
	Interstate Commission for Adult Offender Supervision	Opinion Number ICAOS 9-2004	Page Number: 1
<p align="center"> ICAOS Advisory Opinion Issued by: Executive Director-Don Blackburn Chief Legal Counsel: Richard L Masters </p>			
State Requesting Opinion <u>New Jersey</u>		Dated: December 2, 2004	
Description Offenders sentenced under the Violent Predator Incapacitation Act who seek transfer CSL supervision outside the state of New Jersey			

Background

Pursuant to ICAOS rule 6.101, The State of New Jersey has requested a formal opinion concerning clarification regarding the interpretation and applicability of Rule 1.101 (m), 1.101 (aa), 3.101, and 5.103 of the administrative rules of the Interstate Compact for Adult Offender Supervision to New Jersey offenders convicted of designated sexual offenses and sentenced under the provisions of a New Jersey statute entitled “Violent Predator Incapacitation Act of 1994” (N.J.S.A. 2C:43-6.4), and otherwise known as and referred to herein as “Community Supervision for Life” (“CSL”); and who seek to transfer such supervision outside of the State of New Jersey.

According to your request for opinion, the “Violent Predator Incapacitation Act of 1994.” N.J.S.A.2 C:43-6.4, mandates that the special sentence of community supervision for life shall commence upon the completion of the sentence imposed pursuant to other applicable provisions of the New Jersey Code of Criminal Justice. In addition, the statute requires that persons serving a special sentence of community supervision for life shall be supervised as if on parole and subject to conditions appropriate to protect the public and foster rehabilitation. A violation of a condition of community supervision for life is deemed to be the commission of a crime of the fourth degree under the New Jersey criminal statutes. The New Jersey State Parole Board may file a criminal complaint upon the discovery of a violation; and upon the filing of such complaint the appropriate county prosecutor shall proceed to initiate the prosecution of any such violation as a criminal matter. Moreover, the New Jersey Department of Law & Public Safety-Division of Law has provided formal legal advice indicating that a violation of a condition(s) of CSL occurring out-of-state shall be considered a violation of the law in the State of New Jersey and thus such an offender shall be subject to the full panoply of prosecutorial action by the statute.

You state that your request stems from “actual cases and controversies” regarding the State of New York’s general refusal to supervise any CSL offender who seeks to formally transfer supervision from the State of New Jersey to the State of New York under the


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Compact. The chief concern cited by the State of New York (and the former Executive Council) appears to be the State of New Jersey's alleged inability to "retake" an offender who may violate a condition of supervision in an important respect. In such cases, the State of New Jersey submits that should there be a violation of a condition of supervision in an important respect a receiving state supervising a CSL offender may simply determine to "close interest" in the case; provide notice to the State of New Jersey and provide reporting instructions to the offender.

You state that your reading of "retaking" is not narrowly limited to only those measures that must result in "retaking" a transferee by exercising actual physical control out of a custodial setting in the receiving state and by returning the transferee to a custodial setting in the sending state. You also point out that if the receiving state provides notice to New Jersey that an offender has violated a condition of supervision in an important respect, then the New Jersey State Parole Board will file a formal criminal complaint and ask the appropriate county prosecutor to prosecute any such violation as a criminal matter pursuant to the advice rendered by your Division of Law as noted above.

You note in your request for opinion that prior to the enactment of the "new Compact" and the "new rules," the former Executive Council of the Interstate Compact for Adult Parolees and Probationers rendered an opinion in an appeal of a case involving a CSL offender. The Council believed that said offender was not "a parolee case" covered under the terms of the "old Compact" and, therefore, was ineligible for formal acceptance/transfer under the terms and conditions of the "old Compact." However, you point out that despite such ruling in the New York case, many other states have formally accepted the transfer of supervision of New Jersey CSL offenders under the Compact pursuant to the terms of both the "old" and "new" Compacts.

You have also informed the Commission that the reason that New Jersey is seeking another opinion on this issue at this time is that the New Jersey Superior Court-Appellate Division recently issued a ruling in two companion cases, *Sanchez v. N.J. State Parole Board* and *Imperato v. N.J. State Parole Board*, 845 A.2d 687 (2004). In those cases the Court held that the New Jersey Legislature never intended those offenders sentenced to community supervision for life to remain in the State of New Jersey until termination


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from service of the supervision term. Accordingly, the Court mandated the New Jersey State Parole Board to allow any CSL offender who would otherwise be eligible for transfer under the Compact to relocate their residency outside of the State of New Jersey subject to conditions set by the Parole Board that protect the public and foster rehabilitation, whether or not such offender is formally accepted for supervision by the receiving state. As such, the New Jersey State Parole Board must now allow offenders who are currently under the service of a lifetime supervision stipulation for the commission of an enumerated sexual offense, to relocate to other state without close community supervision.

As acknowledged in the opinion request, since the Executive Council's ruling in this matter under the old interstate compact, the Interstate Compact for Adult Offender Supervision has been adopted by New Jersey and every other state except Massachusetts. Moreover the duly adopted rules promulgated under the authority of the new Interstate Compact became effective August 1, 2004.

In the opinion request you disclose that since the enactment over a decade ago of the "Violent Predator Incapacitation Act of 1994," N.J.S.A.2C:43-6.4, that no more than a handful of such offenders have sought transfer to the State of New York (as well as other States) under the Compact. In addition, all such offenders are carefully screened to assure that all applicable criteria for transfer are met before seeking any such transfer. Furthermore, in consideration of New York's published concerns, you have represented that the State of New Jersey would request that only "mandatory acceptance" cases be considered for any such transfer to the State of New York under the Compact.

You have further advised that effective January 14, 2004, the New Jersey Legislature amended the "Violent Predator Incapacitation Act" from "community supervision for life" to "parole supervision for life." You state that this amendment requires all offenders who commit a designated sex offense on or after the effective date to receive the special sentence of parole supervision for life (PSL) and thereby subject's them to administrative parole revocation proceedings in addition to prosecution of a criminal offense for a violation of PSL. You further indicate that this amendment by the Legislature will

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effectively limit the number of transferees affected by these issues to the cohort that were sentenced under the prior CSL statute.

Regulations at Issue


The regulations which are implicated in your request are the following:

Rule 1.101 (m) “Offender” means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

Rule 1.101 (aa) “Supervision” means the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.

Rule 3.101 “Eligibility for transfer of supervision”

- (a) At the discretion of the sending state, an offender who has three months or more or an indefinite period of supervision remaining shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender, pursuant to a valid plan of supervision–
- (1) is in substantial compliance with the terms of supervision in the sending state and
 - (2) is a resident of the receiving state; or

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- (3) (A) has resident family in the receiving state who have I indicated a willingness and ability to assist as specified in the plan of supervision; and
(B) can obtain employment in the receiving state or has a visible means of support.
- (b) A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision.


Rule 5.103 “Violations of conditions of supervision”

Upon a request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state .

Analysis and Conclusions

As referenced herein the rules of the Interstate Compact for Adult Offender Supervision define “Offender” as an adult placed under, or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of *courts*, paroling authorities, corrections or other criminal justice agencies. Thus it is clear that under this definition that an offender supervised pursuant to the terms of the Compact and its rules may include an adult placed under supervision by a *court*, in addition to paroling and corrections authorities.

“Supervision” is defined as *authority or oversight exercised by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.* Under this definition it is plain that supervision, as defined under the current compact rules, has two distinct criteria both of which must be satisfied in order for such a relationship to exist under the compact which

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are: 1) authority or oversight is exercised by a supervising authority and 2) such exercise of authority or oversight includes a condition, qualification, special condition or requirement which is imposed on the offender at the time of release to the community or during the period of supervision in the community.

The circumstances described in your opinion request are that CSL offenders are placed under and made subject to supervision by the court as the result of the commission of certain enumerated sexual offenses and released to the community under the jurisdiction of the courts with the requirement that they must remain under such supervision pursuant to such general and special conditions of supervision as are determined by the State Parole Board to protect the public and foster rehabilitation of the offenders and subjects such offenders to criminal prosecution for any violation of such conditions. In addition you have pointed out that such offenders may petition the courts for release from supervision after no less than fifteen (15) years of continuous supervision.

OPINION

Based on the above facts as set out in your request and considering the literal language and plain meaning of the rules of the Interstate Compact for Adult Offender Supervision, as referenced herein, it is our opinion that CSL offenders are subject to supervision under the Interstate Compact for Adult Offender Supervision and upon proper application and documentation of a valid plan of supervision and verification of the residency and employment criteria as required under those rules should be permitted to transfer to other states for supervision under the Compact.



State of New Jersey
NEW JERSEY STATE PAROLE BOARD
P.O. BOX 862
TRENTON, NEW JERSEY 08625
TELEPHONE NUMBER: (609) 292-4257

JOHN D'AMICO, Jr.
CHAIRMAN

PAUL J. CONTILLO
VICE-CHAIRMAN

JAMES E. MCGREEVEY
GOVERNOR

October 5, 2004

Don Blackburn
Executive Director
Interstate Commission for Adult Offender Supervision
PO Box 11910
Lexington, KY 40578-1910

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Dear Mr. Blackburn:

Please be advised that pursuant to SEC. 6.101 of the Rules of the Interstate Commission for Adult Offender Supervision (adopted November 3 & 4, 2003, amended March 12, 2004 and effective August 1, 2004) the State of New Jersey respectfully requests your clarification of certain rules of the "new Compact" and the application thereof. Specifically, we seek clarification regarding the interpretation of certain rules as applied to those offenders in the State of New Jersey who have been convicted of a designated sexual offense; who are thereby subject to the provisions of the "Violent Predator Incapacitation Act of 1994", N.J.S.A.2C:43-6.4 (enacted October 31, 1994 and amended January 14, 2004), otherwise known as Community Supervision for Life (hereafter CSL); and who seek to transfer such supervision outside the State of New Jersey.

For your information and consideration, please note that the "Violent Predator Incapacitation Act of 1994," N.J.S.A.2C:43-6.4, mandates that the special sentence of community supervision for life shall commence upon the completion of the sentence imposed pursuant to other applicable provisions of the New Jersey Code of Criminal Justice. In addition, the statute requires that persons serving a special sentence of community supervision for life shall be supervised as if on parole and subject to conditions appropriate to protect the public and foster rehabilitation. Also, be advised that a violation of a condition of community supervision for life is deemed to be the commission of a crime of the fourth degree under the New Jersey criminal statutes; that the New Jersey State Parole Board may file a criminal complaint upon the discovery of a violation; and that upon the filing of such complaint the appropriate county prosecutor shall proceed to initiate the prosecution of any such violation as a criminal matter. Moreover, the New Jersey Department of Law & Public Safety-Division of Law has provided formal legal advice indicating that a violation of a condition(s) of CSL occurring out-of-state shall be considered a violation of the law in the State of New Jersey and, thus, such an offender shall be subject to the full panoply of prosecutorial action as provided by the statute.

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Our present request stems from actual cases and controversies regarding the State of New York's general refusal to supervise any CSL offender who seeks to formally transfer supervision from the State of New Jersey to the State of New York under the Compact. The chief concern cited by the State of New York (and the former Executive Council) appears to be the State of New Jersey's alleged inability to "retake" an offender who may violate a condition of supervision in an important respect. In such cases, the State of New Jersey submits that should there be a violation of a condition of supervision in an important respect a receiving state supervising a CSL offender may simply determine to "close interest" in the case; provide notice to the State of New Jersey and provide reporting instructions to the offender. Our reading of "retaking" is not narrowly limited to only those measures that must result in "retaking" a transferee by exercising actual physical control out of a custodial setting in the receiving state and by returning the transferee to a custodial setting in the sending state. If the receiving state provides notice to New Jersey that an offender has violated a condition of supervision in an important respect, then the New Jersey State Parole Board will file a formal criminal complaint and ask the appropriate county prosecutor to prosecute any such violation as a criminal matter pursuant to the advice rendered by the Division of Law as noted above.

Please note that prior to the enactment of the "new Compact" and the "new rules," the former Executive Council of the Interstate Compact for Adult Parolees and Probationers rendered an opinion in an appeal of a case involving a CSL offender. The Council believed that said offender was not "a parolee case" covered under the terms the "old Compact" and, therefore, was ineligible for formal acceptance/transfer under the terms and conditions of the "old Compact." However, despite such ruling in the New York case, many other states have formally accepted the transfer of supervision of New Jersey CSL offenders under the Compact pursuant to the terms of both the "old" and "new" Compacts.

The reason that New Jersey is seeking another opinion on this issue at this time is that the New Jersey Superior Court-Appellate Division recently issued a ruling in two companion cases, Sanchez v. N.J. State Parole Board and Imperato v. N.J. State Parole Board, 845 A.2d 687 (2004). The Court held that the New Jersey Legislature never intended those offenders sentenced to community supervision for life to remain in the State of New Jersey until termination from service of the supervision term. Accordingly, the Court has mandated the New Jersey State Parole Board to allow any CSL offender who would otherwise be eligible for transfer under the Compact to relocate their residency outside of the State of New Jersey subject to conditions set by the Parole Board that protect the public and foster rehabilitation, whether or not such offender is formally accepted for supervision by the receiving state. As such, the New Jersey State Parole Board must now allow offenders who are currently under the service of a lifetime supervision stipulation for the commission of an enumerated sexual offense, to relocate to other states without close community supervision.

Since the former Executive Council's ruling in this matter, the State of New Jersey notes, significantly, that the Interstate Compact for Adult Offender Supervision and the duly adopted rules became effective August 1, 2004 and, thus, now govern such matters. Firstly, the name of the Act itself changes from the Interstate Compact for the Supervision of Parolees and Probationers to the Interstate Compact for Adult **Offender Supervision** [emphasis]. Obviously, the drafters recognized the expanding scope of states' laws and legislation governing those offenders who may, at any given time, be subject to supervision while in the community. Accordingly, by deleting reference to the words "Parolees and Probationers," the Act makes explicit that its scope encompasses *all* offenders subject to community supervision regardless of when and how such supervision is imposed.

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In addition, the preamble to the enabling legislation for the Compact states that "after hearings, national surveys and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the [Compact] to bring about an effective management capacity that addresses public safety concerns and offender accountability." The purpose of the Act declares that "[T]he compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult **offenders [emphasis]** in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to ... promote public safety and protect the rights of victims through the control and regulation of the interstate movement of **offenders [emphasis]** in the community; and to provide for the effective tracking, supervision and **rehabilitation** of these **offenders [emphasis]** by the sending and receiving states." Thus, in order to insure that the precepts of the Compact are adhered to, the State of New Jersey submits that the monitoring of sex offenders through community supervision, wherever they may reside, is of paramount importance.

Furthermore, the new Act itself defines "Offender" as an adult placed under, or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies. Additionally, the rules formally adopted by the Interstate Commission on November 3, 2003 contain a definition of "Offender" under SEC.1.101(m) as an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, corrections or other criminal justice agencies. Moreover, the rules provide a definition of "Supervision" under SEC.1.101(aa) as the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by the court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community. New Jersey offenders sentenced to the special sentence of community supervision for life are clearly covered under the definitions of "Offender" and "Supervision" pursuant to the duly adopted rules of the Compact.

As noted previously, CSL offenders are placed under and made subject to supervision by the court as the result of the commission of an enumerated sexual offense and released to the community under the jurisdiction of the courts in that they may petition the courts for redress from supervision after no less than 15 years of continuous supervision. The State Parole Board supervises them during such time period pursuant to such general and special conditions of supervision as are determined by the State Parole Board to protect the public and foster rehabilitation of the offender; and they may be subject to criminal prosecution for any violation thereof.

In addition, the State of New Jersey feels strongly that certain offenders maintain a significantly greater chance of successful rehabilitation and a significantly reduced risk of re-offense if they are authorized to return to the community from which they came. Such community and familial ties in the receiving state will greatly increase the chances for rehabilitation, which is one of the stated purposes of the Compact. Conversely, many such offenders have had only minimal and fleeting contacts in the State of New Jersey. Thus, requiring such offenders to reside in this State for the remainder of their years without any significant assistance from the offender's community or

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family, greatly reduces the chances for success and appears wholly contrary to the spirit and intent of the Interstate Compact for Adult Offender Supervision.

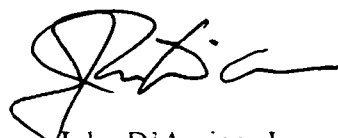
The State of New Jersey also points out that the new Compact (and the rules) place a significant emphasis on providing adequate and appropriate notice to affected victims of an offenders' whereabouts. Arguably, in no crime is the continuing impact of the crime potentially more significant on the victim(s) than for those offenses where the victim has been subject to a direct sexual assault or other such related act. Thus, in order to insure the safety and peace of mind of the victims of such crimes, it is fundamental that a CSL offenders' residence, whereabouts and activities be closely monitored while in the community wherever they may reside, without exception, to insure that their movement and activities are not detrimental to the well-being of any affected victim.

The State of New Jersey notes that since the enactment over a decade ago of the "Violent Predator Incapacitation Act of 1994," N.J.S.A.2C:43-6.4, that no more than a handful of such offenders have sought transfer to the State of New York (as well as other States) under the Compact. In addition, all such offenders are carefully screened to assure that all applicable criteria for transfer are met before seeking any such transfer. Furthermore, in consideration of New York's published concerns, the State of New Jersey would request that only "mandatory acceptance" cases be considered for any such transfer to the State of New York under the Compact.

Finally, be advised that effective January 14, 2004, the New Jersey Legislature amended the "Violent Predator Incapacitation Act" from "community supervision for life" to "parole supervision for life." Such statutory amendment requires all offenders who commit a designated sex offense on or after the effective date to receive the special sentence of parole supervision for life (PSL) and thereby subject's them to administrative parole revocation proceedings in addition to prosecution of a criminal offense for a violation of PSL. Such amendment by the Legislature will effectively limit the number of transferees affected by these issues to the cohort that were sentenced under the prior CSL statute.

Accordingly, for all of the above-noted reasons, it is respectfully requested that you render and publish an opinion that clarifies that CSL offenders are subject to the provisions of the Interstate Compact for Adult Offender Supervision. Such an advisory opinion will allow the State of New Jersey to request any receiving state to accept for formal supervision those CSL offenders that would otherwise be eligible to request a transfer of supervision under the Compact.

Sincerely,



John D'Amico, Jr.
Interstate Compact Commissioner
State of New Jersey

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3685-01T1
A-2965-02T2

APPROVED FOR PUBLICATION

RAUL SANCHEZ,

Petitioner-Appellant,

APR 05 2004

v.

APPELLATE DIVISION

NEW JERSEY STATE PAROLE BOARD,

Respondent-Respondent.

SEBASTIAN IMPERATO,

Petitioner-Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent-Respondent.

Argued/Submitted February 10, 2004 - Decided APR 05 2004

Before Judges Skillman, Coburn and Wells.

On appeal from Final Agency Action of the
New Jersey State Parole Board.

Brian J. Neff, Assistant Deputy Public
Defender, argued the cause for appellant
Raul Sanchez in A-3685-01T1 (Yvonne Smith
Segars, Public Defender, attorney; Mr. Neff,
of counsel and on the brief).

Rem Zeller, attorneys for appellant
Sebastian Imperato in A-2965-02T2 (Jeffrey
B. Steinfeld, of counsel and on the brief).

Patrick DeAlmeida, Deputy Attorney General,
argued the cause for respondent in A-3685-
01T1 (Peter C. Harvey, Attorney General,
attorney; Mr. DeAlmeida, of counsel; David
M. Ragonese and Tamara L. Rudow, Deputy
Attorneys General, on the brief).

Peter C. Harvey, Attorney General, attorney
for respondent in A-2965-02T2 (Patrick
DeAlmeida, Deputy Attorney General, of
counsel; Tamara L. Rudow, Deputy Attorney
General, on the brief).

The opinion of the court was delivered by

COBURN, J.A.D.

The result of this litigation depends on the meaning of one
of the key provisions of the Violent Predator Incapacitation Act
of 1994, commonly known as Megan's Law. L. 1994, c. 130. That
provision, codified in N.J.S.A. 2C:43-6.4,¹ is designed to

As applicable to these appeals, that statute provides:
Special sentence of community supervision for life.

a. Notwithstanding any provision of law to the contrary, a
court imposing sentence on a person who has been convicted of
aggravated sexual assault, sexual assault, [and other sexual
offenses] . . . shall include, in addition to any sentence
authorized by this Code, a special sentence of community
supervision for life.

b. The special sentence of community supervision required
by this section shall commence upon completion of the sentence
imposed pursuant to other applicable provisions of the Code of
Criminal Justice. Persons serving a special sentence of

(continued)

protect the public from recidivism by defendants convicted of serious sexual offenses. To achieve that end, it mandates, in addition to the ordinary sentence provided by the Criminal Code for the covered offenses, a special sentence of community supervision for life ("CSL").

The interpretive problem arises because, although CSL defendants are supervised in New Jersey "as if on parole[.]" violation of a CSL condition is only punishable as a crime. Ibid. In other words, the New Jersey State Parole Board (the "Parole Board") has no administrative enforcement powers; it cannot return a CSL defendant to prison through the revocation hearing procedures applicable to ordinary parolees. As a

(continued)

community supervision shall be supervised as if on parole and subject to conditions appropriate to protect the public and foster rehabilitation.

c. A person sentenced to a term of community supervision for life may petition the Superior Court for release from community supervision. The court shall grant a petition for release from a special sentence of community supervision only upon proof that the person has not committed a crime for 15 years since last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others if released from supervision.

d. A person who violates a condition of a special sentence of community supervision without good cause is guilty of a crime of the fourth degree.

e.

result, other states may but are not required to accept supervision of CSL defendants under the Uniform Act for Out-of-State Parolee Supervision, N.J.S.A. 2A:168-14 to -17 ("UAOPS"), an interstate compact to which all states have subscribed, and which we adopted over sixty years ago. L. 1936, c. 41. The precise issue is whether the Parole Board may permit a CSL defendant to reside in a state, such as New York, that refuses to accept supervision solely because of the Parole Board's lack of administrative enforcement powers.

These appeals concern CSL defendants who applied for permission to live in the State of New York. Raul Sanchez pled guilty on December 17, 1997, to first-degree aggravated sexual assault, N.J.S.A. 2C:14-2a(1), and received a five-year term of imprisonment. Sebastian Imperato pled guilty to second-degree sexual assault, N.J.S.A. 2C:14-2c(2), presently codified as N.J.S.A. 2C:14-2a(7), and received a sentence of probation for two years, with 180 days of incarceration in jail. Both received the mandatory special CSL sentence required by N.J.S.A. 2C:43-6.4, and both instituted administrative procedures here and in New York seeking permission to live in the State of New York. We omit most of the details of those ultimately unsuccessful procedural steps because they have no bearing on the issue to be decided.

The Parole Board conditionally approved the requests, subject to New York agreeing to supervise the appellants pursuant to UAOPS. Ultimately, the New York Division of Parole ("NYDP") refused because of our Parole Board's inability to assure "that violators will be returned to New Jersey if it is determined that they have violated the conditions of their release/supervision in an important respect."

Since our Parole Board's only recourse for a violation was the filing of a criminal complaint, which might not be pursued by the county prosecutor, it conceded that it lacked the necessary administrative authority. Nonetheless, it filed a formal grievance under the UAOPS, which has provisions for resolving disputes between its members. On or about July 21, 2003, the Executive Council of UAOPS issued an opinion agreeing with New York, while noting that New York could accept supervision as a matter of discretion. Consequently, the Parole Board denied the relocation requests, and Sanchez and Imperato filed separate appeals, which we have consolidated for purposes of this opinion. They argue they were entitled to relief under a proper construction of Megan's Law. Alternatively, they argue that Megan's Law is unconstitutional as applied in this setting.

The denials were based on the Parole Board's interpretation of Megan's Law. In short, it construed this statute to mean

that a CSL defendant rejected by another state would have to remain in New Jersey for life. We disagree with that interpretation and hold that in this situation, which was not anticipated by our Legislature, the Parole Board may permit CSL defendants to reside in another state in appropriate circumstances even if that state refuses supervision under UAOPS. Therefore we reverse and remand to the Parole Board for further proceedings.

We note that recently, the Legislature adopted an amendment to Megan's Law resolving the instant problem for defendants whose sexual offenses occurred after January 14, 2004. L. 2003, c. 267. Section 1 of that law amends N.J.S.A. 2C:43-6.4 by redefining the special sentence as "parole supervision for life" ("PSL"), and section 2 amends N.J.S.A. 30:4-123.51b by adding subsection c, which grants the Parole Board administrative power over a PSL defendant to "revoke parole and return the parolee to prison for a specified length of time between 12 and 18 months" Nonetheless, the problem remains for CSL defendants whose offenses occurred during the ten-year period preceding these amendments.

The fundamental goal of statutory interpretation is ascertainment of legislative intent. City of Clifton v. Zweir, 36 N.J. 309, 322 (1962). Courts must "try 'to make sense out of

the legislation, so far as text and context may allow.'" Id. at 323 (quoting Llewellyn, The Common Law Tradition: Deciding Appeals 529 (1960)). The solution does not result from "mechanically selecting and applying a canon or maxim of statutory construction and mouthing it as the reason for the result reached." Ibid. Ultimately, our decision must "turn on the breadth of the objectives of the legislation and the commonsense of the situation.'" Koester v. Hunterdon County Bd. of Taxation, 79 N.J. 381, 391 (1979) (quoting J.C. Chap. Prop. Owner's etc. Assoc. v. City Council, 55 N.J. 86, 100 (1969)).

The critical language of the Megan's Law provision with which we are concerned states that "[p]ersons serving a special sentence of community supervision shall be supervised as if on parole and subject to conditions appropriate to protect the public and foster rehabilitation." N.J.S.A. 2C:43-6.4b (emphasis added). Although the statute does not expressly say so, we infer from the "as if on parole" language that the supervision was intended to be provided by the Parole Board and to the same extent as it would be for ordinary parolees. Cf. State v. Bond, 365 N.J. Super. 430, 443 (App. Div. 2003) ("the Legislature's intent to create a policy whereby CSL would mirror the conditions of parole is clear").

When this statute was enacted, our state had been participating in UAOPS for nearly sixty years. Given that context, and the absence of any express language indicating a Draconian desire to keep CSL defendants within our borders for the rest of their lives, we also infer that the Legislature expected that CSL defendants would be accepted for supervision by other states.

As a result of New York's decision in these cases, as endorsed by the UAOPS's Executive Council, that expectation has been frustrated as of now. Thus, it would appear that although Megan's Law contemplated supervision through UAOPS, a literal reading of its requirement of continuing community supervision would result in restricting CSL defendants to residence in this state unless another state was willing to assume supervision as a matter of discretion.

Fortunately, we are not confined to literal application of words when the result creates an anomaly, particularly one which is so contrary to the objectives of the legislation and the commonsense of the situation. In such circumstances, courts must always be prepared to ask whether "[t]he instant case involves a situation which apparently escaped the attention of the draftsman" Dvorkin v. Tp. of Dover, 29 N.J. 303,

313 (1959). Former Chief Justice Weintraub described the duty of a court faced with an interpretive problem of this sort:

It is frequently difficult for a draftsman of legislation to anticipate all situations and to measure his words against them. Hence cases inevitably arise in which a literal application of the language used would lead to results incompatible with the legislative design. It is the proper function, indeed the obligation, of the judiciary to give effect to the obvious purposes of the Legislature, and to that end "words used may be expanded or limited according to the manifest reason and obvious purpose of the law. The spirit of the legislative direction prevails over the literal sense of the terms."

[New Capitol Bar & Grill Corp. v. Div. of Employment Sec., 25 N.J. 155, 160 (1957) (quoting Alexander v. New Jersey Power & Light Co., 21 N.J. 373, 378 (1956)).]

The Legislature's primary purpose in enacting Megan's Law was to increase the protection of the citizens of New Jersey from recidivism by CSL defendants. So long as a CSL defendant remains here, the Parole Board has all the necessary tools to achieve that purpose. If the CSL defendant is not here, our citizens are not in danger.

As the Executive Council of UAOPS made clear, when a CSL defendant has good cause for moving to another state, that state has discretionary authority under UAOPS to accept supervision for the increased safety thereby afforded to its citizens. Another state's refusal to adopt that course simply because

enforcement in New Jersey is limited to indictment and extradition provides an insufficient reason for keeping a CSL defendant here. For as a matter of commonsense, we are confident that our county prosecutors would provide the Parole Board with full cooperation in the prosecution of CSL offenders whose offenses occurred before the effective date of the 2003 amendment of Megan's Law, noted above.

The spirit of the original Megan's Law is best served by interpreting it to permit CSL defendants who otherwise qualify for residency in another state under UAOPS to live in that state even if that state declines supervision. However, in that case, the Parole Board may make the change in residency "subject to conditions appropriate to protect the public and foster rehabilitation." N.J.S.A. 2C:43-6.4b.

Since we have resolved these cases based on statutory interpretation, we need not reach appellants' constitutional arguments.

For completeness, we take note of the Interstate Compact for Adult Offender Supervision ("ICAOS"), adopted by New Jersey in 2002. L. 2002, c. 111, codified at N.J.S.A. 2A:168-26 to -39. Most states have joined ICAOS, and it will soon replace UAOPS. However, New York did not adopt it until after the UAOPS

Executive Council had ruled on the instant cases. N.Y.

Executive Law § 259-mm (McKinney 2004).

Following New York's adoption of ICAOS, the Parole Board asked the New York parole officials if they would now accept CSL defendants. The informal reply was no and for the same reason that CSL defendants had been rejected under UAOPS. We assume that New York took that position on the assumption that New Jersey would not allow CSL defendants to move to New York unless New York agreed to supervise them. Since that assumption is unsound, it may well be that applications for supervision under ICAOS will now be accepted as a matter of discretion. New York cannot have it both ways. If CSL defendants do not fall within the purview of ICAOS, then New Jersey has no obligation to prevent them from moving to New York. If New York is willing to permit the change of residency, assuming the other criteria of ICAOS are met, we expect that New Jersey will cooperate fully to the extent and in the manner allowed by the laws of this state and the rules of ICAOS.

Reversed and remanded for further proceedings consistent with this opinion.

I hereby certify that the foregoing
is a true copy of the original on file
in this office.


CLERK OF THE APPELLATE DIVISION