



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

**Opinion Number: 9-2004
Issued: 2004-12-02**

Requested by: New Jersey

At Issue: Offenders sentenced under the Violent Predator Incapacitation Act who seek transfer CSL supervision outside the state of New Jersey.

ADVISORY OPINION 9-2004

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

Background:

Pursuant to ICAOS [rule 6.101](#), The State of New Jersey has requested a formal opinion concerning clarification regarding the interpretation and applicability of [Rule 1.101](#) (m), 1.101 (aa), 3.101, and 5.103 of the administrative rules of the Interstate Compact for Adult Offender Supervision to New Jersey offenders convicted of designated sexual offenses and sentenced under the provisions of a New Jersey statute entitled "Violent Predator Incapacitation Act of 1994" (N.J.S.A. 2C:43-6.4), and otherwise known as and referred to herein as "Community Supervision for Life" ("CSL"); and who seek to transfer such supervision outside of the State of New Jersey.

According to your request for opinion, the "Violent Predator Incapacitation Act of 1994." N.J.S.A. 2C:43-6.4, mandates that the special sentence of community supervision for life shall commence upon the completion of the sentence imposed pursuant to other applicable provisions of the New Jersey Code of Criminal Justice. In addition, the statute requires that persons serving a special sentence of community supervision for life shall be supervised as if on parole and subject to conditions appropriate to protect the public and foster rehabilitation. A violation of a condition of community supervision for life is deemed to be the commission of a crime of the fourth degree under the New Jersey criminal statutes. The New Jersey State Parole Board may file a criminal complaint upon the discovery of a violation; and upon the filing of such complaint the appropriate county prosecutor shall proceed to initiate the prosecution of any such violation as a criminal matter. Moreover, the New Jersey Department of Law & Public Safety-Division of Law has provided formal legal advice indicating that a violation of a condition(s) of CSL occurring out-of-state shall be considered a violation of the law in the State of New Jersey and thus such an offender shall be subject to the full panoply of prosecutorial action by the statute.

You state that your request stems from "actual cases and controversies" regarding the State of New York's general refusal to supervise any CSL offender who seeks to formally transfer supervision from the State of New Jersey to the State of New York under the Compact. The chief concern cited by the State of New York (and the former Executive Council) appears to be the State of New Jersey's alleged inability to "retake" an offender who may violate a condition of supervision in an important respect. In such cases, the State of New Jersey submits that should there be a violation of a condition of supervision in an important respect a receiving state supervising a CSL offender may simply determine to "close interest" in the case; provide notice to the State of New Jersey and provide reporting instructions to the offender.

You state that your reading of "retaking" is not narrowly limited to only those measures that must result in "retaking" a transferee by exercising actual physical control out of a custodial setting in the receiving state and by returning the transferee to a custodial setting in the sending state. You also

point out that if the receiving state provides notice to New Jersey that an offender has violated a condition of supervision in an important respect, then the New Jersey State Parole Board will file a formal criminal complaint and ask the appropriate county prosecutor to prosecute any such violation as a criminal matter pursuant to the advice rendered by your Division of Law as noted above.

You note in your request for opinion that prior to the enactment of the “new Compact” and the “new rules,” the former Executive Council of the Interstate Compact for Adult Parolees and Probationers rendered an opinion in an appeal of a case involving a CSL offender. The Council believed that said offender was not “a parolee case” covered under the terms of the “old Compact” and, therefore, was ineligible for formal acceptance/transfer under the terms and conditions of the “old Compact.” However, you point out that despite such ruling in the New York case, many other states have formally accepted the transfer of supervision of New Jersey CSL offenders under the Compact pursuant to the terms of both the “old” and “new” Compacts.

You have also informed the Commission that the reason that New Jersey is seeking another opinion on this issue at this time is that the New Jersey Superior Court-Appellate Division recently issued a ruling in two companion cases, *Sanchez v. N.J. State Parole Board* and *Imperato v. N.J. State Parole Board*, 845 A.2d 687 (2004). In those cases the Court held that the New Jersey Legislature never intended those offenders sentenced to community supervision for life to remain in the State of New Jersey until termination from service of the supervision term. Accordingly, the Court mandated the New Jersey State Parole Board to allow any CSL offender who would otherwise be eligible for transfer under the Compact to relocate their residency outside of the State of New Jersey subject to conditions set by the Parole Board that protect the public and foster rehabilitation, whether or not such offender is formally accepted for supervision by the receiving state. As such, the New Jersey State Parole Board must now allow offenders who are currently under the service of a lifetime supervision stipulation for the commission of an enumerated sexual offense, to relocate to other state without close community supervision.

As acknowledged in the opinion request, since the Executive Council’s ruling in this matter under the old interstate compact, the Interstate Compact for Adult Offender Supervision has been adopted by New Jersey and every other state except Massachusetts. Moreover the duly adopted rules promulgated under the authority of the new Interstate Compact became effective August 1, 2004.

In the opinion request you disclose that since the enactment over a decade ago of the “Violent Predator Incapacitation Act of 1994,” N.J.S.A.2C:43-6.4, that no more than a handful of such offenders have sought transfer to the State of New York (as well as other States) under the Compact. In addition, all such offenders are carefully screened to assure that all applicable criteria for transfer are met before seeking any such transfer. Furthermore, in consideration of New York’s published concerns, you have represented that the State of New Jersey would request that only “mandatory acceptance” cases be considered for any such transfer to the State of New York under the Compact.

You have further advised that effective January 14, 2004, the New Jersey Legislature amended the “Violent Predator Incapacitation Act” from “community supervision for life” to “parole supervision for life.” You state that this amendment requires all offenders who commit a designated sex offense on or after the effective date to receive the special sentence of parole supervision for life (PSL) and thereby subject’s them to administrative parole revocation proceedings in addition to prosecution of a criminal offense for a violation of PSL. You further indicate that this amendment by the Legislature will effectively limit the number of transferees affected by these issues to the cohort that were sentenced under the prior CSL statute.

Applicable Rules

The regulations which are implicated in your request are the following:

Rule 1.101 (m) "Offender" means 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 provisions of the Interstate Compact for Adult Offender Supervision.

Rule 1.101 (aa) "Supervision" means the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community.

Rule 3.101 "Eligibility for transfer of supervision"

(a) At the discretion of the sending state, an offender who has three months or more or 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

(2) is a resident of the receiving state; or

(3) (A) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and (B) can obtain employment in the receiving state or has a visible means of support.

(b) A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision.

[Rule 5.103](#) *"Violations of conditions of supervision"*

Upon a request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state .

Analysis & Conclusion

As referenced herein the rules of the Interstate Compact for Adult Offender Supervision define *“Offender” as an adult placed under, or 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.* Thus it is clear that under this definition that an offender supervised pursuant to the terms of the Compact and its rules may include an adult placed under supervision by a court, in addition to paroling and corrections authorities.

“Supervision” is defined as authority or oversight exercised by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community. Under this definition it is plain that supervision, as defined under the current compact rules, has two distinct criteria both of which must be satisfied in order for such a relationship to exist under the compact which are: 1) authority or oversight is exercised by a supervising authority and 2) such exercise of authority or oversight includes a condition, qualification, special condition or requirement which is imposed on the offender at the time of release to the community or during the period of supervision in the community.

The circumstances described in your opinion request are that CSL offenders are placed under and made subject to supervision by the court as the result of the commission of certain enumerated sexual offenses and released to the community under the jurisdiction of the courts with the requirement that they must remain under such supervision pursuant to such general and special conditions of supervision as are determined by the State Parole Board to protect the public and foster rehabilitation of the offenders and subjects such offenders to criminal prosecution for any violation of such conditions. In addition you have pointed out that such offenders may petition the courts for release from supervision after no less than fifteen (15) years of continuous supervision.

Summary

Based on the above facts as set out in your request and considering the literal language and plain meaning of the rules of the Interstate Compact for Adult Offender Supervision, as referenced herein, it is our opinion that CSL offenders are subject to supervision under the Interstate Compact for Adult Offender Supervision and upon proper application and documentation of a valid plan of supervision and verification of the residency and employment criteria as required under those rules should be permitted to transfer to other states for supervision under the Compact.