
	<b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b>  <b>3-2015</b>	<b>Page Number:</b>  <b>1</b>
<b>ICAOS Advisory Opinion</b>			
<b>Issued by:</b>			
<b>Executive Director: Harry E. Hageman and Chief Legal Counsel: Richard L. Masters</b>			
<b>State Requesting Opinion: Florida</b>		<b>Dated: 12/9/2015</b>	
<b>Description:</b>			
<b>Whether an offender whose sentence in Maryland includes a requirement of successful completion of two (2) years in the Home Detention Program (HDP), or other such program in another state, should be considered to be subject to the Interstate Compact for Adult Offender Supervision during the period in which the terms of the HDP are in effect?</b>			

### **Background & History:**

According to the Commissioner from the State of Florida, a Maryland offender moved to Florida immediately after sentencing was imposed for one count of common law battery in 2013. The sentence was suspended to successful completion of two (2) years of home detention followed by five (5) years of probation. However, it is undisputed that Maryland did not notify Florida of the offender's presence, to serve the portion of his sentence requiring Home Detention from 09/30/2013 to 09/01/2015. At the completion of the two (2) year period of Home Detention, Maryland submitted a Discretionary Transfer Request indicating that he is a Florida resident and that due to the nature of his offense he should not remain in the State of Florida unsupervised. Upon receipt of the request Florida contacted Maryland inquiring why the case was not transferred to Florida in 2013 at the commencement of the HDP period. Maryland advised that no transfer request was made at that time because the offender was considered by Maryland to be "an inmate" during that portion of the sentence.

Maryland describes the HDP, which was enacted by the Legislature in 1990, as a program which "allows carefully selected inmates to serve the last part of their sentences **in the community**" (emphasis supplied). Maryland also describes the conditions of the program as requiring participants to be "monitored by an electronic anklet, periodic telephonic voice-verification, and random visits by correctional staff."

Florida takes issue with the characterization of the offender as an 'inmate' and believes that participants in the HDP meet the requirements of an "offender" as defined under the Interstate Compact for Adult Offender Supervision and therefore must seek transfer under the Compact in cases where such offenders have at least ninety days left remaining in HDP and when relocating to another state. Florida also maintains that if subject to the Compact, Florida probation officers would provide the "random visits" required under the program.

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Based upon information furnished by Florida upon the above facts and pursuant to Commission Rule 6.101(c), the State of Florida has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

**Issue:**

**Whether a Maryland offender whose sentence includes a requirement of successful completion of two (2) years in the Home Detention Program (HDP), or other such program in another state, should be considered to be subject to the Interstate Compact for Adult Offender Supervision during the period in which the terms of the HDP are in effect?**


**Applicable Rules:**

Rule 1.101, in relevant part, provides as follows:

“‘Offender’ means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervisions under the provisions of the Interstate Compact for Adult Offender Supervision.”

“‘Supervision’ means the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender’s release to the community or during the period of supervisions in the community.”

Rule 2.106 provides:

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**“Rule 2.106 Offenders subject to deferred sentences**

Offenders subject to deferred sentences are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this compact. Persons subject to supervision pursuant to a pretrial release program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.”


**Analysis and Conclusion:**

The Commission has previously opined in ICAOS Advisory Opinion 3-2005 that the placement of an offender may trigger the requirements of the Compact even if the offender is not subject to supervision by corrections officials. In that opinion the Commission determined that an offender who was required to participate in a treatment program in another state was subject to the Compact. It was also noted that even in the absence of direct supervision by corrections officials, a provision in a court order requiring compliance with the terms of treatment constituted “supervision” for purposes of triggering the Compact.

Clearly this case involves an adult “convicted of a criminal offense and released to the community” under the terms of his sentence as contemplated in the definition of “offender” in ICAOS Rule 1.101. Moreover, the terms and conditions of HDP require offenders to be “monitored by supervising authorities” through an electronic anklet, periodic voice-verification and random visits by correctional officers consistent with the definition of “supervision” in ICAOS Rule 1.101.

While Maryland refers to the offender as an “inmate” it is obvious that he is not incarcerated and the terms and conditions of release to the community, including successful completion of the HDP, are provided in the sentence by the Maryland Court.

As the Commission has previously observed in Advisory Opinion 4-2004, “In determining the eligibility of an offender for application of ICAOS one must look not at the legal definitions but

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rather the actions taken by a court of competent jurisdiction or paroling authorities.” This opinion also concluded that ICAOS Rule 2.106 is applicable to situations in which “. . . the court has lawfully entered a conviction on its records even if it has suspended the imposition of a final sentence and has subjected the offender to a program of conditional release. The rule would also apply where the defendant has entered a plea of guilt or no contest to the charge(s) and the court has accepted the plea but suspended entry of a final judgment of conviction in lieu of placing the offender in a program of conditional release, the successful completion of which may result in the sealing or expungement of any criminal record. Finally, the rule would apply where the court has entered a conviction on the record and sentenced the offender but has suspended execution of the sentence in lieu of a program of conditional release.” (See ICAOS Advisory Opinion 4-2004 at p. 2.)

The U.S. Supreme Court has determined with respect to statutory construction, “Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning . . . [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997).

Because the individual in this case has unquestionably been convicted of a criminal offense and has been conditionally released to the community under the terms of the sentence imposed by the Court, which includes successful completion of two (2) years in the HDP, he is clearly an “offender” for purposes of the compact. It also appears that the conditions of the HDP satisfy the requirements of ‘supervision’ under the compact. The HDP provides for oversight to be exercised over the offender through monitoring through an electronic anklet, periodic voice-verification, and random visits by correctional officers. Successful completion of the HDP is required in order to be eligible for the remaining five (5) years of probation the violation of which will presumably result in incarceration for the completion of the sentences previously imposed.



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**Whether an offender whose sentence in Maryland includes a requirement of successful completion of two (2) years in the Home Detention Program (HDP), or other such program in another state, should be considered to be subject to the Interstate Compact for Adult Offender Supervision during the period in which the terms of the HDP are in effect?**

**Summary:**

**Based upon the terms of the Compact, the above referenced rules and the legal authorities cited herein, an offender who has been convicted of a criminal offense and who is released to the community under a Home Incarceration Program in Maryland, or similar program in another state, and relocates to the State of Florida, or any other compact state, for the purpose of completing 90 days or more of a period of time required by such a program is eligible for transfer of supervision under the Interstate Compact for Adult Offender Supervision.**