

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

Whether a supervised individual who does not meet the eligibility requirements for mandatory transfer under Rule 3.101 or for misdemeanor eligibility under 2.105 may nonetheless be transferred under Rule 3.101-2 as a discretionary transfer.

Requesting State: Oklahoma

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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At Issue

Whether a supervised individual who does not meet the eligibility requirements for mandatory transfer under Rule 3.101 or for misdemeanor eligibility under Rule 2.105 may nonetheless be transferred under Rule 3.101-2 as a discretionary transfer.

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

Background

The State of Oklahoma has requested guidance under Rule 6.101 regarding the scope of Rule 3.101-2. Oklahoma notes that certain supervised individuals do not qualify for mandatory transfer under Rule 3.101, due to offense type, lack of residency or employment in the receiving state, or other unmet criteria, and similarly may not qualify under Rule 2.105. Oklahoma seeks clarification on whether Rule 3.101-2 permits such individuals to transfer under the Compact when doing so would support successful supervision or rehabilitation.

Applicable Statute & Rules

Article I: Purpose of the Compact

> "…the compacting states recognize that there is no right of any offender to live in another state."

Rule 2.110: Transfer of Supervised Individuals Under this Compact:

> (a) No state shall permit a supervised individual who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.

Rule 3.101: Mandatory Transfer of Supervision:

> At the discretion of the sending state, a supervised individual shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the supervised individual:

a. has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and

b. has a valid plan of supervision; and

c. is in substantial compliance with the terms of supervision in the sending state; and

d. is a resident of the receiving state; or

e.

1. has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
2. can obtain employment in the receiving state or has means of support.

Rule 3.101-2: Discretionary Transfer of Supervision:

a. A sending state may request transfer of supervision of a supervised individual who does not meet the eligibility requirements in Rule 3.101, where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the supervised individual, promote public safety, and protect the rights of victims.

b. The sending state shall provide sufficient documentation to justify the requested transfer.

c. The receiving state shall have the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the compact specifying the discretionary reasons for rejection.

Analysis

Article I and Rule 2.110 make clear that individuals subject to the Compact have no right to relocate outside the sending state and may do so only as permitted by ICAOS rules. Consequently, supervised individuals who do not meet mandatory eligibility requirements under Rule 3.101 ordinarily must remain under supervision in the sending state.

However, Rule 3.101-2 provides an exception, allowing that “A sending state may request transfer of supervision of a supervised individual who does not meet the eligibility requirements in Rule 3.101, where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the supervised individual, promote public safety, and protect the rights of victims.”

Rule 3.101-2 serves as a “safety valve,” allowing for case-by-case discretion when both the sending and receiving states agree that transfer would serve the interests of justice, public safety, and rehabilitation. This flexibility supports the Compact’s overall purpose of promoting accountability and effective supervision across state lines.

Conclusion

A supervised individual who is under supervision within the meaning of the Compact but is ineligible for mandatory transfer under Rule 3.101 may nonetheless be transferred under Rule 3.101-2 as a discretionary transfer, provided that both the sending and receiving states agree that good cause exists and the transfer serves the purposes of the Compact.