

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether an individual who has been granted a conditional pardon in the Commonwealth of Virginia and is transferred to a secure treatment facility in the St
Florida is eligible for transfer under the Interstate Compact for Adult Offender Supervision?

Requesting State: Virginia

Issued By:

Harry Hageman, Executive Director
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Whether an individual who has been granted a conditional pardon in the Commonwealth of Virginia and is transferred to a secure treatment facility in the State of Florida is eligible for transfer under the Interstate Compact for Adult Offender Supervision?

Issued by: Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

Background

The Commonwealth of Virginia recently granted a conditional pardon to a convicted individual and ordered him to be transferred to a secure treatment facility in Florida for a period of ten (10) years from his release by the Department of Corrections conditioned upon the successful fulfillment of all treatment recommendations and requirements of the 'treatment team' and staff providing his care. Failure to comply with all conditions will result in the loss of all privileges provided under the terms of the conditional pardon and, at the discretion of the Governor, subject the individual to immediate arrest and incarceration to complete the terms of his original sentences. Based upon the above facts and pursuant to Commission Rule 6.101(c), the Commonwealth of Virginia has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

Applicable Rules

Rule 1.101 Definitions:

> 'Supervised individual' means an "offender" defined by Article II of the Interstate Compact for Adult Offender Supervision 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 courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the Compact.
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> 'Supervision' means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual 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 supervised individual at the time of release to the community or during the period of supervision in the community.

Rule 2.106 Supervised individuals Subject to Deferred Sentences:

(a) Supervised individuals subject to deferred sentences are eligible for transfer of supervision provided that all other criteria for transfer, as specified in Rule 3.101 (a), (b), and (c) have been satisfied and the:

1. supervised individual has waived their right to trial and entered plea of guilt or no contest, and
2. plea has been accepted by the court.

(b) Persons subject to supervision pursuant to a pre-trial release program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

Analysis

In some cases, the placement of an individual in an out of state treatment program may trigger the requirements of the Compact even if the individual is not subject to supervision by corrections officials. It should be noted, that even in the absence of direct supervision by corrections officials, a provision in a court order requiring compliance with the terms of treatment constitute “supervision” for purposes of triggering the Compact. The imposition of treatment as a condition of release with the corresponding requirement of adherence to all treatment recommendations, and the probability of probation revocation upon failure to comply, is sufficient requirement for the sending state to comply with the Compact and its rules.

Clearly this case involves a person who has been convicted of not just one, but three separate felonies all of which involved assault and battery on law enforcement officers, including a corrections officer which occurred on 5-31-11, 3-7-14 and 1-8-15. The terms of the conditional pardon require the individual to comply with all treatment recommendations for a period of ten (10) years the violation of which will result in the forfeiture of all privileges granted and, at the discretion of the Governor, the individual “shall be subject to immediate incarceration to complete the term of his original sentences.”

While in this case the terms and conditions of release are provided in the conditional pardon issued by the Governor of Virginia, it is equally clear that in Virginia, as in virtually all other states, a person with a conditional pardon remains subject to conditions of release. A conditional pardon does not restore civil rights or rights of citizenship, and the executive, like any other ‘paroling authority’ can revoke the pardon if a person does not comply with the conditions of release. In fact, a person receiving a conditional pardon has the same restrictions

as a person on parole. When the conditions are not fulfilled, a conditional pardon or a parole can be revoked and the person violating such conditions can be re-imprisoned.

ICAOS Rule 2.106 is applicable to situations in which ". . . the court has lawfully entered a conviction on its records even if it has suspended the imposition of a final sentence and has subjected the individual to a program of conditional release. The rule would also apply where the defendant has entered a plea of guilt or no contest to the charge(s) and the court has accepted the plea but suspended entry of a final judgment of conviction in lieu of placing the individual in a program of conditional release, the successful completion of which may result in the sealing or expungement of any criminal record. Finally, the rule would apply where the court has entered a conviction on the record and sentenced the individual but has suspended execution of the sentence in lieu of a program of conditional release." (*See* ICAOS Rule 2.106 .)

Because the individual in this case has clearly been convicted of the felonies in question and has been conditionally released, by a paroling authority who in this case happens to be the Governor of the Commonwealth of Virginia, he is clearly a "supervised individual" for purposes of the Compact. It also appears that the terms of the conditional pardon satisfy the requirements of 'supervision' under the Compact. The conditional pardon provides for oversight to be exercised over the individual by the secure treatment facility, or in a less restrictive environment, for a fixed period of ten (10) years. Compliance with treatment conditions are required the violation of which will result in incarceration for the completion of the sentences previously imposed.

Conclusion

Based upon the terms of the Compact, the above referenced rules and the legal authorities cited herein, an individual who has been granted a conditional pardon in the Commonwealth of Virginia and is transferred to a secure treatment facility in the State of Florida is eligible for transfer of supervision under the Interstate Compact for Adult Offender Supervision.