

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a state may collect its annual sex-offender registration fee from supervised individuals who have transferred to another state, and whether the rece state has any obligation to collect or enforce payment of that fee under Rule 4.107(b)(2).

Requesting State: Michigan

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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Whether a state may collect its annual sex-offender registration fee from supervised individuals who have transferred to another state, and whether the receiving state has any obligation to collect or enforce payment of that fee under Rule 4.107(b)(2).

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

Background

Pursuant to ICAOS Rule 6.101(c) the State of Michigan has requested an Opinion regarding Rule 4.107 (b)(2) as it relates to states charging supervision fees. Michigan states the following:

> Michigan has been made aware that Wisconsin has begun charging Wisconsin supervised individuals residing in another state a fee, called a 'sex offender registration fee.' This fee, in the amount of $50.00 is assessed on an annual basis to Wisconsin supervised individuals, including those who transfer into the State of Wisconsin and those Wisconsin supervised individuals that transfer to other states.
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> Michigan is requesting an advisory opinion as to whether these Wisconsin supervised individuals transferred into another state must pay this fee and whether the receiving state has any responsibility in collecting this fee.
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> According to Wisconsin Commissioner William Rankin, S.301.45 (10) Wisconsin Statute, provides that WI DOC may "require a person who must register as a sex offender and who is in its custody or on probation, parole or extended supervision to pay an annual fee to partially offset its cost in monitoring persons on probation, parole or extended supervision." The fee may not exceed $50.00.
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> Michigan believes this is in violation of Rule 4.107 (b)(2). Although Wisconsin is not calling the fee a supervision fee, the money will be used to "offset the WI DOC costs in monitoring these sex offenders". The transferred sex offenders in question are being monitored by the Michigan Department of Corrections.

Wisconsin responds as follows:

Thank you for this opportunity to reply to Michigan's belief that the annual registration fee imposed on sex offenders required to be listed in Wisconsin's Sex Offender Registry is a "supervision fee" prohibited by Rule 4.107 (b) (2). The letter from Mr. John S. Rubitschun, Deputy Director of Field. Operations Administration, Michigan Department of Corrections, states in part, "Although Wisconsin is not calling the fee a supervision fee, the money will be used to 'offset the WI DOC costs of monitoring these sex offenders'. The transferred sex offenders in question are being monitored by the Michigan Department of Corrections."

Mr. Rubitschun misunderstands the "monitoring" done by Wisconsin's Sex Offender Registration Program (SORP) when he equates it to the "monitoring" done by the Michigan Department of Corrections. In response to a series of questions from Cynthia Johnson, MI Compact Administrator, I advised Michigan on July 6, 2006, that the "monitoring" of sex offenders by the Sex Offender Registration Program is a distinctly different function than "supervision."

Unlike Michigan, Wisconsin's Sex Offender Registratioin Program (SORP) is operated by the Department of Corrections/Division of Community Corrections. Although part of the same division, SORP is a separate function from parole or court ordered supervision of offenders. SORP relies on its own staff to maintain and update registry information, at least annually, on roughly 18,500 sex offenders required to report their residence, school and employment addresses. Sex Offender Registration Specialists investigate non-compliance and prepare petitions for Criminal Complaints and war compliance. These specialists are not Probation and Parole Agents. They have no role in "supervision" of registered sex offenders, whether or not they are currently serving periods of probation, parole or extended supervision.

In 2005, the legislature amended WI Stats:,·s.301.45 Sex offender registration, to authorize the department to require an annual fee, up to $50, be paid by registered sex offenders in the department's custody. The annual registration fee collections are deposited in a separate appropriation account. Broadly speaking, the DOC may request spending authority to use money from this appropriation account for any "monitoring" purpose, including sex offender "supervision" costs, e.g. GPS monitoring, polygraph testing, etc. However, the intent of the fee is to offset the increasing expenses associated with SORP activity and associated staffing requirements.

When a registered sex offender leaves Wisconsin, there is no reduction in the offender's obligation to report information to SORP. Nor is there any reduction in the work required of SORP. Wisconsin SORP continues "monitoring" transferred

registered sex offenders while they are in other states. Michigan's Department of Corrections assumes none of the responsibility for that monitoring when it accepts transfer of supervision of a registered sex offender.

In response to Mr. Rubitschun's question about Michigan's responsibility to collect the annual registration fee for Wisconsin, it seems clear that Rule 4.108 Collection of fines and other costs relieves Michigan of any obligation in this regard. Even if the rule were not in place, Wisconsin has never requested that assistance from Michigan, nor has it been contemplated.

Wisconsin is mindful of Rule 4.107 Fees. Wisconsin charges a supervision fee, authorized under WI Stats., s.304.074, Reimbursement fee for persons on probation, parole and extended supervision. The fee is to "partially reimburse the department [of corrections] for the costs of providing supervision and services." The Division of Community Corrections' Operations Manual instructs Probation and Parole Agents that "Wisconsin offenders shall continue to pay supervision fees until arrival and acceptance in another state. Upon notification of acceptance and arrival in another state, the Wisconsin agent will submit a Supervision Fee Action Report ... to stop the charges."

Applicable Rules

Rule 4.107: Fees

(a) Application fee—A sending state may impose a fee for each transfer application prepared for a supervised individual.
(b) Supervision fee—

1. A receiving state may impose a reasonable supervision fee on an individual whom the state accepts for supervision, which shall not be greater than the fee charged to the state's own individuals under supervision.
2. A sending state shall not impose a supervision fee on an individual whose supervision has been transferred to a receiving state.

Rule 4.108: Collection of Restitution, Fines and Other Costs

(a) A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on a supervised individual.
(b) Upon notice by the sending state that the supervised individual is not complying with family support and restitution obligations, and financial obligations

as set forth in subsection (a), the receiving state shall notify the supervised individual of the violation of the conditions of supervision and the supervised individual's requirement to comply. The receiving state shall inform the supervised individual of the address to which payments are to be sent.

Analysis

The Wisconsin Statute refers to this fee assessed to registered sex offenders an “annual fee” which is imposed on all registered sex offenders to partially defray the costs associated with monitoring requirements which are unique to this category of supervised individuals, such as sex offender registration and victim notification. The sending state cannot charge a “supervision fee” to a supervised individual whose supervision has been transferred to a receiving state under Rule 4.107. However, according to Wisconsin this is not a “supervision fee” because it has no direct relationship to the supervision of such individuals, but rather is an annual assessment imposed on sex offenders, to partially offset the costs of sex offender registration and victim notification and is not a recurring monthly fee directly related to the ongoing supervision of such individuals by parole or probation officers.

Based on the information submitted, because the fee imposed annually under Wisconsin law does not appear to be for the purpose of the supervision of such individuals by parole or probation officers and instead is for the purpose of defraying the cost of sex offender registration and victim notification, it does not appear to fit the criteria of a “supervision fee” and may be collected on Compact supervised individuals.

However, under ICAOS Rule 4.108 (a) Wisconsin is solely responsible for the collection of such an annual assessment. While there is no requirement that Michigan undertake to require payment of this fee by a supervised individual, under Rule 4.108 (b), upon notice from Wisconsin that the individual is not complying with this financial obligation, Michigan must notify the individual that this is a violation of the conditions of supervision and must comply as well as providing the supervised individual with the address to which payments are to be sent.

Conclusion

Based on the rules and information provided, Wisconsin’s annual sex-offender registration assessment is not considered a “supervision fee” under Rule 4.107(b)(2) and therefore may be collected from compact-supervised individuals. Wisconsin remains solely responsible for the collection of the fee, while the receiving state must provide notice and enforcement action under Rule 4.108(b) if non-compliance is reported.