

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

RULES

What Rules Will Be Created For States to Follow?

Rules made pursuant to the original legislation in 1937 have existed for about 60 years, and though largely unchallenged, have carried the legal force of law in all participating states. A primary purpose for amending the compact is for states to create an effective system for enforcing their mutually agreed upon rules. Just as rules were adopted following enactment of the original parole and probation compact, so too must rules be adopted subsequent to enactment of this proposed legislation.

Article VII of the proposed Interstate Compact For Adult Offender Supervision requires that "The Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact...." Among the provisions in that section are the following:

- Proposed rules must be published in advance, and there must be provision for persons to respond in writing, and there must be an opportunity for an informal hearing before any rule can be passed;
- A majority of the legislatures of the Compacting States may reject a rule, and it would then have no further force and effect in any Compacting State;
- The National Commission must address certain specified topics within the first 12 months; and
- To aid in the transition process, the existing rules governing the previous compact will not be null and void until 12 months following the first meeting of the National Commission.

It is impossible to say what the new Compacts' first set of rules will contain when member states' representatives on the National Commission complete their start up work. However, it is likely that a large portion of the existing rules will be adopted; and that additions, deletions or amendments to the existing rules will be the result of extensive discussions, and specific policy decisions made and voted into existence by a majority of member states.

Therefore, a recent version of the "Parole and Probation Compact Administrators' rules" are attached as an indication of the type and scope of rule making that the National Commission is likely to complete. It can not be stressed enough that this information is provided to aid in gaining an understanding of the nature of rule making that has already taken place and is likely to result from passage of this legislation. But, the actual rules adopted by the National Commission will fully be a product of the deliberation of the Commission's state representatives and almost certainly will be at least somewhat different from what currently exists.

INTERSTATE COMPACT FOR THE SUPERVISION
OF PAROLEES AND PROBATIONERS

RULES

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RULES OF PRACTICE

A major portion of the final recommendations of the National Commission to Restructure the Compact consisted of Rules of Practice for the operation of the Compact and Compact Offices. Minor amendments to the Rules were adopted by the Parole and Probation Compact Administrators' Association and have been incorporated in the Rules as set forth herein. These rules are promulgated under the Compact provision allowing the administrators of the various states to jointly adopt rules of procedure for operations under the Compact.

RULES FOR OPERATIONS UNDER THE COMPACT

SECTION 100 - LEGAL NOTES ON THE COMPACT

Section 1-100.
DEFINITIONS

- (A) **Absconder** - A parolee or probationer is considered as an absconder when he/she fails to report and his or her whereabouts are unknown. It must be verified that the offender is no longer living at his or her listed residence. An unsuccessful effort to locate the offender through his/her employment is also required.
- (B) **Civil Probation or Parole** - Shall refer to persons whose freedom or activities are subject to limitation, supervision, or other restraint where such limitation, supervision, or restraint originates from charges brought against such individual which are civil and not criminal in nature.
- (C) **Concurrent Supervision** - Supervision of a parolee or probationer by two separate authorities, i.e., federal and state authorities jointly. This term is also applied when an offender is being supervised by a state for a conviction received in that state as well as convictions received in one or more sending states.
- (D) **Conditional Release** - Shall refer to those persons who have been released from incarceration after adjudication of guilt and sentencing with such continued release contingent for a period of time upon the adherence by such person to specified conditions.
- (E) **Court Ordered Transfer** - A Court Order Transfer is one in which the transfer is authorized on a written order on the record executed by a Court in a criminal proceeding pertaining to a person supervised or to be supervised under the Compact. Suggested wording would be - supervision may be transferred to (receiving state).
- (F) **Detainer** - an order to hold a parolee or probationer in custody.
- (G) **Discharge** - final completion of the sentence which was imposed on offender by the sending state.
- (H) **Extradition - Delivery** from one state to another of a fugitive upon agreement of the governor or chief executive of the state in which the fugitive is found. Return of parolees or probationers under the terms of the Compact agreement can preclude formal extradition.
- (I) **Extraordinary Medical Condition** - Medical conditions in offenders which include infectious diseases, diagnosed psychological disorders or medical conditions that may affect the course of the supervision by the receiving state.

- (J) **Failure to Report** - This term applies to a parolee or probationer whose whereabouts are known but who fails to report to his/her assigned officer as ordered or directed.
- (K) **Family** - For purposes of a formal definition, a family member is anyone who is legally recognized as a relative by state legislation in the receiving state.

(L) **Misdemeanant** - A person convicted of a minor offense for which the sending state's statute provides a lesser penalty than for a felony.

(M) **Non-Convicted Offender** - Shall mean offenders for whom a court has ordered supervision prior to an adjudication of guilt, including individuals released to supervision on their own recognizance. Non-convicted offenders may be supervised under the Compact only pursuant to agreement by the sending and receiving states where statutory authority exists.

(N) **Parole** - A release from prison, given to a prisoner before expiration of sentence, on condition of future good behavior.

(O) **Pre-Parole Investigation** - Shall mean any investigation or inquiry regarding an individual who has requested transfer under the Compact which relates either to that individual's release, parole or suitability for transfer.

(P) **Probable Cause Hearing** - A hearing conducted in behalf of a parole or probation violator in compliance with the U.S. Supreme Court's rulings in *Morrissey v. Brewer* and *Gagnon v. Scarpelli*. Also referred to as a Preliminary Hearing, Preliminary Probable Cause Hearing, On-Site Hearing or On-Site Probable Cause Hearing.

(Q) **Probation** - Shall mean court-order supervision after a plea of guilty or a trial and adjudication of guilt.

(R) **Post-Sentence** - Shall refer to the time period after a court has, based upon a plea or adjudication of guilt, determined conditionally or otherwise the penalty for an offense and has announced said penalty in open court or in an open or closed record of said court.

(S) **Provisional Travel Permit** - A travel permit issued to allow an offender to travel to a receiving state for the purpose of transfer of supervision.

(T) **Receiving State** - In the process of transfer of supervision of parolees or probationers, the state which is requested to assume supervision of an offender.

(U) **Resident** - For the purpose of transfer of supervision under the terms of the Compact, a parolee or probationer may be considered a resident of a state if the offender has been an actual inhabitant of such state continuously for more than one year prior to coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the

commission of the offense for which the offender has been convicted.

(V) **Rule Variance** - An exception to the "Rules For Operations Under The Compact," agreed upon in writing by two states, to facilitate handling of the case of an offender in which they have some mutual interest.

(W) **Sending State** - In the process of transfer of supervision of a parolee or probationer, the state requesting transfer of supervision.

(X) **Special Condition** - Conditions or terms added to the standard conditions of parole or probation by either the sending or receiving state.

(Y) **Special Investigation** - A non-Compact investigation, usually an investigation of arrest or conviction of a parole or probationer in behalf of another state on a courtesy basis.

(Z) **Supervision Fee** - A fee collected to compensate for the cost of supervision of an offender.

(AA) **Temporary Travel Permit** - A travel permit issued to allow an offender to visit another state for a period not to exceed thirty (30) days. This type of travel permit is not used in conjunction with travel for the purpose of transfer of supervision.

(BB) **Third Party State** - In the process of transfer of supervision of a parolee or probationer, a state, other than the original receiving state, that is requested to assume supervision of an offender. Also a state, other than the sending or receiving state, to which a parole or probation violator may have fled or absconded.

(CC) **Waiver** - A formal written statement relinquishing some right, claim or privilege.

**Section 1-101.
CONGRESSIONAL CONSENT**

The Interstate Compact for the Supervision of Probationers and Parolees is authorized by Congress under the Crime Control Act of 1934.

Commentary:

The Interstate Compact for the Supervision of Probationers and Parolees was developed by the states under the Congressional consent given in advance by the Crime Control Act of 1934 which states in part: "[A]n Act granting consent of Congress to any two or more states to enter into agreements or compacts for cooperative efforts and mutual assistance in the prevention of crime and for other purposes."

There is a solid foundation of legal precedent supporting the legality and constitutionality of the

Interstate Compact for the Supervision of Probationers and Parolees. To date, no state court of last resort has ever handed down an unfavorable decision. The legality and constitutionality of the Compact has also been tested in the federal courts, again with no unfavorable decision having been issued against the Interstate Compact. The law of interstate compacts as interpreted by the U.S. Supreme Court is clear that interstate compacts are the highest form of state statutory law, having precedence over conflicting state statutes and obligating the member states to the provisions of the agreement as though it were a binding contract as well as a statute entered into by the member states. See the Legal Digest for citations and summaries of court decisions.

**Section 1-102.
COMPLIANCE**

Violations of Interstate Compact provisions shall be reported in writing to the President of the Parole and Probation Compact Administrators' Association. If the President then deems that a violation has occurred, the President shall notify in writing the Executive Council who will take appropriate action including notification of the governor of the violating state or jurisdiction.

Commentary

Failure to fulfill any obligation under the Compact or this Manual represents a breach of contract. The breaching state can legally be forced to conform (as long as they are member to the Compact); however, it is advisable to attempt to solve problems such as this in an informal manner, if possible, prior to resorting to formal administrative action or litigation. Initially, the President should attempt to mediate any conflicts between two member states before notification of the violative action.

**Section 1-103.
COMPUTER AUTOMATION**

A receiving state shall accept as sufficient for investigation and/or acceptance for supervision data transferred to it from an automated system pursuant to any requirements imposed by the Compact Administrators or these rules.

Commentary

This section assumes that the intent of the drafters of the Compact was to use the most efficient means available for Compact operations. The advent of automation technology was not recognized in the Compact rules previously. This section recognizes the availability of such means for information transfer, and legitimizes such transfers under the agreement methods available in the transfer of information.

**Section 1-104.
AMENDMENTS TO THE RULES AND REGULATIONS**

Amendments to these rules and regulations shall be adopted finally when agreed to by three-fifths of the administrators of the states signatory to the Compact.

Commentary

Article 5 of the Compact provides that the administrators shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of the Compact. The rules and regulations in the Compact Manual carry the same authority as the Compact and therefore it is desirable that amendments or changes be made only after adequate study and consideration have been given to the subject by the administrators. Upon adoption of a rule, however, all states shall give the same credence to the rules and regulations as given to the Compact.

**Section 1-105.
NUMBER OF ADMINISTRATORS/DEPUTY COMPACT ADMINISTRATORS**

Each state shall have one Compact Administrator and no more than two Deputy Compact Administrators designated by the Administrator thereof.

Commentary

The framers of the Compact understood that in order to ensure consistency in the interpretation of the Compact and uniformity in application, a limited number of Administrators/Deputy Compact Administrators was necessary. Information shall be channeled through Compact Offices and the Administrator and Deputies are responsible for dissemination.

SECTION 200 ELIGIBILITY FOR SUPERVISION

**Section 2-101.
ELIGIBILITY FOR SUPERVISION**

Any state (sending state) who is a party to the Compact may permit any probationer or parolee to reside in any other state (receiving state) party to this Compact, while on probation or parole, if:

- (a) such person is in fact a resident of or has family residing within the receiving state and can obtain employment there. The offender shall have an offer of employment or a visible means of support;
- (b) though not a resident of the receiving state and not having family residing there, the receiving state consents to such person being sent.

Commentary

Article (1) of the Interstate Compact for the Supervision of Probationers and Parolees provides that "It shall be competent for the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state'), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this Compact (herein called 'receiving state'), while on probation or parole, if (a) such person is in fact a resident of or has family residing within the receiving state and can obtain employment there. The offender shall have an offer of employment or a visible means of support;

(b) though not a resident of the receiving state and not having family residing there, the receiving state consents to such person being sent there. Before granting such permission opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person. A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one (1) year prior to coming to the sending state and has not resided within the sending state more than six (6) continuous months immediately preceding the commission of the offense for which the conviction occurred.

The Association has refused to adopt proposals for rigid interpretations of the Compact's language regarding residence, family, and employment. The view has always been that the language must be representative of the collaborative effort of its members which makes the Compact a success. The Association's view of desirable policy regarding acceptance of cases for supervision is that individuals should be accepted not only when they have legal residence or relatives in the receiving state, but also when it appears there is a plan for the individual which has merit and will serve to aid in the ultimate rehabilitation of the offender. There may be state laws requiring parolees to have jobs before leaving prison. This would not be applicable to persons sent from other states for supervision.

The receiving state serves only as agent of the sending state and may not determine the conditions of parole or probation in the sending state, but may and should offer recommendations pertaining to such conditions, and impose its own special conditions effective within the receiving state. There is nothing restrictive in the Compact language referring to felony offenses and/or misdemeanors offenses. The Compact covers any infraction of the law, major or minor, for which there has been a conviction.

**Section 2-102.
MILITARY PERSONNEL**

Military personnel shall be processed as any other Compact case, however, mere physical presence in another state for military service does not change residence for purposes of the Compact.

**Section 2-103.
CONCURRENT SUPERVISION**

If an offender is under supervision in the receiving state, the receiving state shall accept any jurisdiction's request for concurrent supervision.

**Section 2-104.
JUVENILES**

No juvenile shall be eligible for supervision under the Compact unless the juvenile has been convicted in judicial proceedings as an adult.

Commentary

Since adjudication of delinquency is not considered a "conviction," generally, juveniles are not eligible for supervision under the Interstate Parole and Probation Compact.

**Section 2-105.
MERCHANT SEAMEN**

Permission to serve in the Merchant Marine may be granted only in select cases. No parole/probationer may do so unless the parolee or probationer was a Merchant Seaman (with papers) prior to commitment.

Commentary

Permission to serve in the Merchant Marine should only be granted in select cases and only if the individual was a Merchant Seaman (with papers) prior to commitment. If the individual is scheduled to remain in an out-of-state port for a substantial amount of time, the receiving state's administrator should be notified and given the opportunity to provide supervision.

**Section 2-106.
PRETRIAL DIVERSION CASES**

Member states of the Compact may enter into agreements under the Compact with other member states where statutory authority exists under which non-convicted persons may be supervised.

Commentary

At the time of adoption of the Compact, pre-trial diversion and similar pre-conviction programs for dealing with offenders were not in frequent use. The development of such programs over recent decades requires that Compact rules be altered to allow for such cases to be handled under the Compact pursuant to agreements that individual Compact states may make with one another. It is the intent of this section to allow such agreements to occur.

**Section 2-107.
MISDEMEANANTS**

Misdemeanants are eligible for supervision under the Compact.

**Section 2-108.
FURLOUGH, WORK RELEASE, OR OTHER PRE-PAROLE RELEASE**

No offender released on furlough, work release, or any other pre-parole release program is eligible for supervision under the Compact.

Commentary

Offenders released on furlough, work release, or any other pre-parole release are not eligible for supervision as Compact cases, and cannot be returned as violators under the Compact.

**Section 2-109.
NON-CONVICTED OFFENDERS**

Non-convicted persons who are subject under order of a court to be supervised are not ordinarily subject to supervision under the Compact. However, where reciprocal legislation or other law exists allowing such transfer and supervision, states may do so pursuant to the other authorizing law.

Commentary

When the Compact was entered into in 1937, diversion programs and other supervisory programs not involving conviction did not exist. The language of the Compact explicitly states that it is for "... any person convicted of an offense," therefore, non-convicted persons on probation are technically not eligible for supervision under the Compact. However, it is the position of the

PPCAA that a non-convicted person who is subject under order of a court to be supervised may be transferred under the Compact if both the sending and receiving states agree to transfer.

**Section 2-110
SPECIAL CONDITIONS**

- A) Any receiving state which chooses not to enforce or is not able to enforce a special condition placed upon a parolee or probationer by the sending state shall notify the sending state, as soon as is possible, that the special condition will not be enforced.
- B) Any receiving state which imposes an additional condition upon a parolee or probationer shall notify the sending state of said condition as soon as is possible.

Commentary

Whenever a special condition is imposed on a parolee or probationer, the sending state shall, as a part of a request for transfer, fully disclose the special condition, the reason for its existence, and all related information to the receiving state. The receiving state should make every effort to meet the special condition. If a receiving state chooses or is not able to enforce a special condition upon a parolee or probationer, the sending state must be notified that the special condition will not be enforced. The sending state may then choose to either decline to transfer the offender or to transfer the offender with knowledge that the special condition will not be enforced. Where such conditions cannot be enforced, they should be altered by the sending state in accordance with its procedures. Special conditions may be imposed by receiving states as well as by sending states. This section recognizes this and imposes a duty upon the receiving state to notify the sending state of any additional conditions imposed upon the parolee or probationer. See PPCAA Executive Council Ratings Section, Ruling No. 1 - Receiving State's Right to Add Special Conditions.

**Section 2-111
EXTRAORDINARY MEDICAL/PSYCHOLOGICAL CONDITIONS**

When transferring under the Interstate Compact a parolee or probationer with an extraordinary medical/psychological condition the sending state shall fully disclose all relevant known information regarding an offender's condition and shall obtain a signed waiver from the offender allowing for such disclosure.

Commentary

When transferring under the Interstate Compact a parolee or probationer with an extraordinary medical/psychological condition such as an infectious disease, the sending state must fully disclose all relevant known information regarding the offender's condition. A sending state must also obtain a signed waiver from the offender allowing for such disclosure. The clear intent of the Compact itself as well as this provision is to hold that where a parolee or probationer otherwise meets the

eligibility requirements of the Compact for mandatory acceptance, states may not reject such a transfer because of the existence of an extraordinary medical/psychological condition.

**SECTION 300 ARRANGEMENTS FOR SUPERVISION:
STANDARDS AND PROCEDURES**

**Section 3-101.
OPPORTUNITY TO INVESTIGATE**

In all cases except emergency and court ordered transfers, the receiving state shall be given the opportunity to investigate the prospective plan of the individual prior to movement to the receiving state. The sending state must mail the transfer package to the receiving state within 15 days after the offender is granted permission to move. Receiving states shall not be expected to make investigations of job and home situations more than sixty (60) days in advance of the proposed placement; therefore, the request shall not be mailed to the receiving state earlier than sixty (60) days in advance. If the parolee or probationer is not sent to the receiving state within 120 days after acceptance, the sending state shall ask for a check of the proposed plan before sending the parolee or probationer to the receiving state. Administrators shall acknowledge investigation requests, report on the progress of the investigation at appropriate intervals and complete investigations as promptly as possible. Investigations shall be completed within forty-five (45) calendar days of receipt by the receiving state. Officials requesting investigations shall either use the official form (Form 1), "Investigation Request" or, if substituting other documents, make certain that the information called for in the form is included. Two (2) copies of all materials will be sent with investigation requests. Offenders that are allowed to proceed to the receiving state prior to an investigation must meet the following criteria: court ordered transfer, death in the parolee's or probationer's immediate family, or employment. Upon knowledge in the sending state's Compact Office that an offender has been allowed to proceed to the receiving state pending transfer, the sending state's Compact Office shall immediately notify the receiving state by telephone or fax. The receiving state shall provide reporting instructions; however, responsibility for the case remains with the sending state until the receiving state accepts for supervision. No attempt at supervision or case management is required prior to receipt of case material, investigation of plan and acceptance.

Commentary:

Although permitting parolees and probationers to proceed to a receiving state prior to investigation of a plan should generally be discouraged, there are circumstances which dictate that certain cases be allowed to proceed to a receiving state prior to completion of an investigation. These circumstances include death in the parolee's or probationer's immediate family, a court order, or employment. Emergency or provisional travel to a receiving state for reasons of employment should not be approved by the sending state except under the most compelling of circumstances. It must be demonstrated that the individual's adjustment will suffer significantly if travel is not immediately allowed to the other state. It is the responsibility of the sending state to verify the need for immediate travel to the receiving state through the appropriate sources: i.e., physicians, court documents, employers.

There are a number of additional factors that bear on whether an individual should be allowed to

proceed to another state prior to investigation of a plan and formal acceptance by the receiving state. Care should be taken to eliminate foreseeable risk to the community. The nature of the parolee or probationer's prior criminal history and adjustment while under supervision are important factors in determining whether the offender should be allowed to travel to another state prior to completion of an investigation.

The receiving state shall always be notified by telephone or fax immediately upon knowledge by the sending state's Compact Office that the offender will be allowed to proceed pending transfer; however, responsibility for the case remains with the sending state until the receiving state completes investigation of the plan and accepts supervision. A formal transfer request should be forwarded to the receiving state 15 days after the offender is granted permission to proceed. The receiving state shall provide temporary reporting instructions for the case to report to the administrator or the administrator's designee to allow the parolee or probationer a contact person in the receiving state. Granting of reporting instructions by the receiving state may facilitate subsequent investigation of the plan and is recommended, but no attempt at supervision or case management is required prior to receipt of case material, investigation of the plan and acceptance.

**Section 3-102.
CHANNELLING CASES THROUGH THE ADMINISTRATOR'S OFFICE**

Acceptance, rejection or termination of an interest in a Compact case shall only occur through the Compact Administrator's office or a designated deputy. All written and verbal communication shall be channeled through the Administrator's office or the office of a designated Deputy.

Commentary:

This section clarifies the policy of the Administrators that a single agency in each state handle communications with other states relating to Compact cases.

**Section 3-103.
REQUEST FOR SUPERVISION INFORMATION**

A request for supervision shall contain a presentence investigation report or similar information from other reports which shall include the following information:

- 1) Criminal history of the parolee or probationer;
- 2) Description of the instant offense including information concerning any enhancement or reduction in the charge or penalty;
- 3) Copy of the conditions of parole or probation with commentary regarding any special conditions which have been imposed is granted. In pre-parole cases, the conditions shall be provided within 30 days after parole to plans in the receiving state;

- 4) Application for Compact Services and Agreement to Return Form;
- 5) Copy of the judgment and commitment;
- 6) Current supervision history of parolee or probationer in the sending state.

Commentary

Given the reality that some states do not have resources available to provide the following material, it is considered desirable, but not mandatory and should be included with the transfer request when it is readily available.

- 1) Photographs and fingerprints;
- 2) Psychological reports;
- 3) Information regarding any medical condition which requires medication.

Section 3-104. PRESENTENCE, PRECONVICTION AND POSTSENTENCE INVESTIGATIONS

Compact Administrators are not required to make presentence or preconviction investigations.

Commentary

Administrators sometimes receive requests for investigations regarding prospective placements of individuals who have not been sentenced. It shall be noted that there is a great difference between making an investigation of an individual who has been convicted, but not yet sentenced, and making an investigation of an individual whose guilt has not been determined. Most Administrators seem to be willing to furnish presentence investigations. This is probably good practice in cases where the investigation will take some time and the court will be required to hold a probationer without a definite supervisory plan until the investigation report is received. The making of an investigation before conviction is another matter. The Association has agreed that Compact Administrators do not have any obligation to make such investigations since the Compact covers only "convicted" persons.

There may be state laws which prevent an Administrator from making such an investigation even if the Administrator wishes to cooperate. Moreover, a person charged with a crime is presumed to be innocent and retains relevant rights until found guilty, so there may be considerable doubt as to the legality of certain investigations before conviction. It is advisable to secure the consent of the individual to the investigation if such individual has not been convicted.

Administrators should try to cooperate by exchanging information to assist other states in

presentence, preconviction, and postsentence investigations. It is difficult for states to make proper decisions when background information is unavailable. Administrators who request information should be specific about the type of information wanted. The investigating state shall be given adequate information about such things as addresses of relatives and former employers.

Section 3-105. CONFIDENTIALITY OF RECORDS

Pre-parole and investigation reports which are exchanged between states in connection with interstate supervision are confidential.

Commentary

Pre-parole and investigation reports shall not be revealed directly or indirectly to any person not authorized to receive them. Administrators shall notify persons in charge of records that they are confidential.

Section 3-106. DISAGREEMENTS OVER ACCEPTING CASES

No state shall refuse to supervise a parolee or probationer eligible under the Compact who has the necessary employment and residency qualifications. A receiving state cannot reject supervision based on a short period of supervision. Cases with less than 45 days supervision shall not be transferred.

Commentary

Under the terms of the Compact no state shall refuse to supervise a parolee or probationer who has been convicted and who has the necessary employment and residency qualifications. No state shall refuse to supervise if the offender is considered to be a poor risk, high profile case, or based upon crime(s). A receiving state cannot reject supervision based on a short period of supervision. Sending states are reminded, however, that receiving states have up to 45 days to investigate prior to acceptance. Therefore, cases with less than 45 days supervision shall not be transferred.

Section 3-107. DIRECT CORRESPONDENCE WITH PRISONERS

Compact officials shall not engage in direct correspondence with prisoners of another state regarding prospects for interstate supervision.

Commentary

The procedure shall be that when an official receives such a letter, it will be acknowledged but will state that the official cannot act or give information on a case without a request from Compact

officials in the sending state. Each state may devise a form letter to use in such cases.

**Section 3-108.
ARRANGEMENTS FOR SUPERVISION IN A THIRD STATE**

Transfer of supervision to a third-party state shall be processed by the sending state. The current supervising state shall notify the sending state prior to movement for purposes of changing residence. Sending states shall notify receiving states of acceptance of transfer by the third-party state.

Commentary

The state presently supervising the parolee or probationer will assist in having Form III signed if provided by the sending state, issue a travel permit, when properly authorized, with specific information included. This information shall then be sent to the sending state, which will forward such information to the third-party state. The sending state will notify the original receiving state when acceptance is made by the third state and notify it to close the file.

**Section 3-109.
RETURN OF SUPERVISION TO THE SENDING STATE**

No probationer or parolee shall be allowed to transfer back to the sending state unless the Administrator in the sending state is given notice as to the return and where the offender can be located.

Commentary

When there is a specific condition of probation or parole, or a notice furnished to the receiving state prohibiting the offender's return to the sending state, the receiving state shall always contact the sending state before allowing the offender to return.

The probationer or parolee shall be furnished a travel permit when permitted to return to the sending state, copies of which shall be furnished to the sending state.

**Section 3-110.
OBLIGATION TO PROVIDE FOR RETURN**

A sending state shall provide for the return of violators supervised under the Compact, including expenses associated with such return, in a reasonable and expeditious manner.

Commentary

Fiscal constraints are not sufficient reason for failure to return violators under the Interstate Compact. It is the duty of the sending state to provide for the return of all offenders supervised

under the Compact. Sending states shall provide for the return of violators from receiving states in a reasonable and expeditious manner.

Receiving states shall not be required to bear expenses associated with a physical return to a sending state, except that no sending state shall be required to compensate a receiving state for expenses associated with the normal incarceration, judicial or administrative process of a receiving state. Additionally, neither the sending or receiving state shall ever send a bill for services to the other state.

Failure to return violators due to fiscal reasons may have liability implications for sending states.

**Section 3-111.
RULE VARIANCES**

Variances to the rules under this Compact, because of the emergency nature of the circumstances surrounding the need for said variance, may be implemented where clear and convincing evidence can be shown to exist of the need for such variance and where agreed upon in advance by the states affected by such variance. Variances shall be in writing, and should be filed with the Chair of the Executive Council.

Commentary

Variances shall be used when the states involved agree upon the need for the variance. Such cases should usually be extraordinary in nature, and variances agreed upon shall be in writing.

SECTION 400 STANDARDS OF RECIPROCAL SUPERVISION

Section 4-101. RECIPROCAL DUTIES BETWEEN STATES

Each receiving state shall assume the duties of visitation of and supervision over probationers or parolees of any sending state transferred under the Compact, and in the exercise of those duties will be governed by the same standards which prevail for its own probationers or parolees.

Commentary

The same standard of supervision as applies in the receiving state in the supervision of its own parolees (and probationers) shall apply to out-of-state parolees (and probationers) sent there under the terms of this agreement. The general interpretation of Article (2) of the Compact is subject to no variation. There is unanimous agreement that this language means, in effect, that a receiving state is not expected to do more or less for out-of-state cases than it does for its own cases.

Section 4-102. INTENSITY AND DURATION OF SUPERVISION

The duration of the parole/probation period in a Compact case shall be determined by the sending state. The degree of supervision shall be determined by the receiving state, but shall be consistent with the degree of supervision applied by the receiving state to its cases not involving the Compact.

Commentary

Some states have parole periods which are much longer than average. Where such periods are fixed by law, it is often impossible for the sending state to discharge a parolee even though the supervision is taking place in a receiving state which does not extend such lengthy supervision to its own parolees. States may place in the lowest level of supervision. Nothing in this section prohibits two states agreeing prior to transfer on the intensity and duration of supervision in a particular case. In accordance with the clear intent of the Compact, sending states shall therefore determine length of supervision, with receiving states determining the degree of supervision applied. See PPCAA Interpretations: Legal & Administrative Section, Legal Opinion No. 1 Closing Supervision Interest.

Section 4-103. REPORTING

The receiving state shall provide the sending state with annual progress reports, unless through the mutual consent of the Administrators involved, they are discontinued. Arrival reports shall be sent within 30 days after the offender's arrival in the receiving state.

Commentary

3.18

The foregoing rule as it applies to progress reports is not to be construed as preventing two or more signatory states from agreeing among themselves upon either more frequent reporting or less frequent reporting concerning their respective parolees or probationers. Progress reports shall cover present residence of the parolee or probationer, name of the employer, type and character of employment and the individual's general conduct and progress, as well as the individual's attitude toward supervision.

Section 4-104. COLLECTION OF SUPERVISION FEES

No sending state shall impose a fee for the purpose of supervision on a parolee or probationer who is currently being supervised by another state under the Interstate Compact.

Commentary

It is the position of the Parole and Probation Compact Administrators' Association that only a receiving state shall charge a supervision fee. The reasoning behind this policy is that only the receiving state is performing the actual supervision of the parolee or probationer during this time after the transfer, and therefore only the receiving state can justify a "supervision" fee. Fees assessed by sending states for purposes other than "supervision" are not specifically addressed by this rule. Receiving states shall not charge a supervision fee in Compact cases in excess of the amount which would be imposed if the offender were a parolee or probationer of the receiving state.

Section 4-105. COLLECTION OF MONEY BY THE SENDING STATE

All money which the sending state desires to collect from parolees or probationers for family support, support of children, restitution, reparation or costs of court or fines, are to be sent directly to the sending state by the parolee or probationer, and the receiving state agrees only to use its best endeavors to see that the individual sends such money as requested.

Commentary

Receiving states have no legal authority to administer the collection of funds on behalf of sending states. In addition, it is the belief of the Compact Administrators that requiring receiving states to collect funds on behalf of sending states would be ineffective and would place unnecessary burdens on receiving states to account for funds belonging to another state.

Section 4-106. TEMPORARY/PROVISIONAL TRAVEL PERMITS

Although many Interstate Offices regulate travel permits for all parolees and probationers within their state, for PPCAA purposes travel permit policies pertain only to Compact cases.

3.19

1) Temporary Travel Permits
A receiving state shall have the discretionary authority to issue to a parolee or probationer a temporary travel permit to make visits out of the receiving state for a period not to exceed thirty (30) days.

2) Provisional Travel Permits
Provisional travel permits may be issued by a sending state to allow a parolee or probationer to proceed to a receiving state prior to completion of an investigation and formal acceptance of the case in emergency situations. See Section 3-101.

Commentary

The Interstate Compact has no authority or involvement in the granting of travel in non-Compact cases. Copies of Provisional Travel Permits are to be included in the investigation request transfer package. Also, copies of Temporary Travel Permits issued in Compact cases are to be provided to the appropriate sending state. Copies of Temporary Travel Permits issued in non-Compact cases will be mailed to states of travel only upon request of those states.

Section 4-106(1): The receiving state is authorized in appropriate cases to grant to the parolee (probationer) permission to make temporary visits out of the receiving state, not exceeding thirty days in length.

Before a parolee or probationer is given permission to visit in another state, advance notice of visits shall always be sent to the state to be visited if such Administrator of that state has indicated a desire for such notification.

Section 4-106(2): The provisional travel permit is to be used when travel is authorized by a sending state for a parolee or probationer to proceed to a receiving state and there remain pending case transfer. The precautions outlined in Section 3-101 shall be observed by the sending state Administrator before authorizing travel in these cases. If the receiving state rejects supervision of an individual following investigation of the plan, the parolee or probationer must return to the sending state. Provisional travel permits shall contain instructions to the parolee or probationer requiring return to the sending state if transfer of supervision is finally rejected by the receiving state. Travel permits shall be clearly marked as either temporary or provisional permits.

Sending states and receiving states are encouraged to utilize methods of electronic transfer of information to expedite communications in emergency cases.

Section 4-107.

CLOSING OF CASE RECORDS

1) The receiving state shall close its records and cease supervision of the parolee or probationer upon receipt of a certificate of discharge from supervision or upon receipt of permission to

close interest from the sending state.

2) The receiving state shall close its records at any time if the parolee or probationer is an absconder, but such closure shall not jeopardize the sending state's right to retake that individual without extradition. Should said absconder be located within the receiving state, the provisions of these rules and the Compact requiring the receiving state to hold a preliminary hearing shall still apply.

3) The receiving state shall place the records of interstate supervisees who have been institutionalized or imprisoned in the receiving state in the "inactive" file

4) No receiving state shall close its records on a violator while the sending state is in the process of retaking the parolee or probationer.

Commentary

It has been established by various court decisions that even when the receiving state has closed its records on an absconder, such closure does not jeopardize the right of the sending state to retake him/her without extradition. The closing of case records merely implies that the receiving state has removed the case from the "active" file on the assumption that the sending state would take the initiative in finding the parolee. Since the Compact does not state that a transferee under the Compact must report at specific intervals, the receiving state, by removing the case from the active file, is merely lengthening the reporting interval, not discontinuing supervision.

The same reasoning applies to records of interstate supervisees who have been institutionalized or imprisoned in the receiving state. If no supervision is to be provided, the records shall be placed in the "inactive" file.

A case shall not be closed on a violator while the sending state is in the process of retaking. The case shall be closed after the offender is removed from the receiving state or when the violator begins to serve a new sentence in the sending state. As a general principal, receiving states shall treat Compact cases as they would treat their own state's non-Compact cases.

Section 4-108.

DISCHARGE IN RECEIVING STATE

The sending state shall notify the receiving state's Compact Administrator of a parolee or probationer's discharge from supervision.

Commentary

Notices of discharge shall always be sent to the receiving state's Administrator, so that they will not be in the position of supervising an individual who is no longer on probation or parole. The

receiving state's authority to supervise springs from the fact that it is acting as "agent" for the sending state. Therefore, the receiving state shall not continue supervision when there has been a discharge.

It is noted that some states discharge supervisees despite the fact that the receiving state has called attention to the need for continued supervision. The sending state has a legal right to make the final decision regarding discharge; however, it also was agreed that there shall be cooperation in these matters.

**Section 4-109.
SUPERVISION OF INDIVIDUALS WHO BECOME MENTALLY ILL OR PHYSICALLY HANDICAPPED WHILE IN THE RECEIVING STATE**

A receiving state shall continue supervision of an offender who is determined to be mentally ill or physically handicapped while in the receiving state, unless the prognosis for recovery is diagnosed as long term or of a permanent nature, where the supervision of long-term commitments reverts back to the sending state.

Commentary

It must be remembered in setting supervision rules for the mentally ill or physically handicapped offender that most such cases are committed for short terms or usually after being charged with a new offense in the receiving state. Closing and resuming Compact supervision on these short commitments would place a needless administrative burden on both the receiving and sending states.

**Section 4-110.
INTERPRETATION AND PRACTICES REGARDING VIOLATORS**

1) Reports of Violations

A receiving state shall promptly, upon violation, notify the sending state of such violation utilizing the appropriate forms provided for by these rules.

2) Crimes Against the Laws of the Receiving State

A receiving state may detain a parolee or probationer who has committed a crime against the laws of the receiving state and hold a trial on that offense.

3) Detainers Placed by the Sending State

The following are procedures regarding detainers placed by the sending state against interstate supervisees incarcerated in the receiving state:

- A) A preliminary hearing shall be conducted as soon as possible by the receiving state and forwarded to the sending state if requested, except where a waiver admitting the fact of the violation has been executed.

- B) The receiving state shall send full information to the sending state regarding such things as the nature of the crime and the length of the new sentence.

- C) The sending state shall, when filing a detainer, send a letter to accompany the detainer to the receiving state expressing the wishes of the sending state when the individual is released from prison in the receiving state.

4) Detainers Placed by a Receiving State

Where allowed by the law of the receiving state, detainers or Compact warrants may be placed by a receiving state upon a violator under the Compact pending a warrant or revocation by the sending state.

5) Requests for Preliminary Hearings

All requests by sending states that a receiving state hold a preliminary hearing on a violation shall be honored, except where a waiver admitting the fact of the violation has been executed (unless waivers are prohibited by the sending state).

6) Bail

No interstate supervisee who has been arrested in the receiving state shall be admitted to bail while the sending state is in the process of returning the supervisee.

Commentary

Section 4-110(1): Section 5 of the Parole and Probation Rules and Regulations specifies that the receiving state shall "promptly, upon violation notify the sending state." An Administrator must give due credit to the recommendations of individual field officers, but should screen notices of violation rather carefully to be sure that there is good and sufficient reason for asking the sending state to revoke its parolee or probationer.

The term "revocation of parole" has different meanings under various state laws. When corresponding about violations with the receiving state, it may be well to substitute other terms, such as "delinquency status" or "suspension of parole."

Section 4-110(2): If a violator has committed a crime against the laws of the receiving state, that violator may, of course, be held and tried on new charges. This is in accordance with Article 3 of the Compact which states, if at the time when a state seeks to revoke a probationer or parolee there should be pending against him within the receiving state any criminal charge or that suspicion exists of having committed within such state a criminal offense, he shall not be taken without the consent of the receiving state until discharge from prosecution or from imprisonment for such offense."

Sending states clearly have a legal and contractual obligation under the Compact to return an individual where requested, just as receiving states have the related responsibility not to violate in Compact cases more readily than they do in their own cases. The length of a new sentence in the

receiving state has no bearing on the sending state's right to retake an individual once the sentence has been served.

Section 4-110(3): Subsection (B): The receiving state shall confront all available adverse witnesses at the preliminary hearing where the violation is technical or based on untried complaints. In the case of a new conviction, the receiving state shall send certified minutes of the conviction.

The receiving state shall authenticate any other materials including the violation report and summary of the preliminary (on site) hearing if required by the sending state.

Section 4-110(4): When an interstate supervisee has been arrested in the receiving state, such supervisee shall not be admitted to bail while the sending state is in the process of making the return. The Morrissey decision and subsequent court decisions are predicated upon the assumption that the preliminary hearing determines the existence of reason to hold the individual, therefore eliminating the basis for allowance of bail. There shall be a special effort made to advise police, prosecutors and judges of the existence of the sending state's violation warrant.

Section 4-111. FACTORS INVOLVED IN THE MAKING OF A DECISION TO RETAKE A CASE

- 1) **Obligation to Retake a Violator**
A receiving state shall consider a parolee or probationer's residence and family ties before asking a sending state to retake a violator, particularly when the violator has only a few months left to serve for the sending state and is under a new sentence in the receiving state.
- 2) **Alternatives to Retaking Out-of-State Cases**
There are two alternatives to retaking out-of-state cases:
 - A) In the case of a violator who has committed a crime in the receiving state it may be possible to arrange concurrent supervision.
 - B. Any violator may be committed by the sending state to an institution of the receiving state if both states are signatory to the Out-of-State Incarceration Amendment.
- 3) **Continuation of Supervision when the Sending State Refuses to Retake a Violator**
A sending state shall apply the same standard for retaking of parolees or probationers as is applied to the taking custody of parolees or probationers within the sending state. The decision of the sending state to retake a person on parole or probation shall be conclusive and non-reviewable within the receiving state.

Commentary

Section 4-111(1): The receiving state shall try to give due consideration to residence and family ties

before asking a sending state to retake a violator, particularly when the violator has only a few months left to serve for the sending state and is under a new sentence in the receiving state. The Association has adopted the following:

"That this Association go on record as favoring the continuance of the practice regarding return principles that has been followed over the years, namely that when a receiving state requests return, the request be honored unless another plan satisfactory to both states can be found."

In special situations the receiving state may feel compelled to ask the sending state to retake a parolee or probationer, even though the violations are relatively minor. It is suggested that in these cases the receiving state explain fully the pressures and special problems which make the continuance of supervision infeasible.

Section 4-111 (3): Article 3 requires that "[i]f the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state." See PPCAA Executive Council Rulings Section. Ruling No. 4 - Sending State's Refusal to Order Return of an Offender.

The sending state shall reply to any violation report with either a decision or status report within 30 days of its receipt.

Section 4-112. FORMS

The forms in reference to (1) Investigation Request; (2) Information When Subject is Sent to Receiving State; (3) Application for Compact Services and Agreement to Return; (4) Progress and Conduct Report; (5) Violation Report; and (6) Report of Arrival, are found in Chapter 4 and made part of these rules and regulations and are to be used for the purpose indicated. The Reply to Investigation Request Form, also found in Chapter 4, is optional.

Commentary

The objective in using standardized forms is to provide a degree of uniformity in the type and quality of information transmitted between states. Although there may be some minor differences in the format of forms used by the various states, every effort should be made to conform to the requirements of the rule regarding the use of forms. This is especially true where use of the Application for Compact Services and Agreement to Return is concerned as the language used in this form must conform in every respect with the language adopted by the Administrators.

SECTION 500 RETAKING CASES FROM ANOTHER JURISDICTION

Section 5-101. GENERAL LEGAL ASPECTS

A duly accredited officer of a sending state may at any time enter a receiving state and apprehend and retake any person on probation or parole after due process.

Commentary

Article 3 of the Compact was reinterpreted by the Supreme Court (1972 & 1973) in *Morrissey v. Brewer* and *Gagnon v. Scarpelli*. The Court expanded certain limited due process rights to parole and probation offenders prior to the return of the alleged violator to the receiving state. A preliminary probable cause hearing is required prior to return.

At the time of application for Compact services, a waiver of extradition is executed. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. Some states require an identity hearing prior to return of the alleged violator to the sending state.

Article 3 also prohibits the removal of an alleged violator from the receiving state if: 1) there remains pending within the state any criminal charges, 2) if the alleged violator is suspected of having committed any criminal offenses, 3) unless, the receiving state grants consent to remove the violator prior to discharge from prosecution or from imprisonment for such offense.

Section 5-102.

PROBABLE CAUSE HEARINGS

Morrissey v. Brewer and *Gagnon v. Scarpelli* mandate the holding of preliminary probable cause hearings in the receiving state prior to returning an alleged violator to the sending state.

Commentary

In the early 1970's the U.S. Supreme Court held in *Morrissey v. Brewer* and *Gagnon v. Scarpelli* that alleged parole and probation violators must be afforded limited due process rights upon arrest and confinement in the receiving state. The court held that an informal hearing is mandated to give assurance that the finding of parole or probation violation is based on verifiable facts and that a reasonably prompt inquiry is made by an impartial hearing officer near the place of alleged violation. The hearing is held to determine whether probable cause exists to believe that a parole or probation condition has been violated.

Section 5-103. WAIVER OF PROBABLE CAUSE HEARINGS

Waiver of probable cause hearings by a parolee or probationer under the Compact against whom revocation proceedings have begun shall not be accepted unless said waiver shall also include an admission of violation of probation or parole, knowingly signed by the parolee or probationer unless such waivers are prohibited by the sending state.

Commentary

Historically, practices differ among states as to the conditions of and acceptability of waivers of probable cause hearings. Problems have occurred in substantiating parole/probation violations in the receiving state based upon waivers which do not include an admission of violation. To prevent the loss of violation action by the sending state, all waivers of probable cause hearings shall include a signed admission of violation by the parolee or probationer.

Section 5-104. ON-SITE PROBABLE CAUSE HEARINGS

- 1) Parole or probation revocation actions against individuals transferred under the Interstate Compact shall include a preliminary probable cause hearing conducted in the receiving state when at the time of initiation of revocation the parolee or probationer was physically within a receiving state pursuant to transfer under the Compact.
- 2) Preliminary probable cause hearings shall be conducted in a timely and reasonable manner and may be held by court of appropriate jurisdiction or by administrative officials who are neutral and detached from the specific proceedings as otherwise allowed by law.
- 3) Preliminary probable cause hearings shall be subject to the procedures of the receiving state where not in conflict with the Compact.
- 4) Any evidence acceptable in a preliminary probable cause hearing shall be sufficient when transferred to a sending state as part of the official record of the preliminary probable cause hearing for acceptance as evidence for consideration in a final revocation hearing in the sending state, notwithstanding that it may be otherwise insufficient or objectionable in the form in which it is transferred. See Probable Cause Hearing Information Form.

Commentary

The Adult Compact clearly mandates that policies and practices in the treatment of Compact offenders are to be governed by the receiving state. Therefore, to maintain uniformity in the administration of interstate preliminary probable cause hearings, the policies, procedures and practices of the receiving state shall prevail. Conflicts between states on the acceptability/admissibility of evidence are resolved through the execution of the Probable Cause Hearing Information Form signed by the parolee or probation offender at the time of application for Compact services.

**Section 5-105.
WAIVER OF EXTRADITION**

No transfer shall occur under the Compact without a duly executed waiver of extradition signed by the parolee/probationer.

Commentary

- 1) Article (3) of the Compact greatly simplifies the procedure for interstate rendition of parolees and probationers. It means that the signatory states have agreed that extradition proceedings shall not be required when a sending state wishes to retake its parolee or probationer.

This agreement between the states is buttressed by an agreement signed by the parolee or probationer leaving the sending state for supervision in the receiving state. By signing this agreement (Form III) of the Parole and Probation Forms - "Application for Compact Services and Agreement to Return" the offender waives any right to extradition proceedings in return for the privilege of interstate supervision and agrees to make no contest of "any effort by any state" to force return to the sending state upon demand.

Thus the states, with the consent of Congress, have expressly waived all of their legal requirements to obtain extradition of fugitives under the Compact - and the individual parolees or probationers have agreed - in advance and as a specific condition of their transfer - to waive their right to contest the effort of any state to return them to the sending state. The right of states to retake Compact cases without extradition has been challenged in court many times, but no court of last resort has ever handed down an unfavorable decision to the Compact.

- 2) The courts in recent years have ruled that if a parolee or probationer has signed a waiver of extradition as part of the agreement, extradition is not necessary. There are numerous relevant court cases (not one court of higher jurisdiction has ever ruled against this method of return). Quite to the contrary, the courts of higher jurisdiction, the U.S. 5th, 7th and 8th Circuits have ruled that a pre-signed waiver (without a Compact transfer) can be used and denied civil judgment against officials involved under USC Section 42, 1983. The courts have also ruled that:

- (A) Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition. See *Piterson v. Grant*, 127 F.2d 161 (8th Cir.1975).
- (B) Prior waiver is enforceable if the offender had a "general knowledge and understanding" of the waiver. See *Forrester v. California Adul Authority*, 510 F.2d 58 (8th Cir.1975).
- (C) Extradition is not an exclusive remedy. See *Cook v. Kern*, 330 F2d 1003 (5th Cir.1964).
- (D) It need only to establish identity of the offender and the authority of the retaking officer.

See *Simmons on behalf of Gra-V v. Lohman*, 228 E2d 824 (7th Cir.).

See PCCAA Executive Council Rulings Section, Ruling No. 5 - Refusal to Honor Waiver of Extradition.

**Section 5-106.
THIRD PARTY STATE RETURN OF PAROLEE/PROBATION VIOLATORS**

When a parolee or probationer executes the Application for Compact Services and Agreement to Return Form (Form III) the individual also waives the right to extradition from any jurisdiction where such person may be found.

Commentary

There has been no difficulty experienced by probation or parole agencies in effecting the return of violators who are apprehended in the receiving state, particularly where the probationer or parolee has signed the Compact Form III. The courts have uniformly upheld the right of the state to retake in this situation without extradition and no reported case has been found to the contrary. The great weight of authority also holds that a parolee or probationer who has been released to supervision under the Compact in another state and absconds to a third party state may also be returned without formality of extradition proceedings. There are several court decisions upholding the return of an alleged violator from any other state under a pre-signed waiver. The courts have ruled that:

1. Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition;
2. Prior waiver is enforceable if the offender had "general knowledge and understanding" of the waiver;
3. Extradition is not an exclusive remedy.
4. There is need only to establish identity of the offender and the authority of the retaking officer.

**Section 5-107.
RIGHT OF PAROLEES AND PROBATIONERS TO LEGAL PROCEEDINGS**

No parolee or probationer under the Compact shall be denied the right to appeal to a court for the protection of individual rights.

Commentary

Parolees and probationers have sometimes made the claim that the Compact procedure for securing

the return of interstate cases is in violation of the Fourteenth Amendment because it deprives them of liberty without due process of the law. This claim has always been rejected.

The following excerpt taken from the *Miederer v. Gray*, 240 N.W.2d 626 (Wis. 1976) case indicates the line of reasoning generally followed by the courts in upholding the Compact's waiver provisions, "because a parolee is deprived of no federally protected right, constitutional or statutory, in not being afforded an extradition proceeding, there is no due process violation."

The Compact does not and cannot deny to a parolee or probationer the right to appeal to a court for the protection of individual rights. However, the rights of a parolee or probationer are not unlimited and must be balanced against the rights of society. Article 3 of the Interstate Compact under which supervision occurs states, "the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state." Therefore, certain claims of violation of individual rights must be decided by the courts of the sending state rather than the courts of the receiving state.

The following is a summary of interpretations regarding the jurisdiction of courts of sending and receiving states over claims made by parolees and probationers:

- (1) If the parolee or probationer claims to be the wrong person when the sending state attempts to retake the individual by the very terms of the Compact the individual can apply in the asylum (receiving) state where the individual is found for a writ of habeas corpus to test "the identity of the person to be retaken."
- (2) If the parolee or probationer claims that the officer sent to retake is not the duly accredited officer of the sending state; by the terms of the Compact, application can be made in the asylum (receiving) state for a writ of habeas corpus to test "the authority of the officer."
- (3) If the parolee or probationer claims that conviction by the sending state was unjust or that the sentence received was disproportionate; the remedy is to appeal to the courts of the demanding (sending) state. There is no right to test innocence or guilt on habeas corpus in the receiving state.
- (4) If the parolee or probationer claims that the sentence has already been served in full; the individual must appeal to a court of the sending state for a decision as to that person's status under the laws of the sending state.
- (5) If the parolee or probationer claims that the violation for which retaking is underway is not serious enough to warrant return to the sending state; the court of the receiving state is relieved of jurisdiction by the express terms of the Compact which states, "the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state."

- (6) If the parolee or probationer contests the legality of the revocation: this is a question for the demanding (sending) state.

Section 5-108. TRANSPORTATION OF CASES THROUGH OTHER STATES BY AGENTS OF THE SENDING STATE

Persons who are duly accredited officers of the sending state under this Compact, shall be permitted to transport prisoners through any and all states party to this Compact without interference.

Commentary

Article (4) of the Compact states that "only duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this Compact, without interference."

States may authorize appropriate officials within public or private agencies as official agent of the sending state for purposes of transporting offenders. Nothing in the Compact precludes a state from contacting with private transportation vendors for purpose(s) of transporting offenders across state boundaries.

Section 5-109. RETAKE OF OFFENDERS DIRECTLY FROM STATE/FEDERAL CORRECTIONAL FACILITIES

Duly accredited agents of the sending state may assume custody directly from state/federal facilities provided that: 1) no detainer has been placed by the state in which the institution lies; 2) no extradition proceeding initiated by a 3rd state is pending; 3) that no identity hearing is required by the laws of the state in which the offender is incarcerated.

Commentary

Article 3 of the Compact provides for the waiving of extradition rights at the time of application. Unless local charges are pending or unless another party state has initiated extradition proceedings, custody may be directly assumed by the sending state's agents at the place of confinement. In addition, some states require that an identity hearing be held in the state of confinement to establish the identity of the offender and of the sending state's agents.

**SECTION 600 SUGGESTED RULES OF PRACTICE UNDER THE INTERSTATE
REVOCATIONS HEARINGS AMENDMENT**

NOTE: Section 600 contains recommended policies and general provisions for the implementation of interstate revocation hearings between signatory states. The contents of any sub-section contained herein is subject to the approval of the duly appointed Compact Administrators and/or designees representing the signatory states party to this amendment.

**Section 4-101.
GENERAL LEGAL PROVISIONS**

The service of administering interstate revocation hearings on a reciprocal basis is not a service provided for under any provision of the basic Compact. However, where Compact amendment exists and where a written contractual agreement exists between signatory jurisdictions, states may provide interstate revocation hearings pursuant to law and contractual arrangement. See recommended contract "Contract for Services Between (receiving state) and (sending state) for the implementation of the Revocation Hearings Amendment."

Commentary

When the Compact was effectuated in 1937, no provisions were made for authorities of signatory states to hold final revocation hearings for one another. While the Incarceration Amendment to the Compact (late 1960's) recognized and provided for interstate revocation hearings between signatory jurisdictions, its primary intent was to reincarcerate violators in the receiving state. As a result, the Incarceration Amendment's applicability to modern field and correctional systems was questionable.

The Interstate Revocation Hearings Amendment provides the legal basis to permit signatory states to hold final revocation hearings for one another, reciprocally. The amendment legally assigns equal status to the receiving state's officials in the holding of final revocation hearings pursuant to this amendment. There are two separate Compact amendments governing interstate revocation hearings - one statute governs parole revocation hearings and the other statute governs probation revocation hearings. States may opt to pass one or both amendments. In addition to the passage of the Compact amendment(s), signatory states shall enter into written contractual agreements. Said agreements shall provide the basis of how the states' staff conduct business between one another; what offender groups shall be eligible for services; and, which states' applicable laws and regulations shall prevail and govern the administration of final revocation hearings. Nothing in the amendment(s) or contained in any contractual agreement shall abrogate or revoke the sending state's authority to review and approve a final revocation hearing recommendation made by the authorities of the receiving state.

**Section 4-102.
ELIGIBILITY**

Signatory states shall negotiate and agree via written contract as to the scope of offender eligibility.

Commentary

The U.S. Supreme Court clearly established that speedy trial rights do not apply to outstanding parole and probation violation/detainers when an alleged parole or probation violator is serving an out of state term of imprisonment. *Moss v. Carchman* 473 U.S. 716, 105 S.Ct. 3401 (1985). Given the above holding, interstate Administrators may at their discretion decide on which offender groups may best be served by the hearing process provided for under the Interstate Revocation Hearings Amendment. It is strongly recommended that officials entering into contracts under this amendment clearly define the offender groups to be served.

**Section 6-103.
AGREEMENT OF WAIVER - COMPACT OFFENDER**

In order to partake in services provided under the Compact between states party to the Interstate Revocations Hearings Amendment, the parole and/or probationer shall execute Form II, "Agreement of Waiver, Revocation Hearings Amendment" in conjunction with "The Application for Compact Services and Agreement to Return" form. All documents shall be contained in the original transfer package compiled at the time of application for transfer.

Commentary

Compact services provide certain benefits to the offender group. In consideration of obtaining certain benefits derived from interstate transfer, the offender(s) must waive their rights to formal extradition and must realize and accept certain differences in the administration of parole/probation supervision between states. Where two states have adopted the Interstate Hearings Amendment and have entered into contractual arrangements under the amendment, the offender shall also acknowledge and agree to any differences in the administration of final revocation hearings between sending and receiving states. In addition, the offender must waive any right to a face-to-face revocation hearing in the sending state, and must waive any challenge to the type and character of information reports and documents presented and/or used in consideration against the offender during the final revocation process.

**Section 6-104.
AGREEMENT OF WAIVER - NON-COMPACT OFFENDER**

In order to partake in services provided under the Final Revocation Hearings Amendment and to obtain benefits derived there from, non-Compact offenders deemed eligible for revocation hearing by contractual agreement, shall effectuate Form IV, "Agreement of Waiver, Non Compact Case". Form IV shall be executed prior to the scheduling of any final revocation hearing within the receiving states. The offender must voluntarily execute a Form IV.

Commentary

Form IVs are only executed by non-Compact offenders who voluntarily request that a receiving state hold a final revocation hearing. Non-Compact offenders are only eligible for interstate revocation hearings under this Amendment if when signatory states agree to the eligibility of non-Compact offenders via formal contractual provision.

**Section 6-105.
STANDARDS OF EVIDENCE**

The type and character of information, reports and documents presented and/or entered into evidence to substantiate or dispute violation allegations brought against an offender under this amendment shall be accepted as legitimate standards of evidence by officials of the sending state provided that such documents are acceptable standards of evidence for revocation proceedings within the receiving state.

Commentary

The rule ensures that evidence presented and accepted at a final revocation proceeding within the receiving state be transferable as legitimate evidence when considered by officials within the sending state.

Rosters

CRIME VICTIMS REPORT

For Criminal Justice Professionals and Providers of Support Services

Volume 3, No. 6 ISSN 1092-4372 Page 11-95 January/February 2000

Revised Interstate Compact Protects Victims Rights

by Melissa Hook

Parent of Murdered Daughter Meets Inmate on Death Row

by Mark S. Umbreit, Ph.D. and Betty Von, Ph.D.

On the night of September 12, 1986, 25-year-old Jonathan Wayne Nobles was, by his own account, near the end of his rope. He was divorced and completely cut off from his children. He was also a spiteful, angry addict, a dealer, a peddler, and survivor of violent physical and sexual abuse. He had tried desperately, after three hit men attempted to take enough drugs out of it all. He recalled:

All that night, I shot up over an eight-ball of speed, a gram of cocaine, snorted more cocaine, dropped several hits of acid, drank through the Johnny Walker Red, smoked a few joints, and I could not blow my horn out. I was trying like the officers to blow my horn out, and could not do it.

Instead, he strapped a knife to the small of his back, and left, intent on collecting a drug deal. In the early morning hours of September 13th, on the way to his grandmother's home, where he lived, he stopped at a drive-through window by a woman who was getting undressed for him.

He drove into the residence, received the blonde woman in his arms, and she was killed. See PAGE 17, page 39

Editor's Note: It is critical that victims and victim service providers make their support for the revised Interstate Compact known to their representatives in the state legislatures so that, when the draft proposals are presented in the upcoming sessions, the significance of the proposed legislation to victims is fully realized.

A significant flaw in the original justice system permitted a 22-year-old convicted unsupervised just 23 months into his 10-year sentence. The offender had applied to a residential drug treatment center in Denver, Colorado. The one would have known of the oversight if Donnie Paige had not been arrested four months later for the murder of Byron Jambill, a young college graduate living in an apartment near the streetcar carter in Paige's case, at Interstate Compact among the states that is used to control the movements of convicted offenders across state lines was never enacted.

Donnie Paige was not the only recent convicted felon whose out-of-state move resulted in a terrible tragedy. Inadequate supervision of convicted murderers, who was on parole, ended in the murder of two college girls. Mydrena Shanon, a student, was ordered by the courts to stay away from bikers. This information was not passed on to the supervising agency which he transferred, pursuant to the Compact, to New Jersey; Simon moved into the home

of a motorcycle gang member and soon after he shot and killed a state trooper.

There are many instances in which inadequate supervision of offenders who are on out-of-state parole, and denying them their rights. Not all such tragedies can be attributed to Compact irregularities, yet Compact is essential to implement the Compact and victim services providers are supporting the movement to amend the Interstate Compact so that it further victim's safety and ensures victims' right.

Interstate Compact Applies to Offender Transfers

The Interstate Compact for the Supervision of Probation and Parole (ICSP) is the formal record among the 30 states, the District of Columbia, Puerto Rico, and the Virgin Islands, to oversee the transfer of adult parolees and probationers across state lines. Established in 1937 to monitor the few thousand convicted offenders who were permitted to move out-of-state at that time, the ICSP steadily is responsible for the continued movement of over 250,000 parolees and probationers—most of whom have not been convicted of a crime in the last two years. Compelling evidence supports the argument that offenders have a better chance of succeeding outside of prison if they have the emotional, financial support of their families and support for employment.

See COMPACT, next page

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January/February 2000

The Crime Victims Report

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Carroll asked how a violent felon had this asked how a violent felon had received permission to leave prison and travel to Denver for unemployment training without notification to local authorities, a spokesman for the Denver ISC was voluntary. (Daniel Ledyard and Keith Berrill, "Colorado Questions Law After Maryland Men in Arson," *Washington Post*, (May 21, 1999, at C4).)

Educating judges about the Compact and presented a major challenge to PCCA

Does Existing ISC Improve Victim Safety?

The Interstate Compact is passed by the state legislatures. Once it is enacted, it is binding. The drafters should have proceeded only if Colorado had provided reporting instructions that allowed him to proceed. Otherwise, the offender should have waited until the Colorado Interstate Compact had been signed and accepted him. There was nothing voluntary about it. (Telephone interview with Tim Carroll (Nov. 9, 1999).)

Ellen (Linda) met and married a two-time convicted armed robber who had been released on probation in a western state to transfer home through the Interstate Compact. A few years ago the marriage, after the birth of their child, he began to abuse her. They had her hospitalized when she came into the home and he beat her. If he had been arrested, he would have been in the hospital, at which time she had him arrested. The husband was convicted of a battery misdemeanor and he was placed on probation by the state authorities. Ellen filed for divorce.

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Marshall's response. The fact that Paige was released by the Maryland courts and allowed to transfer out-of-state created further confusion. Leonard A. Sipes, a spokesman for the Maryland Department of Public Safety and Correctional Services, was reported in the same *Washington Post* article as saying:

The Compact governs executive branches of state governments. The action that brought the offender to Colorado was taken by the judiciary without the input of the executive branch. (Daniel Ledyard and Keith Berrill, *supra*.)

Husband in violation of Compact provisions. In the process of filing a civil suit for domestic battery, Ellen met a victim's advocate who was familiar with the ISC. She realized that although her husband was on probation having twice been convicted of battery, he had never been under supervision since his arrival in the state. Because he had fallen through the cracks, she had her husband arrested. He was in violation of his probation in the state from which he transferred. Moreover, when placed on probation, he also violated the Compact's provisions. The risk factor was by that time, the fact that her husband had been arrested for the safety of her child whom he had threatened to kidnap.

Request for recall denied. After his arrest for domestic battery, Ellen's husband never ceased to abuse her. He had received no contact, no contact, and probation orders issued by the court with

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2 Article VII, paragraph 7, specifies 10 subjects which must be addressed by the Interstate Commission within 12 months of the first meeting; "notice to victims and opportunity to be heard" is a number one on the list.

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Victims' Support of Revised Compact Needed

Under the new leadership in the compact administration, moves have already been made to change the role of the existing ISC to better serve victims. Tim Carroll responds:

One of the biggest national embassies for us is the fact that the Interstate Compact is not a victim's issue. In our upcoming meeting in January, we are preparing specific state government resolutions to victims. The leadership of the organization is limited. We only will try to do these things we are recommending that we have a victim advocate serve on the executive committee for the coming compact. We have already placed Mr. Trench on the board of Person, Trench, on our working committee. It is important for us to work with the new world that the Interstate Compact has taken down on its 50th anniversary. In the past, we are going to work up and be connected. (C)

States Eye New Compact for Offenders

Some believe it is time to update how we supervise released felons who travel across state lines.

By Donn Lyons and Michael Foote

The rape and murder of a 23-year-old woman in Denver by a convicted felon from Maryland has become the "poster crime" for more effective supervision of the estimated quarter of a million adult offenders under community supervision who live or travel across state lines.

Lawmakers from eight states have approved an updated Interstate Compact for Adult Offender Supervision. Proponents say the current 60-year-old agreement, which will remain in place until at least 35 states enact the new version, leaves potentially dangerous offenders roaming across state lines.

The Pennsylvania man's death is a tragic example of the holes in the present system, according to Colorado Senator Norma Anderson, who sponsored the first state enactment of the new compact. The man accused of the Denver crime was a felon released from a Maryland prison and sent on a suspended sentence to Colorado for drug treatment. The defendant was in Denver without any notice to state or local authorities. Since he was not technically on probation or parole, such notice was not required under the existing compact.

"Newer methods of supervision, like deferred sentences, are not even mentioned in the compact written in the 1930s," Anderson said. Not only would that loophole be closed under the new compact, it also would create a system for quick information exchange. Anderson said it takes an unacceptably average of 90 days, even where notice is required, under the existing agreement.

Connecticut, Hawaii, Idaho, Kentucky, Missouri, Oklahoma and Vermont also enacted the new compact this year. The California Senate has approved and sent the provision on to the Assembly.

Currently, a probationer or parolee may be sent by one state and received by another if he or she meets certain family, employment or other criteria. An advisory group led by the Council of State Governments and National Institute of Corrections drafted the new compact to include training, mediation and remedies to increase and enforce compliance with transfer provisions. Automation is expected to not only to speed communications about particular offenders, but also



Senator Norma Anderson, Colorado

track their location and provide information annually to policymakers documenting the number of offenders moving state-to-state and any new crimes committed by those offenders.

In addition, the updated compact offers criteria for states to use in making decisions about whether to accept offenders and, when necessary, specifies how offenders may be returned to the originating jurisdiction. An Interstate Commission created under the new compact would handle the related administrative functions. Rule-making authority would be vested in representatives of states that enter the compact. State councils would provide for interbranch coordination on compact matters within each state.

Not all lawmakers are enthusiastic about the additional costs and bureaucracy the new compact and commission would bring. The existing arrangement is almost without cost, but state dues would have to be levied for the new compact to support the \$1.4 million per year commission. Among states hearing to adopt the agreement this year was Washington, where an alternate enactment calls for a study of existing and proposed compacts. The study bill's sponsor, Senator Jen Costa, says a cautious approach is called for in that the proposed, updated compact involves not just a change in policy, but also assignment of power to a national group. She expects the state to take up the compact proposal again next year.

Proponents point to the complexity of interstate supervision, especially under new laws dealing with the registration and movement of sex offenders and notification to victims, as justification for modest costs and better management of convicts. Representative Michael Lawlor of Connecticut, chair of the General Assembly's Judiciary Committee, served on the national drafting committee for the new compact. He says it avoids the drawbacks of other approaches that include lack of enforceability in uniform state laws or federal oversight taking control away from states. But mostly, Lawlor calls it a public safety bargain. "When all is said and done this will provide for a greater degree of public safety and offender accountability than what we have without it," Lawlor says until July 1, 2001, to at least on the compact and be responsible in the initial rule-making process.



Representative Michael Lawlor, Connecticut

Journalism from News-Media, M.A.'s, Criminal Justice Program in the Bachelor of Arts and a certificate in Criminal Justice from the University of Northern Iowa, which has several news internships at the University of Northern Iowa.

(COMPACT 5, on page 51)
 partners and about 85% of the victims of non-lethal intimate violence. Also, four to 10 inmates serving time in jail for intimate partner violence had had a criminal justice status—on probation or parole, or under a restraining order—at the time of the violent attack on an intimate partner ("Violence Against Women: Summary Findings," BIS (Feb. 1999)).

Tim Carroll is the deputy ISC administrator for the District of Columbia, and the acting president of the Parole and Probation Compact Administrator's Association (PPCAA), the governing body of the ISC. When asked why domestic violence offenders are excluded from the Compact, he replied:

Many states do not supervise misdemeanors. Even though many of the cases are "pleaded down felonies," and many of the offenders are felons in misdemeanor clothing, those states that have dug in their heels do not accept them for supervision. However, it is a plan as day in the rules that misdemeanors are eligible for transfer through the Interstate Compact. (Telephone interview with Tim Carroll (Nov. 9, 1999).)

The PPCAA has the power to call the resisting states on their failure to comply under the existing compact but lacks the financial resources to pursue violations if any.

Numbers Overwhelming Systems. The increasing number of offenders who are permitted to relocate out-of-state through the Interstate Compact have overly taxed the ability of probation and parole boards to effectively conduct their monitoring responsibilities. Furthermore, the circumstances under which adult parolees and probationers are allowed to go out-of-state have unofficially been extended to include transfers to treatment facilities. As a result, more and more adult probationers and parolees are moving across state lines without notification to the receiving state, or without adequate supervision.

Inappropriate Procedures and Poor Understanding of ISC

Prior to staying Peyton Tuhill, Domic Page had been incarcerated at Roxbury Correctional Institute in Hagerstown, Maryland. He applied to Stout Street Foundation in Denver for drug rehabilitation, where participants housed at the Foundation, work unsupervised outside the facility

during the daytime, and return in the evening for counseling. Upon admission to the program, Page wrote to the Prince George County Circuit Court, asking for a chance to attend Stout Street for treatment. The court granted Page's request and ordered that the remainder of the sentence be suspended. The court docket states that:

Defendant [is] to enter and complete the Stout Street Program and return to court upon release. Defendant [is] to be released on personal recognition; his mother forthwith (CT-96-1512X (Oct. 13, 1998)).

Page's mother, however, did not travel to Denver with him, and as a private treatment center, Stout Street Foundation bore no custodial responsibility for Page while he was in treatment. Thus, a violent felon with a serious drug addiction was unsupervised from the time of his release from Roxbury Correctional Institute until he was picked up for robbing a convenience store in Laurel, Maryland, three days after he killed Peyton Tuhill.

Facilities Scrutinized After Murder. After the Tuhill slaying, national attention focused on the Stout Street Foundation and other private treatment facilities that accept out-of-state adult probationers and parolees for treatment, regardless of their supervision status. There is no question that the city of Denver view of the Stout Street practices is reprehensible. Denver district attorney Bill Ritter described the program as

"the most notorious form of community treatment that I have ever seen." Denver officials had discovered that several unsupervised probationers and parolees were in residence at the foundation, including other Maryland offenders. Ritter has a message for community leaders:

Local governments should be sure that if they have private correction programs within their communities, they know who the resident offenders are and see that they are supervised. (Telephone interview with Denver D.A. Bill Ritter (Nov. 8, 1999).)

Colorado's Response. The Colorado legislature moved quickly to enact a law requiring private treatment facilities to deliver immediate notification to public safety officials in the community when an unsupervised offender entered their program.

Yet, a clear perspective on the relevance of the Interstate Compact was lacking in

the Domic Page story. The Washington Post reported that when Colorado officials asked how a violent felon had received permission to leave prison and travel to Denver for unsupervised drug treatment without notification to local authorities, a spokesman for the Denver mayor replied that notification through the ISC was voluntary. (Daniel Ladd and Beth Berselli, "Colorado Questions Law," *Washington Post*, (Mar. 21, 1999), at C4.)

Compact Administration Response. The president of the Compact Administration had a different view. Tim Carroll explained:

The Interstate Compact is passed by the state legislature. . . . Once it is enacted, it is binding. The offender should have proceeded only if Colorado had provided reporting instructions that allowed him to proceed. Otherwise, the offender should have waited until the Colorado Interstate Compact had him engaged him and accepted him. There was nothing voluntary about it. (Telephone interview with Tim Carroll (Nov. 9, 1999).)

Maryland's Response. The fact that Page was released by the Maryland courts and allowed to transfer out-of-state created further confusion. Leonard A. Sipes, a spokesman for the Maryland Department of Public Safety and Correctional Services, was reported in the same *Washington Post* article as stating:

The Compact governs executive branches of state governments. The actions that brought the offender to Colorado were taken by the judiciary without the input of the executive branch. (Daniel Ladd and Beth Berselli, *supra*.)

In a telephone interview, Sipes further confirmed his point that Page was "voluntarily" released in an order that was free and clear of obligations to the executive branch, the branch that governs the Maryland Department of Probation and Parole. (Telephone interview with Leonard Sipes (Oct. 27, 1999).)

Tim Carroll disagreed with Sipes' statement. That is a misstatement on the part of the executive branch. There is nothing in the Compact that differentiates between the executive and judiciary. (Telephone interview with Tim Carroll (Nov. 9, 1999).)

CASES, from page 61

gramming—Typically a non-profit organization or otherwise philanthropic venue. Identifying a financial partner is a key aspect of the CASES approach to community partnerships.

How Does Community Justice Look in the Long Term?

CASES helps the community set up an intermediary function to support community justice, a localized Community Justice Center. The Center has three capacities: it

isn't organizing, program development, and information analysis. The continuing function of the Center is to "grow" community justice initiatives. They typically begin with a single-interest program, such as an after-school project, one that will generate strong citizen support, good results for criminal justice, and can be easily put in place. From these success experiences, the Center branches out to other problems, based on an assessment of the information about the community and effective working relationships with the community and criminal justice partner.

Thus, what CASES is trying to build is a long term capacity for community justice in the form of a community justice center that operates in the neighborhood and has the capacity to generate ideas about interesting justice resources in new ways that promote community safety, working with citizens and justice officials to build confidence in those programs, and helping residents become more in control of the safety of the places they live.

Todd R. Clear, Executive Director, Program of Law & Public Service, John Jay College of Criminal Justice, City University of New York

COMPACT, from page 52

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The gap here is clearly in the training. This year, the Compact Administration has embarked upon its most ambitious training effort. However, judges do not normally attend. (Ed.)

Does Existing ISC Improve Victims' Safety?

Ellen Jenkins met and married a routine even-tempered married man who had been released on probation in a western state to transfer home through the Interstate Compact. A few years into the marriage, after the birth of their child, he began to abuse her. They had been separated when he came into the home and brutally raped her. Two days later, he beat her savagely. His attempt to choke her to death landed her in the hospital, at which time she had him arrested. The husband was convicted of a battery misdemeanor and he was placed on probation by the state authorities. Ellen filed for divorce.

Husband in Violation of Compact Provisions. In the process of filing a civil suit for domestic battery, Ellen met a victim's advocate who was familiar with the ISC. She realized that although her husband was on probation, having twice been convicted of felonies, he had never been under supervision since his arrival in the state. His case had fallen through the cracks. Because he had re-offended, he was in violation of his probation, in the state from which he transferred. Moreover, unenforced and officially bankrupt, he also failed to meet the transfer criteria of the ISC. Ellen hoped that he might be recalled

By that time, she feared for her life and the safety of her child whom he had threatened to kidnap.

Request for Recall Denied. After his arrest for domestic battery, Ellen's husband never ceased to abuse her. He had responded to the several "no contact" and protection orders issued by the court with threats to kill her. Ellen asked the state's deputy ISC administrator to contact his counterpart in the sending state to initiate a recall. Not surprisingly, Ellen's efforts proved futile. Even though her home state deputy ISC administrator lobbied to have her husband recalled, the sending state ISC administrator refused to take action. Under the terms of the current Interstate Compact, the sending state has the final say as to whether or not an offender is returned for probation or parole violations. The Compact Administration is currently trying to change the rule to give the receiving state more say in what happens when transferred offenders violate conditions of their release from prison.

Amending ISC

In view of the complex issues and poor understanding that compromise the function of the ISC, ten years ago the National Institute of Corrections (NIC) initiated a study to determine what measures might be taken to better supervise offenders and to improve the enforcement of offender accountability at their new location. Once the NIC Advisory Board had conducted surveys and hearings regarding the supervision of interstate adult probationers and parolees, they determined that the ISC needed improvement in the following three major areas:

- Clear authority;
- Sufficient funding; and
- A workable management structure (Backlog and Context for Amending

the Probation and Parole Interstate Compact, NIC 4 (May 1999).)

As a result of the preliminary study, the NIC Advisory Board established an ISC advisory group to address interstate supervision issues. The task force was comprised of system decision-makers, including representatives from victims committees of both the American Probation and Parole Association (APPA) and the American Correctional Association (ACA). Within their analysis of the regulation of offenders traveling interstate, the enforcement of victims' rights was a crucial area of consideration.

The APPA and ACA Victims Committees concluded that the following inter-issues, designed to ensure victims their safety and sense of security, are dependent upon:

- Accurate and reliable inter-agency information;
- Compliance with victim notification laws and protection orders; and
- Community notification for sex offender registration.

Furthermore, the committees found that the state infrastructures currently supporting the ISC do not adequately support victims' rights enforcement. A further discussion of victims' rights identified the following relevant issues that were considered in the formation of the ISC amendment:

- Victims should be notified of their offender's request to leave the state and permitted to give input in the decision.
- Victims' rights to notification should be enforced in the accepting state.
- "No-contact" and protection orders should be enforced regardless of the location of the offender.

See COMPACT, next page.

COMPACT, *from page 62*

- The supervising agency should give the victim the name and contact information of the person to whom the offender will report, as well as a means to report violations of the conditions of supervision that concern the victim.
- The ISC should develop a secure and integrated database to track and monitor ISC cases that contain relevant information about victim notification, offender financial and legal obligations and victim protection issues.
- When a sex offender educates, supervising agencies should notify sex offender registries and communities as mandated.

(Anne Seymour, "Interstate Compact: The Perspective of the Victim," APPA, Victims Issues Committee Meeting, Draft (Aug. 21, 1999).)

New Compact Includes Clear Voice for Victims

The revised draft of the Interstate Compact addresses issues that impede the proper functioning of the existing compact in the following areas:

- Funding;
- A secure and integrated national database;
- Clear definitions of terms;
- Training;
- Accountability; and
- Compliance.

Of particular significance, the new Compact includes victims' input and victims' rights to notification. The organizational overview of the revised Interstate Compact states as a primary purpose that it will provide:

The framework for the promotion of

public safety and ... [will] protect the rights of victims through the control and regulation of the interstate movement of offenders. (The Interstate Compact for Adult Offender Supervision Revised Draft, Article I (July 30, 1999).)

Victims and Advocates Included in Council. Within the organizational bodies created by the revised ISC, crime victims and victims advocates have roles to play at the state and national level. The ISC provides for the creation of a State Council within each member state that must include the following:

- At least one representative from the legislative, executive and judicial branches of government;
- At least one representative from victims' groups; and
- The compact administrator.

Furthermore, an interstate commission formed with representatives from each member state will write the bylaws and rules that effectively and efficiently realize the intentions of the ISC. The compact administrators from each state are the only voting members on the commission, but nonvoting members must include all stakeholders including crime victims.

Additional Rulemaking Provisions. The following two provisions of the Revised Compact with respect to victims and the rulemaking process are also included.

1. Article I ensures that there will be an opportunity for input and timely notice to victims, and to jurisdictions where defined offenders are authorized to travel and to relocate across state lines.
2. Article VII, paragraph 7, specifies 10 subjects which must be addressed by the interstate commission within 12 months of the first meeting: "notice to

victims and opportunity to be heard" is number one on the list.

Revised Compact Benefits States

States stand to benefit from the revised Interstate Compact—its overall importance far outweighs the increase in funds that states will be assessed to support the changes. As Carroll describes it:

The bottom line, however, is that the Compact is the only legislation that allows states to have some say as to who comes into their state. So, in fact, if they do not join the Compact and they do not pay their fees, anyone can place any offender in their state and they have no say. The revised Interstate Compact is handed down a better document. (Telephone interview with Tim Carroll (Nov. 9, 1999).)

Victims' Support of Revised Compact Needed

Under the new leadership the compact administration, moves have already been made to change the rules of the existing ISC to better serve victims. Tim Carroll recounts:

One of the biggest national embarrassments for us is the fact that the [current] Interstate Compact is silent on victim's issues. ... In our upcoming meeting in January, we are proposing specific rules governing notification to victims. The leadership of the organization is behind us. Not only will we pass these rules, we are recommending that we have a victim advocate serve on the executive committee for the existing compact. We have already placed Mrs. Tubbill, the mother of Peyton Tubbill, on our working committee. It is time for us to catch up with the real world. Where the Interstate Compact has fallen down on its obligation to victims in the past, we are going to stand up and be counted. (Id.)

PROBATION, *from page 54*

ter and Heakett note, "although tough to change, corporate culture can be made more performance enhancing. Such change is complex, takes time, and requires leadership, which is something quite different from even excellent management." (Id., p. 12. An excellent guide to the role of leaders in implementing change in organizations is John Kotter's book *Leading Change* (Harvard Business School Press, 1996).

In the end, organizational change efforts that are sensitive to the issue of organizational culture will be more successful. They will also help to bring the key elements of the organization into alignment. This means that the vision, structure, culture, strategy, operating processes, and personnel are working together in pursuit of the organization's goals. Organizations whose major elements are in alignment are more productive and better placed to work.

The reinventing probation efforts clearly demonstrate that fundamental change is needed if probation is to not only survive, but more importantly begin to achieve its largely untapped potential. Change can be a positive, empowering, constructive, and exciting process which can build a strong foundation upon probation for the future. But to realize those possibilities, we must engage the culture of the organizations we seek to transform in the very process of change. No other way will work. ■

Original Compact Language

INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS

PREAMBLE

- Whereas: The interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;
- Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;
- Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration;
- Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;
- Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

Be it enacted by the General Assembly (Legislature) of the state of _____:

Short title: This Act may be cited as The Interstate Compact for Adult Offender Supervision.

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the Bylaws and Rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact will: create a Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and Bylaws and Rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

- "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.
- "By-laws" mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.
- "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.
- "Compacting state" means any state which has enacted the enabling legislation for this compact.
- "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.
- "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.
- "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

- **"Non Compacting state"** means any state which has not enacted the enabling legislation for this compact.
- **"Offender"** means 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.
- **"Person"** means any individual, corporation, business enterprise, or other legal entity, either public or private.
- **"Rules"** means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.
- **"State"** means a state of the United States, the District of Columbia and any other territorial possessions of the United States.
- **"State Council"** means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

ARTICLE III

THE COMPACT COMMISSION

The compacting states hereby create the "Interstate Commission for Adult Offender Supervision."

The Interstate Commission shall be a body corporate and joint agency of the compacting states.

The Interstate Commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state.

In addition to the Commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of

interested organizations; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, non-voting members as it deems necessary.

Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

The Interstate Commission shall establish an Executive Committee which shall include commission officers, members and others as shall be determined by the By-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and as directed by the Interstate Commission and performs other duties as directed by Commission or set forth in the By-laws.

ARTICLE IV

THE STATE COUNCIL

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or

pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators. Each compacting state retains the right to determine the qualifications of the Compact Administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the Judiciary. In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

- To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission
- To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.
- To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission.
- To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means, including but not limited to, the use of judicial process.
- To establish and maintain offices.
- To purchase and maintain insurance and bonds
- To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

- To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.
- To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.
- To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.
- To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.
- To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.
- To establish a budget and make expenditures and levy dues as provided in Article X of this compact.
- To sue and be sued.
- To provide for dispute resolution among Compacting States.
- To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
- To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.
- To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity.
- To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. By-laws

The Interstate Commission shall, by a majority of the Members, within twelve months of the first Interstate Commission meeting, adopt By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

establishing the fiscal year of the Interstate Commission;

establishing an executive committee and such other committees as may be necessary.

providing reasonable standards and procedures:

(i) for the establishment of committees, and

(ii) governing any general or specific delegation of any authority or function of the Interstate Commission;

providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

establishing the titles and responsibilities of the officers of the Interstate Commission;

providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the By-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and

providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

providing transition rules for "start up" administration of the compact;

establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

The Interstate Commission shall, by a majority of the Members, elect from among its Members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the By-laws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The Officers so elected shall serve without compensation or remuneration from the Interstate Commission; PROVIDED THAT, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

Section C. Corporate Records of the Interstate Commission

The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

Section D. Qualified Immunity, Defense and Indemnification

The Members, officers, executive director and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the Commissioner of a Compacting State, or his or her representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or

omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the Commissioner of a Compacting State, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall meet and take such actions as are consistent with the provisions of this Compact.

Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

Each Member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A Member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a State Council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the

member state at a specified meeting. The By-laws may provide for Members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.

The Interstate Commission's By-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such Rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission shall promulgate Rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

- relate solely to the Interstate Commission's internal personnel practices and procedures;
- disclose matters specifically exempted from disclosure by statute;
- disclosure trade secrets or commercial or financial information which is privileged or confidential;
- involve accusing any person of a crime, or formally censuring any person;

- disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- disclose investigatory records compiled for law enforcement purposes;
- disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;
- disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;
- specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflected in the vote of each Member on the question). All documents considered in connection with any action shall be identified in such minutes.

The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its By-laws and Rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

The Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

Rulemaking shall occur pursuant to the criteria set forth in this Article and the By-laws and Rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All Rules and amendments shall become binding as of the date specified in each Rule or amendment.

If a majority of the legislatures of the Compacting States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such Rule shall have no further force and effect in any Compacting State.

When promulgating a Rule, the Interstate Commission shall:

- publish the proposed Rule stating with particularity the text of the Rule which is proposed and the reason for the proposed Rule;
- allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;
- provide an opportunity for an informal hearing; and
- promulgate a final Rule and its effective date, if appropriate, based on the rulemaking record.

Not later than sixty days after a Rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such Rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the Rule unlawful and set it aside.

Subjects to be addressed within 12 months after the first meeting must at a minimum include:

- notice to victims and opportunity to be heard;
- offender registration and compliance;
- violations/returns;
- transfer procedures and forms;
- eligibility for transfer;
- collection of restitution and fees from offenders;

- data collection and reporting;
- the level of supervision to be provided by the receiving state;
- transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;
- Mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous compact superceded by this Act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in Non-compacting States which may significantly affect Compacting States.

The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

The Compacting States shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the Compact and which may arise among Compacting States and Non-compacting States.

The Interstate Commission shall enact a By-law or promulgate a Rule providing for both mediation and binding dispute resolution for disputes among the Compacting States.

Section C. Enforcement

The Interstate Commission, in the reasonable exercise of its' discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII, Section B, of this compact.

ARTICLE X

FINANCE

The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

The Interstate Commission shall levy on and collect an annual assessment from each Compacting State to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each Compacting State and shall promulgate a Rule binding upon all Compacting States which governs said assessment.

The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its By-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state, as defined in Article II of this compact, is eligible to become a Compacting State.

The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than 35 of the States. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding, as to any other Compacting State, upon enactment of the Compact into law by that State. The governors of Non-member states or their designees will be invited to participate in Interstate Commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the Compact may be proposed by the Interstate Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Interstate Commission and the Compacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; PROVIDED, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repeal.

The Withdrawing State shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

The Interstate Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty days of its receipt thereof.

The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State reenacting the Compact or upon such later date as determined by the Interstate Commission

Section B. Default

If the Interstate Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the By-laws or any duly promulgated Rules the Interstate Commission may impose any or all of the following penalties:

Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

Remedial training and technical assistance as directed by the Interstate Commission;

Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the By-laws and Rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the

Governor, the Chief Justice or Chief Judicial Officer of the state; the majority and minority leaders of the defaulting state's legislature, and the State Council.

The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission By-laws, or duly promulgated Rules. The Interstate Commission shall immediately notify the Defaulting State in writing of the penalty imposed by the Interstate Commission on the Defaulting State pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the Defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Compacting States and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a Defaulting State, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer and the Majority and Minority Leaders of the Defaulting State's legislature and the state council of such termination.

The Defaulting State is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the Defaulting State unless otherwise mutually agreed upon between the Interstate Commission and the Defaulting State.

Reinstatement following termination of any Compacting State requires both a reenactment of the Compact by the Defaulting State and the approval of the Interstate Commission pursuant to the Rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the Members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce

compliance with the provisions of the Compact, its duly promulgated Rules and By-laws, against any Compacting State in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact

The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the By-laws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

The provisions of this Compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.

All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

All lawful actions of the Interstate Commission, including all Rules and By-laws promulgated by the Interstate Commission, are binding upon the Compacting States.

All agreements between the Interstate Commission and the Compacting States are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the Compacting States, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.