



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

**Opinion Number: 8-2005
Issued: 2005-11-21**

Requested by: Illinois

At Issue: Can a receiving state make a determination that an offender is not in substantial compliance in the sending state, when the offender commits a crime in the receiving state during the period of investigation, or when the offender has an outstanding warrant in the receiving state?

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

Background:

Pursuant to [Rule 6.101](#) the State of Illinois requested, in an email to the Executive Director on October 06, 2005, further clarification of [Rule 3.101](#).

“Specifically, can a receiving state make a determination that an offender is not in substantial compliance in the sending state, when the offender commits a crime in the receiving state during the period of investigation, or when the offender has an outstanding warrant in the receiving state?”

Applicable Rules

The relevant portions of Rule 3.101 amended October 26, 2004 contains the following language:

“At the discretion of the sending state, an offender who has three months or more of an indefinite period of supervision remaining shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender pursuant to a valid plan of supervision,

(1) is in substantial compliance with the terms of supervision in the sending state; and. . .”

As we pointed out in [ICAOS Advisory Opinion 7-2004](#), the intent of this rule as derived from its plain meaning, is that the sending state initially controls the decision to allow the offender to transfer under the Compact and the receiving state has no discretion whether or not to accept the case as long as the offender satisfies the criteria provided under this rule.

Rule 3.101 (l) requires that the offender must be in “*substantial compliance*” with the terms of

supervision in the sending state. [Rule 1.101](#) (aa) provides that substantial compliance:

“means that an offender is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.”

The facts of the Illinois case that prompted this request involved an offender who met the criteria for transfer to the receiving state and had been given reporting instructions; however, the receiving state denied acceptance of supervision based on the offender not being in substantial compliance because of an arrest for a new offense in the receiving state during the period of investigation. In another case Illinois reported that the receiving state indicated it could not reply to the request for transfer because the offender was not available for supervision due to a new arrest. This resulted in incarceration pursuant to the arrest but prior to either a trial or conviction. The receiving state indicated that if the sending state needed a reply immediately it would send a denial.

Analysis & Conclusion

While Rule 3.101 (1) places the initial decision to transfer an offender under the compact with the sending state, the addition of the “substantial compliance” requirement to the criteria set forth in this rule was to prevent the transfer of offenders who are not in compliance with the terms and conditions of their supervision in the sending state as the result of other pending criminal charges. However, as emphasized in **ICAOS Advisory Opinion 7-2004**, such charges pending in the receiving state are “irrelevant to the transfer decision, when the issuing authority has taken no action.” While the previous advisory opinion has already addressed the question which Illinois raises as to “outstanding warrants” the question of whether a subsequent arrest for an alleged crime committed during the investigation was not directly considered. However, it appears that the same logic should apply. Whether the charges are pending as the result of an outstanding warrant or an arrest for a new alleged offense, it is not a sufficient basis under the foregoing rules to reject transfer of an offender where the sending state has taken no action and has not specifically determined that a basis exists for revocation proceedings. Such action unjustifiably prohibits offenders who are residents of the receiving states to which they wish to transfer from returning home who in many cases have no resources in the sending state. Notwithstanding this reasoning, the receiving state should report these outstanding warrants and arrests to the sending state which may be considered in the determination as to whether the offender is in substantial compliance with the terms of supervision in the sending state.

Thus, based on the above analysis and the text of the referenced rules of the Compact, unless the sending state has taken action on an outstanding warrant or is actively seeking to take the offender into custody under a new arrest warrant or has specifically determined that these new or pending charges are the basis for a revocation proceeding, then the transfer application should not be rejected only on this basis.