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**Interstate Compact for  
Adult Offender Supervision**

**2014 Report to the Legislature**



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March 2014

This information will be provided in alternative  
format upon request.

The total cost of salaries and supplies  
incurred in development and preparation of this  
report was \$11,930.00 (reported as required by M.S. 3.195).

Printed on recycled paper with  
at least 10 percent post-consumer waste.

## **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.

In 2009, the tragic events of a case where four police officers were killed by an offender transferred under the compact caused the National Commission to rethink the mandatory retaking rules. At the 2010 Annual Business Meeting, the commission voted to accept the recommendations of a special committee appointed to look at the problems associated with the retaking process under the compact.

The goal of the changes was to increase public safety, however unintended consequences arose. There were indicators that jurisdictions across the country were terminating offender supervision to avoid the cost of having to retake the offender.

At the 2012 Annual Business Meeting, the National Commission approved changes to the Interstate Compact Offender Tracking System (ICOTS) to improve rule compliance under the retaking rules. It was determined that ICOTS lacked the “business logic to enforce rule compliance.” These changes were implemented in ICOTS on May 22, 2013.

In addition to enhancing ICOTS, the National Commission reached out to other organizations impacted by the retaking rules. The commission increased its efforts to provide information to prosecutors, judges and defense attorneys about the impact of the Compact Rules on their offices. On November 1, 2013, the commission published a Retaking Whitepaper to assist states in understanding their responsibilities in the retaking process.

The impact on the retaking of offenders in Minnesota and across the country has been the primary focus during 2013 for the National Commission, as well as the Minnesota Advisory Council.

## **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 Speaker of the House; 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 2013 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 Jim Newberger, State Representative;
- ✓ Honorable Barb Goodwin, Minnesota State Senate;
- ✓ Honorable Bill Ingebrigtsen, Minnesota State Senate;
- ✓ 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 2013, the Advisory Council held three meetings. Since rules would be voted on at the 2013 ICAOS Annual Business Meeting, the Advisory Council reviewed proposed rule amendments.

In consideration of some rulings by the National Commission regarding the violation process, a handout developed by the Minnesota DCA outlining the adult violation process was approved. Even though the target audience for this handout is judges, it will be beneficial to anyone seeking information on the mandatory retaking process under the Compact.

One of the most significant issues the Council addressed this year was how Minnesota would address pending charges for offenders transferred to Minnesota under the compact while remaining in compliance with the rules of the Compact. The Council determined that while an interstate offender being supervised in Minnesota has pending charges the decision to hold the offender will be made by the jurisdiction where the new offense occurred. No action would be taken on the interstate case until the new charges are resolved.

## **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, continues to serve as the Minnesota Interstate Commissioner and on the Technology Committee for the National Commission.
- The Annual Business Meeting of the National Commission took place August 27-28, 2013, in Boston, Massachusetts. Present at this meeting were 44 commissioners and 8 official designees, along with 52 deputy compact administrators. This meeting was the eleventh meeting of the commission.
- The Peyton Tuthill Award was presented to Minnesota's victims' advocate, Suzanne Elwell, in recognition of her service and commitment to victims, by Minnesota Interstate Commissioner Jill Carlson and Ex-Officio P. Tuthill.
- Compact Rules are voted on in odd number years. Subsequently, 17 rules were approved at the 2013 Annual Business Meeting and become effective March 1, 2014. Several of the amendments were for clarification and consistency. One of the more significant rule amendments that passed was the repeal of the Violent Offender definition and corresponding mandatory retaking rule. This is significant because this rule was passed as a result of the special committee established to make recommendations regarding the mandatory retaking rules. This rule change will reduce the number of mandatory retake cases Minnesota will have to return.
- A victim notification component of ICOTS approved by the commission at the 2012 Annual Business Meeting continues to move forward.

### **Committee Activities**

- 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. With the launch of a new violation process in ICOTS the Training Committee focused on training of the violation rules and the proper use of the new violation process in ICOTS. The violation rules did not change; however, the changes in ICOTS were designed to help states follow the violation rules.
- The Technology Committee worked on the ICOTS violation enhancements and the victim's portal, VINEWatch. The need for the ICOTS violation enhancement was clear when it was found that since the launch of ICOTS at least 60,000 inappropriate violation reports/responses were submitted. The new system is designed to reduce the number of inappropriate reports/responses and to provide more detailed reports for use by the states

and the commission. There was a significant learning curve and the enhancement does have some flaws, however if used properly it provides better information. VINEWatch was scheduled to launch in September, however that launch was delayed.

- The Compliance Committee addressed an issue of Kansas failing to retake an offender under a mandatory retaking rule. The issue was investigated and referred to the Executive Committee for further action.

### **Advisory Opinions**

- There were no requests for Advisory Opinions from ICAOS during 2013. This would seem to indicate that when rules are not changed every year it gives states an opportunity to learn and be trained on the rules, and reduces the need for advisory opinions.

### **Dispute Resolutions**

- There were two dispute resolutions during 2013.
  - The first was filed against Minnesota by Oregon. Oregon alleged that a Minnesota county was in violation of the Compact Rules when they closed supervision on an offender instead of returning the offender. Minnesota's position was that in order for Oregon to invoke this rule they had to make a request for Minnesota to return the offender, and Oregon did not do so until after the request to close was made to the Minnesota Court. The commission ruled in favor of Minnesota.
  - The second dispute resolution was filed against Texas by Oregon. Oregon alleged that Texas closed supervision of an offender that they were required to return under the Rules of the Compact. The opinion of the ICAOS legal counsel and executive director was that Texas did violate the compact. Although the court in the sending state does set the term of probation, once a mandatory retaking rule is invoked the offender has to be returned, they cannot be discharged.

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 2014. The current annual report, FY 2013, 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.

According to the commission website, the Executive Committee held 10 meetings during calendar year 2013. Seven of the meetings were held via WebEx, two of the meetings were

held in conjunction with the National Commission meeting, and one was held in Louisville, Kentucky.

The issue of the Prison Rape Elimination Act (PREA) was discussed and it was determined that ICAOS was not required to take any action regarding PREA and the transfer process.

Kansas was found to be in default for failing to issue a nationwide warrant and failure to retake as required by rule 5.103-2. The Executive Committee required Kansas to submit a corrective action plan to remedy the default. The action plan needs to include statewide training and the appointment of a commissioner along with a timeline to complete the action plan. A fine of \$100,000 was levied against Kansas; the fine was held in abeyance to allow Kansas to remedy the default. Kansas was also required to pay the Commission for any expenses resulting from the investigation of the case.

California was also found in default for failure to appoint a commissioner, being out of compliance in audited areas, and for a longstanding complaint by Arizona against California and a complaint involving Nevada against California. At the direction of the Executive Committee, legal counsel sent notice to the Governor of the State of California noting the state's failure to comply with the rules of the compact and requesting California submit an action plan. The notice further indicated that if California failed to comply with the notice, action could be taken by the commission to include taking the case to federal court. California did submit an action plan which was found to be insufficient and was rejected by the Executive Committee. The commission has taken further action in federal court.

Not all states had their state councils in place and the Executive Committee worked with those states to get their councils in place so the state would be in compliance.

During FY 2013, 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**

- Minnesota was audited by the National Commission during 2013 and passed all areas of the audit. One area Minnesota agents need to improve is submitting progress reports as required under the Compact Rules.
- Minnesota agents have struggled with the new ICOTS violation enhancements so the Minnesota Interstate Compact Unit (ICU) has increased training on that specific process in ICOTS.
- Clarification from the National Commission that once a mandatory retaking rule is invoked by the receiving state the sending state no longer has an option to discharge the case, has caused concern by Minnesota counties. The biggest obstacle for Minnesota counties is the cost of retaking an offender when a violation occurs. It is important for counties to balance the decision of allowing an offender to relocate under the compact with the cost of retaking an offender when a mandatory retaking rule is invoked. In 2013, the Minnesota ICU was able to work with counties to return offenders as required under the rules.

- The primary focus of the Minnesota ICU continues to be training and working with counties to maintain compliance with the rules.
- During 2013, the Minnesota ICU became aware of 35 Minnesota offenders who were in another state prior to approval; this is a 22% decrease from the 45 offenders out of state prior to approval in 2012. The ICU became aware of 22 offenders from other states who were in Minnesota prior to approval during 2013. This is a 60% decrease from the 56 offenders in Minnesota prior to approval reported in 2012. 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.

**Nationally**

- Throughout the year, several states were able to resolve disputes through the informal process. In a few cases the commission had to take corrective action, to include filing against one state in federal court.
- ICOTS has allowed the National Commission to identify states that continue to have compliance issues and work with those states to address areas that may need improvement.

**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, 2013.</b>	<b>1287</b>	<b>304</b>	<b>99</b>
<b>Number of Minnesota offenders under supervision in other states December 31, 2013.</b>	<b>2029</b>	<b>275</b>	<b>63</b>

**SUMMARY**

The Interstate Commission has been in place for over ten years and, although states will probably always struggle with some compliance issues, progress has been made in several areas across the country. The National Commission and State Councils give states a place to go for direction and assistance. Overall, states try to work together while being mindful of the purpose of the compact; promote public safety, protect the rights of victims, effective supervision/rehabilitation, control movement of offenders and provide for effective tracking of offenders' transfer across state lines.