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ICAOS Advisory Opinion Issued by: Harry Hageman, Executive Director Richard L Masters, Chief Legal Counsel		
State Requesting Opinion: ICAOS Western Region States	Dated: July 15, 2010	
Description: What is the effect of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders who are sentenced to a term of community custody, community placement, or community supervision on supervision cases under the compact		

Background & History:

Pursuant to Commission Rule 6.101(c) the States comprising the Western Region of the Interstate Commission for Adult Offender Supervision have requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following:

Issue:

What is the effect of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders who are sentenced to a term of community custody, community placement, or community supervision on supervision cases under the compact.

Analysis and Conclusion:

In 2009 the Washington State Legislature enacted a statute which classifies the felony and misdemeanor offenders who are eligible for community supervision by the Department of Corrections. Eligibility for supervision is determined by review of the current offense with the use of a “static risk assessment tool” developed by the Washington State Institute for Public Policy (“WSIPP”), and ‘evidenced based practices’ to concentrate resources used for supervision on the highest risk offenders. Under the provisions of this statute the DOC only has authority to supervise those offenders convicted of a specific type of crime or offenders who score at high risk to reoffend based on the static risk assessment tool.

Under the terms of this statute and pursuant to ICAOS Rule 4.101 Washington will “match” the out-of-state conviction to a similar Washington criminal offense and in conjunction with the criminal history and risk level of offender will determine the level of supervision which the transferred offender will receive in Washington. According to information furnished by the DOC offenders on supervision for the following like convictions will have regular contact with a Washington community corrections officer:

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- Murder First and Second Degree
- Homicide by abuse
- Manslaughter First Degree
- Assault First Degree
- Kidnapping in the First Degree
- Rape in the First Degree
- Assault of a Child in the First Degree
- An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies
- Federal or out of state conviction for an offense that under the laws of Washington would be a felony as classified above
- Sex offense

The Washington DOC has also indicated that interstate felony offenders on supervision for the following ‘like convictions’ will be on kiosk-only reporting (unless the offender scores high risk to reoffend based on Washington’s risk assessment tool):

- Arson First and Second
- Bail Jumping with Murder First Offense
- Burglary First Degree
- Homicide by Watercraft by being under the influence of intoxicating liquor or drugs, by disregard for the safety of others, or by operating a vessel in a reckless manner
- Leading Organized Crime
- Malicious Explosion First or Second
- Malicious Placement of Explosives First Degree
- Over 18 and Delivering Heroin, Methamphetamine, or Narcotic from Schedule I/II, or Flunitrazepam from Schedule IV to Under 18
- Robbery First and Second Degree



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ICAOS Advisory Opinion

Issued by:

**Harry Hageman, Executive Director
Richard L Masters, Chief Legal Counsel**

State Requesting Opinion:

ICAOS Western Region States

Dated:

July 15, 2010

Description:

What is the effect of a Washington statute providing that the Department of Corrections is not authorized to supervise certain offenders who are sentenced to a term of community custody, community placement, or community supervision on supervision cases under the compact

- Trafficking First and Second Degree
- Treason
- Use of Machine Gun in Commission of Felony
- Vehicular Homicide by being under the influence of intoxicating liquor or any drug, by disregard for the safety of others, by the operation of a vehicle in a reckless manner
- Assault Second and Third Degree
- Drive-by Shooting
- Extortion First and Second Degree
- Kidnapping Second Degree
- Manslaughter Second Degree
- Vehicular Assault under the influence or by operation in a reckless manner, or driving a vehicle with disregard for the safety of others
- Identity Theft First and Second Degree
- Promoting Prostitution First Degree
- Intimidating a Juror
- Intimidating a Witness
- Intimidating a Public Servant
- Bomb threat (if against a person)
- Unlawful imprisonment
- Promoting a Suicide Attempt
- Riot (if against a person)
- Stalking
- Custodial Assault
- Certain Domestic Violence Court Order Violations
- Counterfeiting—Endangering Public Health and Safety
- Felony Driving a motor vehicle under the influence of intoxicating liquor/drug
- Felony Physical control of a motor vehicle under the influence of intoxicating liquor/drug

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- Other drug offenses not listed previously

Interstate misdemeanor offenders will be on ‘kiosk-only’ reporting unless the conviction meets the following criteria:

- Communication with a Minor for Immoral Purposes
- Custodial Sexual Misconduct Second Degree
- Sexual Misconduct with a Minor Second Degree
- Failure to Register as a Sex Offender
- Assault Fourth Degree or Violation of a Domestic Violence court order and a prior conviction for:
 - A Violent Offense (the first nine offenses listed)
 - Sex offense
 - Above listed felony offenses, excluding drug offenses
 - Assault Fourth Degree
 - Violation of a Domestic Violence court order

All other convictions not listed will be on ‘kiosk-only’ reporting.

In reviewing the provisions of the statute and the means by which offenders will be classified for purposes of supervision in Washington it is important for ‘receiving’ states to be aware that certain types of offenders convicted and sentenced in Washington who wish to relocate to other states, and who would previously have been subject to regular reporting to a parole or probation officer, will now be under minimal supervision such as kiosk reporting or no supervision at all. Washington offenders no longer subject to community supervision as a result of the new law will no longer be subject to the supervision transfer requirements of the compact and presumably will be relocating without notice.

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Conversely, offenders whose supervision is transferred from a ‘sending’ state to Washington for crimes which require reporting to a probation or parole officer in the ‘sending’ state may, subject to the provisions of the new law, only be required to be placed on ‘kiosk-only’ reporting.

However, even in cases in which the new law’s supervision requirements are ‘*de minimus*,’ once determined to be under supervision and transferred under the compact, ICAOS Rule 4.101 requires that a “receiving state shall supervise an offender in a manner . . . consistent with the supervision of other similar offenders sentenced in the receiving state.” This rule provision assumes that during such period of supervision in the receiving state. As determined in *ICAOS Advisory Opinion 1-2007*, “*By definition this rule does not permit the receiving state to provide no supervision and at a minimum the rules of the compact contemplate that such an offender will be under some supervision for the duration of the conditions placed upon the offender under Rule 4.102.*”

Thus compact supervision will continue to include any special conditions imposed on the offender as well as the required arrival and departure notices under ICAOS Rule 4.105 and the progress reports required by ICAOS Rule 4.106. Supervision fees can be imposed as authorized by Rule 4.107 and collection of restitution, fines, and other costs could be applied as permitted or required under Rule 4.108. As also pointed out in *ICAOS Ad. Op. 1-2007*, “*Violation reports would be required as provided in Rule 4.109 and the transfer of the offender to a subsequent receiving state and any requested return to the sending state would be subject to the provisions of Rules 4.110 and 4.111 respectively.*” Case closure will continue to be governed under ICAOS Rule 4.112 and, if necessary, such an offender can be ‘retaken’ by the sending state pursuant to the requirements of Rules 5.101 through 5.111.

While the Washington law clearly provides that the DOC is not authorized to supervise any offender "**sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom**

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supervision is required (under this act),"no provision of the statute prohibits a sentencing Court from imposing upon an offender reporting requirements directly to the Court in lieu of the DOC.

This is, no doubt, attributable to a Constitutional concern on the part of the legislature about the ‘separation of powers’ among the executive, legislative and judicial branches of government. However, this discrepancy could result in anomalous cases in which a Court in Washington orders some type of ‘reporting’ to the Court or completion of some behavioral modification or treatment program and that the results are to be submitted directly to the Court rather than the Washington Department of Corrections.

Should this occur, such a case would qualify as being ‘supervised’ under the terms of the compact and the rules notwithstanding the fact that the Washington law does not permit the DOC to supervise the offender. *See ICAOS Rule 1.101 “Supervision,” also ICAOS Advisory Opinions 3-2005, 9-2004, and 8-2004.*