

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

New Jersey has requested clarification under ICAOS Rule 6.101 regarding whether individuals convicted of certain sexual offenses and sentenced under th Violent Predator Incapacitation Act of 1994, N.J.S.A. 2C:43-6.4—known as Community Supervision for Life (CSL)—are eligible for transfer of supervision ur the Compact. Specifically, the question presented concerns the interpretation and applicability of ICAOS Rules 1.101 (Supervised Individual), 1.101 (Supervision), 3.101, and 5.103, and whether New Jersey possesses sufficient authority to retake or prosecute CSL offenders who violate conditions while u supervision in a receiving state. This request is prompted by disputes with the New York, which has declined to accept CSL transfers claiming that Ne Jersey lacks the legal ability to “retake” violators under the Compact.

Requesting State: New Jersey

Issued By:

Harry Hageman, Executive Director
Rick Masters, General Counsel

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

Background:

Under N.J.S.A. 2C:43-6.4, individuals sentenced to CSL are released into the community under conditions set by the New Jersey State Parole Board. A violation of CSL conditions constitutes a fourth-degree criminal offense. The Parole Board may file a criminal complaint and county prosecutors are authorized to pursue prosecution. Additionally, the New Jersey Division of Law has advised that violations occurring outside its territorial borders still constitute violations of New Jersey law and may be fully prosecuted upon the individual's return. New Jersey asserts that CSL offenders are Compact eligible and that if a violation occurs while supervised in a receiving state, that state may close supervision and direct the individual to return to New Jersey, where prosecution would then be initiated under state law.

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.

'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 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 5.103 Supervised Individual Behavior Requiring Retaking:

(a) Upon a request by the receiving state and documentation that the supervised individual's behavior requires retaking, a sending state shall issue a warrant to retake or order the return of the individual from the receiving state or a subsequent receiving state within 15 business days of the receipt of the violation report.

Analysis

The Compact applies to any individual under community supervision as the result of a criminal conviction, plea of guilt, or plea of no contest, whether the supervision is imposed by a court, parole board, or other releasing authority. See Rule 1.101 (defining "Supervised Individual"). Its authority extends to those released to the community under lawful conditions of supervision,

regardless of the specific terminology used by a state's statutes.

Under New Jersey's CSL statute, supervised individuals:

1. Have been convicted of qualifying offenses;
2. Are under ongoing supervision by the New Jersey State Parole Board; and
3. Are subject to continuing conditions and potential criminal penalties for violations.

These criteria satisfy the Compact's definitions of supervised individual and supervision. Therefore, CSL individuals are covered under ICAOS and may seek transfer when other eligibility criteria in Rule 3.101 are met.

As for retaking, Rule 5.103 reinforces that sending states must act promptly when behavior requires retaking or when a return is ordered. New Jersey's statutory structure, treating violations of CSL conditions as new criminal offenses subject to prosecution, does not negate its responsibility under ICAOS to issue a warrant or order a return consistent with the rule. Retaking encompasses both physical apprehension and formal return by directive; thus, New York's concern that New Jersey lacks authority to "retake" is unfounded.

Conclusion

Based on ICAOS definitions, rules, and statutory framework:

1. Individuals sentenced under New Jersey's "Community Supervision for Life" statute meet the definition of supervised individuals under ICAOS.
2. They are eligible for transfer under Rule 3.101 if other criteria (e.g., compliance, residency, and supervision duration) are satisfied.
3. Rule 5.103 provides a clear mechanism for return or retaking when violations occur, ensuring that New Jersey remains compliant with Compact obligations.
4. The concerns raised by New York regarding New Jersey's retaking authority are addressed by the Compact's mandatory timelines and procedures.

Accordingly, CSL cases fall within the scope of the ICAOS, and transfers may be accepted and managed under its provisions.