Interstate Commission for Adult Offender Supervision
ADVISORY OPINION

Opinion Number: 5-2006
Issued: 2006-04-04

Requested by: North Dakota
At Issue: Time allowed for investigation by receiving state, Rule 4.101 - Manner and degree of supervision.

Issued by: Don Blackburn, Executive Director and Richard L. Masters, Legal Counsel

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.?”

Applicable Rules

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.

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
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.
Analysis & Conclusion

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.

References

Rules

- Rule 3.101 - Mandatory transfer of supervision
- Rule 3.104 - Time allowed for investigation by receiving state
- Rule 4.101 - Manner and degree of supervision in receiving state
- Rule 4.103 - Conditions of supervision

Bench Book

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Topic Area

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