

**Interstate Compact for  
Adult Offender Supervision**

**2013 Report to the Legislature**



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## **BACKGROUND**

In March 2002, Minnesota passed statutes §243.1605, 243.1606 and 243.1607 regarding the Interstate Compact for Adult Offender Supervision (ICAOS). Minnesota statute § 243.1606 establishes an Advisory Council on the Interstate Compact for Adult Offender Supervision in Minnesota and directs the Advisory Council to report to the governor and the 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 ON ADULT OFFENDER SUPERVISION**

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 2012 membership included:

- ✓ Steve King, Chair, Mower County Court Services Director, representing county probation officers;
- ✓ Suzanne Elwell, Vice-Chair, Victim's Representative;
- ✓ Honorable Michelle Larkin, Minnesota Court of Appeals;
- ✓ Jill Carlson, Interstate Commissioner, Department of Corrections (DOC);
- ✓ Tom Roy, Commissioner, DOC;
- ✓ Michael Downey, Office of Governor Mark Dayton;
- ✓ James Early, Office of the Attorney General;
- ✓ Honorable Joe Mullery, State Representative;
- ✓ Honorable Tim Kelly, State Representative;
- ✓ Honorable John Harrington, Minnesota State Senate;
- ✓ Honorable Dan Hall, Minnesota State Senate;
- ✓ Richard Crawford, Deputy Commissioner, DOC;
- ✓ Pete Orput, Washington County Attorney, representing county attorneys;
- ✓ Carolina Llamas, Neighborhood Justice Center Inc Executive Director, representing public defenders;
- ✓ Sheriff Bill Bergquist, Clay County Sheriff, representing the Minnesota Sheriffs' Association; and
- ✓ Midge Christianson, 6W Community Corrections Director, representing Community Corrections Act Counties.

Advisory Council staff from the DOC included:

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

The Advisory Council first met on August 21, 2002, and continues to meet on a quarterly basis or as needed.

In calendar year 2012, the Advisory Council held three meetings. Since rules would not be voted on at the 2012 ICAOS Annual Business Meeting, the Advisory Council did not have rule amendments to review.

A Minnesota county requested clarification for the court on the definition of relocate and the impact it had on Minnesota offenders traveling out of state. The Minnesota DCA researched the issue through ICAOS Advisory Opinions and the Bench Book for Judges and found it was not clearly addressed. The issue was brought to the Advisory Council for review. The decision of the Advisory Council was to have Minnesota request an advisory opinion from the National Commission to ensure the rule was being applied consistently across compact states. Upon receipt of the advisory opinion, the Advisory Council discussed the intent of the definition and how this definition could be improved. One suggestion was to use a rule to define the length of time an offender can be in another state without approved reporting instructions or transfer request. The Advisory Council did not develop a specific rule change to be proposed.

In other council business, a handout developed by the Minnesota DCA outlining the adult transfer process was approved. Even though the target audience for this handout is judges, it will be beneficial to anyone seeking basic information on the compact process. The Advisory Council also approved a recommendation to have the DCA meet one-on-one with new council members in order to provide them information and prepare them for their first council meeting.

## **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 relocate across state lines. The commission established a system of uniform data collection (ICOTS), which provides access to information on active cases by authorized criminal justice officials; and coordinates regular reporting of compact activities to heads of state advisory councils, state executive/judicial/legislative branches, and criminal justice administrators. The commission also monitors compliance with rules governing interstate movement of offenders, initiates interventions to address and correct noncompliance, and coordinates training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

### **Annual Business Meeting**

- Jill Carlson, DOC Director of Field Services, serves as the Minnesota Interstate Commissioner and serves on the Technology Committee for the National Commission.
- The annual business meeting of the National Commission took place August 28 – 29, 2012, in Madison, Wisconsin. Present at this meeting were 47 commissioners and three official designees, along with 48 non-commissioner deputy compact administrators. This meeting was the tenth anniversary of the commission and there were several guests in attendance. Guests in attendance from Minnesota included: Ken Merz, previous Interstate Commissioner and Chair of the Interstate Commission; Jeff Peterson, DOC Corrections Executive Officer Hearings and Release; and Judge Larkin, Minnesota Court of Appeals and member of the Advisory Council.

- Compact Rules are voted on in odd number years. Subsequently, the 2012 Annual Business Meeting focused on training, the violation process, and the Tenth Anniversary of the National Commission.
- A victim notification component of ICOTS was approved by the commission at the 2012 Annual Business Meeting and is moving forward.

### **Committee Activities**

- The Technology Committee instructed the National Office to pursue current problems with the violation and retaking process in ICOTS. A workgroup was formed to look at the process and make recommendations for improvement. The estimated cost to implement the suggested enhancements is 178,000 dollars.
- The commission continues to provide training to agents, compact offices, courts, and law enforcement through the National Commission. Minnesota's DCA, Rose Ann Bisch, is an active member of the Training Committee for the National Commission. WebEx training is offered several times each month at the national level. On-demand training sessions are available on a variety of topics. The Training Committee continues to add new sessions both live and on-demand each year.

### **Advisory Opinions**

- There were five Advisory Opinions issued by ICAOS during 2012. The first Advisory Opinion was requested by New Jersey and addressed the issue of whether a person acquitted by reason of insanity under the New Jersey "Carter-Krol" statute is eligible for transfer under the compact. A similar analysis was used by the Supreme Court of Virginia in reviewing the issue of whether or not a person released under the Sexually Violent Predators Act was subject to the ICAOS rules. In the Virginia case, the court ruled that because supervision was under a civil, as opposed to a criminal statutory scheme, it was not subject to ICAOS rules. In the New Jersey case, the commission determined that a person "acquitted" by reason of insanity is not eligible for interstate transfer. This opinion seems to clarify that Minnesota offenders released under only civil commitment would not be eligible for transfer under the compact.
- Arizona requested the second Advisory Opinion regarding whether or not approved reporting instructions, or an accepted transfer request, can be the reason for the release of an offender from a correctional facility which otherwise would keep the offender incarcerated. According to the Advisory Opinion, neither an acceptance of transfer or approved reporting instructions can be the basis for the sending state to release an offender. This opinion could have an impact on Minnesota as the Hearings and Release Unit has issued this type of release order for Minnesota supervised release violators.
- California requested an Advisory Opinion regarding the applicability of the compact and ICAOS rules to the return of an offender who was never transferred under the compact and later absconds to another state. The opinion indicates that if the offender's supervision was never transferred to a receiving state under the compact and no application for transfer or waiver of extradition ever occurred, neither the compact nor

the ICAOS rules would apply and the offender would be treated as a “fugitive from justice” and returned under the extradition clause of the US Constitution. This opinion will impact Minnesota counties on both offenders that have absconded to Minnesota from another state and offenders that abscond from Minnesota to other states.

- Minnesota requested the fourth Advisory Opinion related to the definition of “relocate”. This request was on behalf of the Minnesota State Advisory Council. The question posed by Minnesota was whether or not the definition of “relocate” should be interpreted to mean an offender may not proceed to and remain in another state for a cumulative period exceeding 45 days in any 12-month period without an approved transfer request or reporting instructions. Specifically, would it be a violation of the compact for a state to allow an offender to proceed to another state for multiple periods of time, never exceeding 45 consecutive days in any single occurrence? The Advisory Opinion indicates that while such a practice may be subject to criticism based on public safety concerns, the current definition of “relocate” does not appear to limit the cumulative number of days an offender can be in another state up to 45 cumulative days within a 12-month period. This will not only impact how Minnesota agents issue future travel permits, it will impact the number of offenders in Minnesota on travel permits as opposed to approved transfers. The ICAOS Rules Committee is looking at this language for a possible proposed rule amendment that may limit the number of days an offender can be in another state before a transfer is required.
- The fifth Advisory Opinion, requested by Colorado, addressed the issue of using a two-way video closed circuit television during probable cause hearings where it has been determined to be necessary to protect a witness from harm. The opinion affirms the use of a closed circuit television for a probable cause hearing. This will not have much impact on Minnesota as the Hearings and Release Unit that conducts interstate probable cause hearings, already has a procedure to address witness safety at a these hearings.

The National Commission is required to submit an annual report on the activities of the commission and the next report will be made available in July 2013. The current Fiscal Year (FY) 2012 annual report, as well as past reports and newsletters regarding the National Commission’s activities, can be found at: [www.interstatecompact.org/About/Publications.aspx](http://www.interstatecompact.org/About/Publications.aspx).

## **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 regional representative from each of the four regions.

The Executive Committee held 12 meetings during calendar year 2012. Nine of the meetings were held via WebEx, two of the meetings were held in conjunction with the National Commission meeting, and one was held at the National Office in Lexington, Kentucky.

States were found in default of the compact in the areas of establishing a state advisory council, failure to retake an offender, and allowing bail on an interstate offender. In one of the cases, the state had to develop a corrective action plan with the approval of the Executive Committee.

During FY 2012, they were able to meet all of the commission obligations within budget.

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

**Within Minnesota**

- During 2012, the Minnesota Compact Unit (ICU) became aware of 45 Minnesota offenders that were in another state prior to approval; this is a slight decrease from the number out of state prior to approval in 2011, which were 53 offenders. The ICU became aware of 56 offenders from other states that were in Minnesota prior to approval during 2012. This is a slight increase from 49 offenders in Minnesota prior to approval reported in 2011. All of the cases were resolved by the offender being returned, the court discharging the case, or a warrant being issued. Despite the fact these cases were resolved, the risk to public safety increases every time an offender crosses state lines without supervision in place.
- Of the new cases accepted by Minnesota in 2012, 17 needed an End of Confinement Review Committee level assigned. Of the 17 offenders, seven were assigned a level 2 and ten were determined to be level 1.

**Nationally**

- Throughout the year several states were able to resolve disputes through the informal process. In a few cases the commission took corrective action.
- A prevailing issue across the nation continues to be states not issuing nationwide warrants as required and not returning offenders when the return is required under a compact rule. States are reluctant to return offenders because of the cost associated with the return or the court not agreeing with the requirement to return the offender. Oftentimes, the courts will choose to discharge these offenders from supervision to avoid having to return the offender, which may result in a risk to public safety.

**OFFENDER MOVEMENT AS REPORTED IN ICOTS:**

|  | <b>Probation</b> | <b>Parole</b> | <b>Both</b> |
|--|------------------|---------------|-------------|
| <b>Number of offenders under supervision in Minnesota from other states December 31, 2012.</b> | <b>1237</b>      | <b>301</b>    | <b>96</b>   |
| <b>Number of Minnesota offenders under supervision in other states December 31, 2012.</b>      | <b>2031</b>      | <b>278</b>    | <b>56</b>   |

## **SUMMARY**

In June 2012, it was ten years since the Interstate Compact for Adult Offender Supervision was passed into law. Although states still struggle with some compliance issues, progress has made in several areas across the country. States continue to make progress through training, technology and direction from the National Commission. State advisory councils can also be instrumental in raising the awareness of the compact law and keeping states focused on public safety when it comes to the Interstate Compact for Adult Offender Supervision. Minnesota is fortunate to have an active State Advisory Council.