

**Interstate Compact for
Adult Offender Supervision**

2009 Report to the Legislature



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BACKGROUND

Since 1937, the Interstate Compact for the Supervision of Parolees and Probationers has provided the sole statutory authority for regulating the transfer of adult parole and probation supervision across state boundaries. All 50 states were members of this interstate agreement as were the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The Interstate Compact for the Supervision of Parolees and Probationers was enacted into Minnesota law on June 1, 1939 (M. S. §243.160).

In 1998, a new compact law was drafted. In order for the compact law to become effective, it required passage by 35 states. By June 2002, the threshold of 35 states had been reached, thereby making the compact active in just 30 months. Minnesota passed the legislation in March 2002 (M.S. §243.1605). Currently, this legislation has been enacted into law in all 50 states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

The legislative language establishes a council in every state. M.S. §243.1606 directs the Minnesota State Council to report to the governor and legislature by March 1 each year on its activities and the activities of the interstate commission and executive committee for the preceding year. This report must also include an assessment of how the interstate compact is functioning, both within and without the state.

ACTIVITIES OF THE ADVISORY COUNCIL

Per M. S. §243.1606, the Advisory Council shall consist of the following individuals or their designee: the governor; the chief justice of the supreme court; two senators, one from the majority and the other from the minority party, selected by the subcommittee on committees of the Senate Committee on Rules and Administration; two representatives, one from the majority and the other from the minority party, selected by the house speaker; the compact administrator, selected as provided in §243.1607; the executive director of the Center for Crime Victim Services; and additional members as appointed by the commissioner of corrections.

The 2008 membership included:

- ✓ The Honorable Gordon Shumaker, Minnesota Court of Appeals;
- ✓ Ken Merz, Interstate Commissioner, Department of Corrections (DOC)
- ✓ DOC Commissioner Joan Fabian
- ✓ Suzanne Elwell, Victim's Representative
- ✓ Harry Kennedy, Office of Governor Pawlenty
- ✓ James Early, Office of the Attorney General
- ✓ The Honorable Kurt Zellers, State Representative
- ✓ The Honorable Joe Mullery, State Representative
- ✓ The Honorable Julianne Ortman, Minnesota State Senate
- ✓ The Honorable Mee Moua, Minnesota State Senate
- ✓ Steve King, Mower County Court Services Director, representing county probation officers
- ✓ Jill Carlson, DOC Director of Field Services
- ✓ Harley Nelson, DOC Deputy Commissioner
- ✓ Doug Johnson, Washington County Attorney
- ✓ James Hankes, Chief Public Defender; and
- ✓ Tom Roy, Arrowhead Regional Corrections Director, representing Community Corrections Act counties.

Advisory Council staff included:

- ✓ Rose Ann Bisch, Deputy Compact Administrator (DCA); and
- ✓ Randy Hartnett, DOC Policy & Legal Services.

The Advisory Council first met on August 21, 2002, and continues to meet on a quarterly basis unless there is no business for the council that quarter.

In calendar year 2008, the Interstate Advisory Council held four meetings. Tom Roy served as chair and Suzanne Elwell as vice-chair.

The primary issues addressed by the council during 2008 included the new sex offender rules passed in 2007, information sharing, and the return of interstate offenders.

There were two new sex offender rules passed during the 2007 annual business meeting that became effective January 1, 2008. The new rules were reviewed by the Advisory Council. The first rule defines a sex offender as an offender who is required to register in the sending or receiving state. This definition as written is not an issue. Not until it is applied to another sex offender rule does it become problematic. The second rule addresses an offender that lives in the receiving state at the time of sentencing. Prior to January 1, 2008, an offender living in the receiving state at the time of sentencing could return home under supervision pending a formal investigation. Under the new sex offender rule, a sex offender must remain in the sending state until approved reporting instructions or a transfer request is received. This rule also allowed states to deny a transfer and or reporting instructions if the proposed plan is in violation of the receiving state's laws or policies. This raised several concerns with the council. One of the main concerns is where the offender would be housed while awaiting approval to return home. One suggestion was to have the courts sentence the offender to 5 days in jail or require the offender to notify the court as to where they will reside during this 5-day period. It was determined that the local counties should deal with these offenders as they would any offender who is homeless and resides in Minnesota. The number of offenders that this rule applies to is not great. However, every case is problematic. The Midwest region has a proposed amendment to this rule that will be submitted for approval at the 2009 annual business meeting.

Not all of the language in the second sex offender rule was problematic for Minnesota. In fact, the language requires additional sex offender information be included on sex offender cases. This is helpful to Minnesota when an End-of-Confinement Review Committee level needs to be assigned on an incoming case.

The second issue addressed by the council was information sharing. Technology was also discussed by the council. The new data system being developed by the National Commission is called the Interstate Compact Offender Tracking System (ICOTS). Minnesota cannot move forward with a new interstate tracking system until the national system is developed. There were questions about the privacy of information on ICOTS. The council feels it is important that information that is **not** public in Minnesota retain that status in ICOTS. At this point, access to ICOTS is limited to law enforcement personnel and any user has to be authorized by the compact office in his/her state.

One of the council members brought up the issue that current Minnesota statute prohibits the automated sharing of information between systems. It was felt by members of the council that this issue should be addressed by the legislature due to increasing use of automation.

The third issue addressed by the council is in regard to the return of interstate offenders from other states. Under the rules of the compact, there are certain circumstances in which a Minne-

sota offender transferred under the compact has to be returned from any compact state to Minnesota. This is an area of significant non-compliance by local Minnesota entities. The first issue is that this rule applies to misdemeanor offenders as well as gross misdemeanors and felonies. The current practice in Minnesota is to not enter misdemeanor cases into NCIC. If they are entered, they are only entered locally and not returned. The first step was to work with the Bureau of Criminal Apprehension to establish a work-around in NCIC to allow misdemeanor cases to be entered as nationwide warrants. The second issue is getting local entities to issue nationwide warrants on cases they traditionally would not have returned. Cost is the main factor in county refusal to return interstate offenders as required under the law. The council looked at several options regarding this issue, including charging a fee to the counties and offenders. It was determined that the council does not want to impose a fee at this time to either the offender or the county. The recommendation was to have the DOC continue to educate local entities on the law and look at the issue again in six months. If compliance has not improved by that time, the council will look at other options.

ACTIVITIES OF THE NATIONAL COMMISSION

The National Commission exercises day-to-day oversight of the compact between states. It promulgates rules to achieve the goals of the compact and ensures an opportunity for input and timely notice to victims and jurisdictions where defined offenders are authorized to travel or relocate across state lines. It will establish a system of uniform data collection; provide access to information on active cases by authorized criminal justice officials; and coordinate regular reporting of compact activities to heads of state councils, state executive/judicial/legislative branches, and criminal justice administrators. The commission will also monitor compliance with rules governing interstate movement of offenders, initiate interventions to address and correct noncompliance, and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

The seventh annual meeting of the National Commission took place September 7-11 in Palm Springs, California. Present at this meeting were 46 commissioners and 7 official designees, giving the commission a total of 53 votes. In addition to the voting members, also in attendance were 5 ex-officio members, 54 deputy compact administrators, and 20 guests to include attorneys, Appriss staff, state council members, etc.

Rule changes were not voted on at this meeting per a rule amendment effective January 1, 2008. Under this rule, the commission has the option of waiting until the next annual meeting falling in an odd-numbered year to bring proposed rule changes before the whole commission. This will slow the process of rule changes when appropriate and continue to allow for rule changes during even-numbered years if necessary. The goal of this rule change was to improve compliance by not making rule changes every year.

The implementation of ICOTS was the main topic at the annual meeting. A decision was made by the commission to move forward with the scheduled launch of ICOTS on October 6, 2008. Since the launch was going to occur before the system was fully developed, a decision was made to launch ICOTS in steps. The first launch would be October 6, 2008, for all new compact cases. States would then have 60 days to load "legacy" cases. Legacy cases are those that were accepted and active prior to October 6, 2008. Minnesota was the first state to load legacy data into ICOTS. As of January 1, 2009, several states have not loaded their legacy data. As a result, states continue to work with two systems.

There have been several problems with ICOTS. It will probably be another year before it becomes fully functional. However, once fully functional, it will provide better accountability of offenders, agents, and states.

The annual meeting also included regional meetings, committee reports, training sessions, and elections for National Commission officers. Ken Merz, Minnesota's Interstate Commissioner, was elected to a two-year term as National Commission Chair.

WebEx continues to be utilized by the National Commission to conduct training sessions and meetings across the country. WebEx is an online system that blends data and voice through a web browser and telephone. WebEx provides cost savings to the commission as it has reduced the need for travel to conduct training or hold committee meetings.

Training continues to be a priority for the National Commission. Training is provided to agents, compact offices, courts, and law enforcement through the National Commission. Minnesota's Deputy Compact Administrator, Rose Ann Bisch, is one of the national trainers for the ICAOS. In addition to training via WebEx, On-Demand Training modules are utilized. This allows users to access training at their convenience, and module use continues to increase each year. A third training format offered is to view a previously-recorded session. The Bench Book for Judges & Court Personnel and training materials are reviewed and updated every year. The Commission worked with several states to establish CLE credits for on-demand interstate training.

To assist with compliance and training issues and to avoid the need for expensive dispute resolutions or advisory opinions, the Training Committee has increased the use of Training Bulletins to provide direction regarding a specific compact rule or procedure. During 2008, there were 3 advisory opinions written and posted by ICAOS, with no formal dispute resolutions filed. In 2007, there were no Training Bulletins published; in 2008, a total of 8 bulletins were published.

An ad hoc committee was established in 2007 to look at the issue of treatment in adjoining states, with committee findings published in 2008. It was determined that ICAOS rules should not be amended to allow local agreements between compacting states. It was also determined that the rules should not be amended to create special procedures or considerations for the purpose of allowing offender access to treatment in other jurisdictions.

At the request of many states, the National Office, in conjunction with several committees, developed three self-assessment tools for use by states either at local corrections or state-level compact offices. These tools are designed to help agencies improve their overall operations in relation to policies, practices, and written and public safety standards. A process to post best practices on the ICAOS website was established to enable sharing of best practices across the country.

During FY 2008, the Commission operated below budget.

The National Commission is required to submit an annual report on the activities of the commission. The next report will be made available in July 2009.

ACTIVITIES OF THE EXECUTIVE COMMITTEE

The Executive Committee is responsible for guiding and overseeing the administration of all commission activities and for acting on behalf of the commission, as permitted by the compact, during the interim between commission meetings. The Executive Committee is comprised of a

chair, treasurer, vice-chair, victim's advocate, standing committee chairs, and the four regional representatives. As the Regional Chair, Ken Merz, the Minnesota Compact Commissioner, is a member of the Executive Committee. During the 2008 National Commission annual business meeting, Ken Merz was elected to a two-year term as chair of the National Commission and, as such, serves as chair of the Executive Committee.

The Executive Committee held 10 meetings during 2008. In an effort to save money, all but 2 meetings were held via WebEx. This eliminated travel costs for members. A new dues structure was approved by the Executive Committee during 2008.

Initially, the Executive Committee authorized the development of three separate reference guides. However, there was some concern about the guides being outdated each time a new rule is passed. Therefore, it was decided that only one reference guide regarding state councils would be developed.

The Executive Committee felt it is important for states to report accurate data and for each state to have a working state council. Therefore, a letter was sent to all states advising that state councils need to be established and statistics need to be accurate. As a result, data collection has improved without the need for enforcement by the commission.

Travel for the deputy compact administrators to attend the 2008 National Commission meeting was approved by the Executive Committee. In an attempt to reduce meeting costs, the process of making hotel reservations for the annual meeting was changed. In the past, the national office made the hotel reservations. When people did not attend and failed to cancel their reservation, the commission had to pay the cost for the unused room. Now, each attendee will make his/her own reservations and be reimbursed after the meeting. This will eliminate the commission paying for unused rooms. It was also decided that breakfast would not be provided for annual meeting attendees as another cost-savings measure.

ASSESSMENT OF HOW THE INTERSTATE COMPACT IS FUNCTIONING, BOTH WITHIN AND WITHOUT THE STATE

The National Commission identified the top three compliance issues across the country:

- ✓ offenders in the receiving state prior to approval,
- ✓ failure of the receiving state to complete an investigation in authorized timeframe, and
- ✓ failure of states to retake their offenders when required to do so.

Minnesota concurs with this assessment of the top three issues. With training efforts by the Minnesota DOC over the past several years, agents have become more aware of the rules and compliance has improved. However, this is still an issue with Minnesota courts allowing offenders to relocate to another state without proper authority under the compact. Offenders arriving in Minnesota prior to approval also continues to be a problem.

Investigations conducted within the authorized timeframe has been a continual problem in Minnesota as well as across the nation. Oftentimes, this is a resource issue within the local corrections office or in the state compact office. Implementation of ICOTS should bring this issue to the forefront and help states address this issue. In many cases, ICOTS has already expedited the investigation process.

The third issue and final compliance issue identified by the National Commission relates to a rule that requires states, in certain circumstances, to return their interstate offenders. In Minnesota, this has not been an issue for supervised release offenders as they are returned by the DOC.

However, it is a problem with the return of offenders by local counties. The state council and the DOC continue to monitor the situation and work with counties to achieve resolution.

Non-compliance is usually the result of one of three reasons:

- ✓ The offending entity is not aware of the compact rules or law. For this reason, training for corrections agencies, courts, and law enforcement continues to be a high priority for the National Commission and the Minnesota DOC.
- ✓ Differing interpretations of the rules. This generally occurs between states. Communication, training, training bulletins, formal and informal dispute resolution, and advisory opinions are all helpful in addressing this non-compliance issue.
- ✓ The local entity's refusal to follow the rules. Local counties oftentimes do not understand or appreciate what they perceive to be as the DOC "interfering" with their business. Unfortunately, this reason for non-compliance is also the most difficult to address. Many times it can be resolved through meetings between the DOC and local entities. In some cases, however, compliance may not occur until the National Commission imposes sanctions on the local entity.

Some states are attempting to circumvent the compact by asking other states to work outside the rules in the "spirit of the compact." While Minnesota tries to cooperate with other states, cooperation is within the rules – with public safety as a priority.

SUMMARY

The main focus of the National Commission and Minnesota during 2008 was the implementation of ICOTS. Although it is not yet fully functional, ICOTS will eventually provide an efficient and effective system to transfer offenders across the country.

As this current compact is only 6 years old, it is still in the development stages and continues to grow and move forward. Compliance in Minnesota and across the country continues to slowly improve. Increased awareness of the compact across the nation has been beneficial to public safety.