



**Interstate Commission
for Adult Offender Supervision
ADVISORY OPINION**

**Opinion Number: 3-2010
Issued: 2010-07-22
Revised: 2019-05-15**

Requested by: Missouri

At Issue: Whether a California statute that classifies certain eligible California offenders as not subject to active supervision or revocation of parole excludes such offenders from the jurisdiction of the Interstate Compact for Adult Offender Supervision.

ADVISORY OPINION 3-2010

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

Background

Pursuant to Commission [Rule 6.101\(c\)](#) the State of Missouri has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules with respect to the following: On January 25, 2010, the provisions of a new California statute (California Penal Code § 3000.03) became effective. This statute placed eligible California parolees onto Non-Revocable Parole ('NRP') status.

Offenders who qualify for classification as NRP status are not subject to active supervision by California parole officers and "shall not be subject to parole revocation or the placement of a parole hold." NRP parolees are only subject to search by any law enforcement officer at any time until discharged. Cal Pen Code § 3000.03 applies to all California inmates and parolees under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR), regardless of their conviction date with the following exceptions:

- sex offenders;
- offenders convicted of serious or violent, or sexually violent felonies (serious felonies are not defined except by reference to another statute);
- gang members;
- offenders determined to be at high risk to re-offend;
- offenders with serious disciplinary offenses while incarcerated; or
- offenders who refuse to sign written notifications of parole requirements or conditions.

Accordingly, the State of California asserts that NRP parolees currently under compact supervision in other states or who are seeking a transfer of supervision, from California, to another state under the compact no longer meet the definition of supervision and are therefore no longer subject to transfer under the compact provisions.

Applicable Rules and Statutes

[Rule 1.101](#) provides:

"Supervision" means the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender 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 offender at the time of the offender's release to the community or during the period of supervision in the community."

Analysis and Conclusion

Under the current definition of supervision set forth in Rule 1.101, oversight exercised over the offender required to establish jurisdiction of the compact must include two components:

1) ". . . the offender is required to report to or be monitored by supervising authorities";
and

2) the offender is required "to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community."

Cal Pen Code § 3000.03 clearly meets the 2nd of these components because the offender is subject to search by any law enforcement officer at any time until discharged; however, the statute eliminates the need to report to supervising authorities. It is doubtful that the 'subject to search' requirement of the statute is sufficient to meet Rule 1.101's definition of supervision that requires monitoring by supervising authorities.

Because monitored is not defined in the provisions of the compact or ICAOS Rules, the accepted maxims of statutory construction require interpretation of such terms according to their common meaning or usage as other words in the English language. *See Diamond v. Diehr, 450 U.S. 175, 182 (1981) ('In all statutory construction,' "[u]nless otherwise defined, "words will be interpreted as taking their ordinary, contemporary, common meaning.") Id at p.182.* In this context, the dictionary's definition of "monitor" means "to oversee, supervise, or regulate, to watch closely for purposes of control, surveillance, etc., keep track of;" (*Random House Dictionary of the English Language, 2nd Ed. 1987*). Through common use, the term *monitor* anticipates active and regular oversight and 'keeping track of' the offender 'monitored by supervising authorities' under the terms of the compact.

The requirement imposed by Cal Pen Code § 3000.03, that NRP offenders are subject to a random and occasional search, if at all, does not appear consistent with the phrase 'monitored by supervising authorities' as used in the ICAOS Rules. For that reason, a California offender who, as a result of the type of offense committed, qualifies for classification as an NRP parolee, is not considered under supervision as defined by ICAOS Rule 1.101 and is therefore not subject to transfer under the provisions of the Compact.

However, since the statute applies to all California inmates and parolees under the jurisdiction of the CDCR, in a case in which an offender is seeking transfer of supervision to another state and the Court determines that supervision is warranted, it is still possible for a California court to order direct reporting to the Court or completion of behavioral modification/treatment programs with direct result submission to the Court in lieu of the CDCR.

The potential imposition of such court-ordered terms for an offender seeking transfer to another state can create sufficient basis for supervision under the terms of the compact and the rules, notwithstanding the fact that the California law does not permit the offender's supervision by the CDCR.