



**Interstate Commission
for Adult Offender Supervision
ADVISORY OPINION**

Opinion Number: 5-2006

Dated: April 4, 2006

Issued by:

Don Blackburn, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: North Dakota

Description: Rule 3.104 Time allowed for Investigation by Receiving State Rule 4.101 Manner and degree of supervision.

Background

Pursuant to Rule 6.101 (c) North Dakota has requested an advisory opinion concerning the application of Rule 3.104-Time allowed for investigation by Receiving State and Rule 4.101 -Manner and degree of supervision.

North Dakota poses the following opinion request:

“May the receiving state exceed the 45 calendar day rule, under Rule 3.104, to determine if the offender’s supervision plan is valid for sex offenders? Many states have either a state law or internal policies that require clarification of residency restrictions, establishing of sex offender risk levels or community notification requirements. May the receiving state exceed the 45 calendar rule, under Rule 3.104, by citing their right to determine whether the offender’s supervision plan is valid by conducting residency restrictions, establishing of sex offender risk levels, or community notification requirements before they respond to the sending state’s transfer investigation request?”

“Under Rule 4.101, may the receiving state require prior to acceptance of a sex offender the establishing of a sex offender risk level or community notification on sending states probationers when the receiving state does not require the establishing of a sex offender risk level or community notification on their own probationers.?”

Analysis

Rule 3.104 (a) provides in relevant part that a receiving state “. . . **shall** complete investigation and respond to a sending state’s request for an offender’s transfer of supervision no later than the 45th calendar day following receipt of a completed transfer request in the receiving state’s compact office. . . .”

Sections (b) (1) (2) and (3) of this subsection address procedures for a transfer request that is incomplete.

The plain meaning of the text of this rule is that states have 45 days to complete investigations once the application has arrived in the receiving state compact office.



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North Dakota's justification for its inquiry is premised on the assumption that many states have special laws or policies pertaining to sex offenders which require clarification of residency restrictions and establishing sex offender risk levels or community notification requirements. Under the current rules as referenced herein there is no provision for using the type of crime to define how the above referenced rule will be applied as to the stated time period.

The receiving state's investigation as contemplated under Rule 3.104 is in part to determine if the transfer request meets the criteria under Rule 3.101 and if the sending state has presented a valid plan of supervision. While there is no question that the receiving state has the authority to substantiate the validity of the transfer, the rule gives no discretion to extend the time frame of 45 days to complete the review.

With respect to the requested opinion concerning Rule 4.101 North Dakota asks if the receiving state may require the sending state to establish the sex offender's risk level or community notification when the receiving state does not require the establishment of either risk level or community notification on its own offenders. The provisions of Rule 4.101 clearly refer to an offender who has already been "transferred" to a receiving state and requires such an offender to be supervised ". . . in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state." This rule must be read together and consistently with Rule 3.101 which unequivocally provides that once a sending state grants permission under subsection (1) (a) or (b), the receiving state must assume supervision over the offender and any state which attempts to condition the acceptance of such an offender on a special condition to be imposed prior to the transfer violates the Compact. See also *Interstate Commission for Adult Offender Supervision v. Tennessee Board of Probation and Parole et al*, (U.S. District Court, Eastern District of Kentucky#04-526-KSF, 2005), see also *Doe v. Ward*, 124 F. Supp.2d 900 (W.D. Penn. 2000). Under Rule 2.101 as interpreted by at least two federal courts, states which have statutes, policies, memorandum of understandings, assessments and other restrictions which are imposed on their own offenders may only be applied to compact offenders once the transfer request has been accepted as provided in Rule 4.103 (a). States cannot impose such restrictions prior to the acceptance of the transfer.



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Opinion

Based on the literal language and plain meaning of the Rule 3.104 (a) 45 calendar days is the maximum time a receiving state has under the rules to respond to a sending state's request for transfer.

The provisions of Rule 4.101 only apply to the manner in which a receiving state supervises an offender who has already been transferred in compliance with the provisions of the compact and the rules. Specifically, Rule 3.101 does not permit a receiving state to place conditions and requirements on offenders prior to transfer under the compact. The clear language of Rule 4.103 (a) states that special conditions may be imposed by the receiving state after an offender has transferred. (See *ICAOS v. Tennessee Board of Probation and Parole, supra*; see also *Doe v. Ward, supra*.)

Moreover, Rule 4.101 plainly requires the receiving state to supervise an offender transferred in a manner "consistent with the supervision of other similar offenders sentenced in the receiving state." Clearly, this portion of the rule does not permit a receiving state to impose the establishment of sex offender risk level or community notification on offenders transferred under the compact if it does not impose these same requirements on offenders sentenced in the receiving state.