report to supervising authorities and it is doubtful whether the 'subject to search' requirement of the statute is sufficient to classify this condition as being "monitored by supervising authorities" as is required under Rule 1.101 of the compact to constitute "supervision."

Since the term "monitored" is not defined in the provisions of the compact or ICAOS Rules, the accepted maxims of statutory construction require interpretation of such terms according to their common meaning or usage as other words in the English language. *See Diamond v. Diehr, 450 U.S. 175, 182 (1981)* ('In all statutory construction,' "[u]nless otherwise defined, "words will be interpreted as taking their ordinary, contemporary, common meaning.") *Id* at p.182. Recourse to the dictionary reveals that the term 'monitor' in this context means "to oversee, supervise, or regulate, to watch closely for purposes of control, surveillance etc., keep track of;" (*Random House Dictionary of the English Language, 2nd Ed. 1987*). Thus, as commonly used, it seems reasonable to conclude that the term "monitor" anticipates active and regular oversight and 'keeping track of' the offender who is being 'monitored by supervising authorities' under the terms of the compact.

The requirement imposed by the California statute at issue that NRP offenders will be subject to what is most likely to be a random and occasional search, if at all, does not seem to be consistent with the above described concept conveyed by the use of the terms being "monitored by supervising authorities" as used in the ICAOS Rules. Accordingly, a California offender who, as a result of the type of offense committed, qualifies for classification as an NRP parolee, would not be under 'supervision' as that term is defined by ICAOS Rule 1.101 and would therefore not be subject to transfer under the provisions of the Compact.

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Because the statute applies to all California inmates and parolees under the jurisdiction of the California Department of Corrections and Rehabilitation, it is still possible that a California Court could order some type of ‘reporting’ directly to the Court or completion of some behavioral modification or treatment program and that the results are to be submitted directly to the Court in lieu of the California Department of Corrections and Rehabilitation.

Should this occur with regard to an offender who moves to another State, such a case would qualify as being ‘supervised’ under the terms of the compact and the rules notwithstanding the fact that the California law does not permit the offender to be supervised by the DOCR. *See ICAOS Rule 1.101 “Supervision,” also ICAOS Advisory Opinions 3-2005, 9-2004, and 8-2004.*