

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement Operations</u> STATEMENT NUMBER <u>5.73</u>
SUBJECT: <b>INTERSTATE TRANSFER OF SUPERVISION CASES FROM OTHER STATES</b> PROPONENT: <u>Michael McAlister, Director</u> <i>Name/Title</i> <u>Field Services</u> <u>271-5652</u> <i>Office</i> <i>Phone #</i>	EFFECTIVE DATE <u>05/30/14</u> REVIEW DATE <u>05/30/15</u> SUPERSEDES PPD# <u>5.73</u> DATED <u>11/30/12</u>
ISSUING OFFICER:  <hr/> <i>William Wrenn, Commissioner</i>	DIRECTOR'S INITIALS: _____ DATE: _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. PURPOSE:

To provide guidelines for the acceptance of Interstate Compact cases from other states pursuant to the Interstate Commission for Adult Offender Supervision (ICAOS) rules.

II. APPLICABILITY:

To all staff

III. POLICY:

It is the policy of the NH Department of Corrections to investigate and recommend requests for the transfer of supervision through the Interstate Compact in accordance with acceptance criteria outlined in ICAOS rules.

IV. PROCEDURE:

- A. The Interstate Compact Office will review and forward all Interstate Compact supervision requests to the District Office in the area that the offender proposes to reside using the Interstate Compact Offender Tracking System (ICOTS).
- B. The Chief Probation/Parole Office (CPPO) will assign the case to a Probation/Parole Officer (PPO) for an investigation to determine if there is a viable supervision plan.
- C. The investigation should include contact with proposed employers, and a contact/visit to the proposed residence.
- D. The ICAOS rules define mandatory and discretionary acceptance and specific criteria pertaining to the transfer of sexual offenders.
  1. ICAOS Rule 1.101 defines a "Sex offender" as follows: "Sex offender means an adult placed under, or made subject to, supervision as a result of the commission of a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, corrections or other criminal justice agencies and who is required to register as a sex offender either in the sending or receiving state and who is required to request transfer of supervisions under the provisions of the ICAOS.

2. ICAOS rule 1.101 definitions states "Resident" means a person who
  - a. Has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision
  - b. Intends that such state shall be the person's principal place of residence, and
  - c. Has not, excluding periods of incarceration, remained in another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.
3. The ICAOS rules provide criteria specific to sex offenders. Rule 3.101-3 Transfer of Supervision of Sex Offenders states:
  - a. Eligibility for transfer: at the discretion of the sending state, a sex offender shall be eligible for transfer to a receiving state under the Compact rules. A sex offender shall not be allowed to leave the sending state until the sending state's request for transfer of supervision has been approved, or reporting instructions have been issued by the receiving state.
  - b. Application for Transfer: in addition to the information required in an application for transfer pursuant to Rule 3.107, and in an application for transfer of supervision of a sex offender, the sending state shall provide all information, if available, to assist the receiving state in supervising the offender
    - 1) Assessment information, including sex offender specific assessments
    - 2) Social history
    - 3) Information relevant to the sex offender's criminal sexual behavior
    - 4) Law enforcement report that provides specific details of the sex offense
    - 5) Victim information
      - a) The name, sex, age and relationship to the offender
      - b) The home state of the victim or victim's representative
    - 6) The sending state's current or recommended supervision and treatment plan.
  - c. Reporting instructions for sex offenders living in the receiving state at the time of sentencing. Rule 3.103 applies to the transfer of sex offenders, except for the following:
    - 1) The receiving state shall have five business days to review the proposed residence to ensure compliance with the local policies or laws prior to issuing reporting instructions. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.
    - 2) No travel permits shall be granted by the sending state until reporting instructions are issued by the receiving state.
- E. Each request will be reviewed in accordance with the ICAOS rules.
- F. A Notice of Arrival Report Form shall be completed on all cases and forwarded to the sending state immediately upon the offender's arrival in New Hampshire.
- G. If the PPO determines that the transfer does not meet the Interstate Compact criteria, the supervision request should be denied after a review by the CPPO. A Reply to Transfer Request Form must be forwarded to the Interstate Compact Office ~~using~~ **via** ICOTS. The Compact Office will verify compliance with denial criteria and forward the information to the sending state.
- H. The CPPO is hereby designated as the authority pursuant to RSA 651-A:25 IX, to deny a probationer/parolee permission to remain in New Hampshire. A Notice of Order to Return to the sending state (Attachment 2) may be served on an offender who is present in New Hampshire without approval. The PPO, CPPO and the offender must sign the notice. The CPPO or PPO must provide a copy of the notice to the local law enforcement agency as soon as reasonably possible after the notice is served. The CPPO or PPO will not initiate

enforcement action against the offender's who do not comply, but may assist local law enforcement if requested to do so.

- I. Requests for compact supervision of non-convicted offenders such as bail supervision and those convicted of non-criminal offenses such as motor vehicle violations and other violations will not be accepted for supervision. The compact does state offenders placed on probation for a criminal offense, with specified conditions, with a plea or finding of guilty, with or without a recorded conviction, does meet the criteria for transfer. These cases will be accepted if they meet transfer criteria.
- J. A Reply to Transfer Request Form must be sent via ICOTS within 45 days of the investigation being received in New Hampshire. If the investigation has not been completed due to extenuating circumstances, the PPO will notify the Deputy Compact Administrator.
- K. Rule 4.106 requires the receiving state to send a progress report annually, or upon request of the sending state. PPO's shall respond timely to ICOTS progress report due and/or ICOTS action due notifications. The deputy compact administrator will email the Chief PPO a monthly report of any required compact actions that are approaching their respective deadline.
- L. If all case plan requirements have been met, and supervision is no longer necessary, an early termination request shall be made through the Interstate Compact Office using a progress report. If a response is not received within 30 days, the sending state shall be contacted. Interstate transfer cases will not be terminated early without giving the sending state an opportunity to respond to the request for termination. In all instances, the Interstate Compact Office will be notified if a state does not respond to a requested action in a timely fashion.
- M. If the sending state does not have a legal provision for early termination of supervision, or if the appointing Court or Board denies the request, the case can be placed in an administrative status.
- N. Cases that are adjudicated guilty, even if under appeal will be accepted for supervision provided that the sending state certifies the offender is subject to all the conditions of supervision including arrest, detention, and return to the sending state.

#### REFERENCES:

Standards for the Administration of Correctional Agencies

Second Edition Standards

**3-CO-4B-02**

Standards for Adult Correctional Institutions

Fourth Edition Standards

Standards for Adult Community Residential Services

Fourth Edition Standards

Standards for Adult Probation and Parole Field Services

Third Edition Standards

**3-3180 thru 3-3182; 3-3185, 3-3189**

Other

**RSA 651-A:25 I**

MCALISTER/clr

Attachments

### Chapter 3 Transfer of Supervision

#### Rule 3.101 Mandatory transfer of supervision

At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender:

- (a) has more than 90 days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
- (b) has a valid plan of supervision; and
- (c) is in substantial compliance with the terms of supervision in the sending state; and
- (d) is a resident of the receiving state; or
- (e)
  - (1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
  - (2) can obtain employment in the receiving state or has means of support.

#### References:

##### ICAOS Advisory Opinions

7-2004 [While a sending state controls the decision of whether or not to transfer an offender under the Compact, the receiving state has no discretion as to whether or not to accept the case as long as the offender satisfies the criteria provided in this rule]

9-2004 [Upon proper application and documentation for verification of mandatory criteria of Rule 3.101, CSL offenders are subject to supervision under the Compact]

7-2005 [All mandatory transfers are subject to the requirement that they be pursuant to a “valid plan of supervision”]

8-2005 [The sending state determines if an offender is in substantial compliance. If a sending state has taken no action on outstanding warrants or pending charges the offender is considered to be in substantial compliance]

13-2006 [An undocumented immigrant who meets the definition of “offender” and seeks transfer under the Compact is subject to its jurisdiction and would not be a per se disqualification as long as the immigrant establishes the prerequisites of Rule 3.101 have been satisfied]

15-2006 [There is no obligation of the sending state to retake when requirements of 3.101 are no longer met]

2-2007 [A receiving state is not authorized to deny a transfer of an offender based solely on the fact that the offender intends to reside in Section 8 housing]

History: Adopted November 3, 2003; amended October 26, 2004; amended September 13, 2005; amended October 4, 2006; amended September 26, 2007.

**NOTICE OF ORDER TO RETURN TO SENDING STATE**

**TO:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

NH REVISED STATUTES ANNOTATED (RSA) 651-A:25V states: "That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact."

RSA 651-A:25 IX states: "An individual who is on parole or probation in another state, who is present in this state without the permission of the officer of this state designated under paragraph V of this section, and who does not leave this state within 7 days after being notified in writing by a law enforcement officer that the individual may not remain in this state without the permission of the designated officer, is guilty of a class B felony."

RSA 651-A:25 X states: " Within 24 hours after a law enforcement officer has notified an individual that he or she may not remain within the state without the permission of the designated officer, the law enforcement officer shall report the notification to the designated officer. An individual who is on parole or probation in another state may not remain in this state without the permission of the officer designated under paragraph V of this section. In a prosecution of an offense under this section, an individual's good faith belief that he or she had received permission to be present in this state shall be an affirmative defense if the individual acted in reasonable reliance upon the written statements of an authorized officer of this state or the state in which the individual is on parole or probation. This defense is not available to a person who remains present in this state after being notified in writing by the designated officer of this state that the individual does not have permission to be present."

**ACCORDINGLY**, you are **ORDERED** to leave the State of New Hampshire and to return to the state of \_\_\_\_\_ within seven (7) days from the date of this order. Failure to do so will result in your arrest and you are being charged according to the statute quoted above. This felony carries a penalty of 3 ½ - 7 years at a NH State Prison facility as well as fines of up to \$4000.00.

This form must be signed in triplicate, acknowledging receipt of a copy. Failure to sign does not remove your obligation under this statute. This form was read (to) (by) the Parolee/Probationer.

\_\_\_\_\_  
Parolee/Probationer

\_\_\_\_\_  
Probation/Parole Officer

\_\_\_\_\_  
Chief Probation/Parole Officer

Effective Date of Order: \_\_\_\_\_