

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether the phrase “an offense in which a person has incurred direct or threatened physical or psychological harm” in Rule 2.105(a)(1) requires physical to or whether it also includes harm caused through other instrumentalities, such as the use of a vehicle or a weapon.

Requesting State: Colorado

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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At Issue

Whether the phrase “an offense in which a person has incurred direct or threatened physical or psychological harm” in Rule 2.105(a)(1) requires physical touching or whether it also includes harm caused through other instrumentalities, such as the use of a vehicle or a weapon.

Revised (2nd revision February 4, 2026)

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

Background

The state of Colorado requested an Advisory Opinion pursuant to Rule 6.101 concerning the meaning of the “physical harm” requirement of 2.105 (a)(1).

Colorado asked: “Does ‘(1) an offense in which a person has incurred direct or threatened physical or psychological harm’ mean that physical harm has to be physical touching of the supervised individual to the victim or does it include a weapon being used?’” Colorado also points out that the factual predicate leading to this opinion request involved injury by a vehicle in which the supervised individual, during the commission of a criminal act, caused serious injury to three victims. He was convicted of Assault 3 reckless/cause injury.

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.

Rule 2.105 Misdemeanants:

(a) A misdemeanor supervised individual whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for

transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following—

1. an offense in which a person has incurred direct or threatened physical or psychological harm;
2. an offense that involves the use or possession of a firearm;
3. a 2nd or subsequent misdemeanor conviction of driving while impaired by drugs or alcohol;
4. a sexual offense that requires the supervised individual to register as a sex offender in the sending state.

Rule 4.101: Manner and Degree of Supervision in Receiving State:

(a) A receiving state shall supervise individuals transferred under the interstate compact in a manner consistent with the supervision and risk level of other similarly sentenced individuals sentenced in the receiving state.

(b) If a supervised individual violates conditions of supervision, the individual may be sanctioned in the receiving state during the term of supervision in a manner consistent with similarly sentenced individuals in the receiving state.

(c) Receiving states shall document the use of incentives, corrective actions, graduated responses, and other supervision techniques.

Analysis

The application of the compact and its rules to any particular supervised individual is determined by the offense committed. Those who are subject to the jurisdiction of the compact are supervised individuals who have committed particular offenses. As noted in Chapter 3 of the ICAOS Benchbook, the compact covers a wide range of individuals and embraces supervised individuals subject to traditional forms of supervision as the result of a “conviction” as well as supervised individuals subject to innovative forms of supervision as the result of adjudications such as deferred sentencing. See, Rule 2.106

Regardless of the method of adjudication, the consistent theme in our advisory opinions and reflected in the compact and Commission rules is the requirement of legal action in the form of some type of court determination that the supervised individual committed the offense or offenses charged. Altering the status of a person from innocent to that of a supervised individual who has committed particularized criminal acts can only be accomplished through an adjudicatory process reaching a judicial determination. The requirement of specific legal action in the form of some type of adjudicatory action by a court merely recognizes the due process rights of individuals charged with criminal offenses and the right not be held accountable for

crimes they did not legally commit. Thus, for example, an individual charged with both a felony offense and a misdemeanor offense not covered by Rule 2.105 (the misdemeanor rule) would not be subject to the compact *if the individual is adjudicated solely on the misdemeanor offense*. Adjudications, not charges, determine a person's status as a criminal and, therefore, their eligibility under the compact.

It is not possible to address the application of each state's criminal code and corresponding definitions within the context of Rule 2.105(a)(1). Neither the compact nor the rules defines "direct or threatened physical or psychological harm." However, the Model Penal Code does provide insight into what circumstances might trigger compact requirements for misdemeanant offenses. The Model Penal Code "effects a consolidation of the common law crimes of mayhem, battery, and assault and also consolidates into a single offense what the antecedent statutes in this country normally treated as a series of aggravated assaults or batteries." Commentary to Model Penal Code § 211.1. Thus, the traditional distinction between battery-type offenses ("direct harm") and assault-type offenses ("attempted harm") has largely eroded over the years with the adoption of the Model Penal Code by many states. Under the Model Penal Code simple assault, which may be considered in many states as misdemeanor-like conduct depending on its severity, covers those acts in which an individual "attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear of imminent serious bodily injury." Model Penal Code § 211.1(1) (1962). The language of 2.105(a)(1) contemplates both assault offenses and battery offenses, without distinction.

In the instant matter, a person charged and adjudicated on a misdemeanor offense of assault would be subject to the compact pursuant to Rule 2.105(a)(1), assuming all other provisions of the compact and rules apply. The fact that the instrumentality of the harm was an automobile has no bearing on the determination of eligibility under Rule 2.105(a)(1). Each state establishes the elements of its own criminal laws. Rule 2.105(a)(1) addresses only the nature of the offense committed ("an offense in which a person has incurred direct or threatened physical or psychological harm"), not the particular instrumentality used in the commission of the offense. If the law of the sending state recognizes the use of an automobile as an element in an assault offense and the individual is so adjudicated, Rule 2.105(a)(1) applies.

Our opinion in this matter does not prevent states from exchanging information concerning underlying charges nor does it prevent a receiving state from taking such matters into consideration in determining supervision if such considerations are allowed by state law and applied equally to in-state and out-of-state supervised individual. See, Rule 4.101 (receiving state must supervise out-of-state supervised individuals in a manner consistent with similar individuals sentenced in receiving state). However, neither does our opinion mandate the exchange of charging information, particularly if disclosure is prohibited by law in the sending state. Our opinion reaches only the issue of eligibility to transfer supervision under the compact

and affirms the principle that adjudication of an offense – not the offense charged or the instrumentality used in the commission of an offense – is what determines a supervised individual's status vis-à-vis the compact and its rules.

Conclusion

A person charged and adjudicated on a misdemeanor offense of assault would be subject to the compact pursuant to Rule 2.105(a)(1), assuming all other provisions of the compact and rules apply. The fact that the instrumentality of the harm was an automobile has no bearing on the determination of eligibility under Rule 2.105(a)(1). Each state establishes the elements of its own criminal laws. Rule 2.105(a)(1) addresses only the nature of the offense committed ("an offense in which a person has incurred direct or threatened physical or psychological harm"), not the particular instrumentality used in the commission of the offense. If the law of the sending state recognizes the use of an automobile as an element in an assault offense and the individual is so adjudicated, Rule 2.105(a)(1) applies.