

January 24, 2008

Teresa A. Knox, General Counsel
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And Pardon Services
Post Office Box 50666
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Dear Ms. Knox:

In a letter to this office you raised several questions regarding the arrest of out-of-state offenders who are supervised in South Carolina pursuant to the Interstate Compact for Adult Offender Supervision (the Compact). The Compact is codified at S.C. Code Ann. §§ 24-21-1100 et seq. As noted in the Rules of the Compact, such Compact is described as “...a formal agreement between member states that seeks to promote public safety by systematically controlling the interstate movement of certain adult offenders.” Also, as stated in State v. McGovern, 2007 WL 2363718 (Conn. 2007),

[t]he ICAOS is a uniform law allowing states to cooperate in tracking the location of offenders, transferring probation supervision in an orderly and efficient manner, and when necessary returning offenders to the originating jurisdiction...The ICAOS creates an interstate commission, which promulgates rules and bylaws that are binding upon the compacting states.

You raised the following questions:

1. May an out-of-state offender [probationer, parolee, etc.] being supervised in South Carolina pursuant to the Compact be arrested by a South Carolina law enforcement officer with general powers of arrest, based solely upon a duly issued out-of-state arrest warrant charging violations of the conditions of the offender's supervision?
2. If the answer to question (1) is yes, and the offender is taken to any state, county, or municipal jail in South Carolina, is the jail required to accept the prisoner for detention upon delivery of the prisoner and a copy of the out-of-state warrant?

3. If the answer to question (1) is no, what steps must be taken by a South Carolina enforcement officer with general powers of arrest in order to lawfully arrest an out-of-state offender based on an out-of-state arrest warrant charging a violation of the conditions of the offender's supervision?

4. Regardless of the method of arrest, once an out-of-state offender has been arrested and is being detained at a state, county, or municipal jail, may he be admitted to bail while the sending state is in the process of retaking the offender?

As explained by you,

The Compact, Article 12 of Title 24, Chapter 21, of the South Carolina Code, was added by 2002 Act No. 273, § 1 and became effective on January 3, 2003, upon certification to Governor Sanford that thirty-five states had already legislatively enacted the Compact. S.C. Code Ann. §§ 24-21-1100. See also: § 24-21-1190.

The purpose of the Compact is set forth in § 24-21-1105 stating that:

[t]he purpose of this compact and the Interstate Commission created under it, through means of joint and cooperative action among the compacting states, is to:

- (1) promote public safety by providing adequate supervision in the community of adult offenders who are subject to the compact;
- (2) provide a means for tracking offenders subject to supervision under this compact;
- (3) provide a means of transferring supervision authority in an orderly and efficient manner;
- (4) provide a means of returning offenders to the originating jurisdictions when necessary;
- (5) provide a means for giving timely notice to victims of the location of offenders subject to supervision under this compact;
- (6) distribute the costs, benefits, and obligations of this compact equitably among the compacting states;
- (7) establish a system of uniform data collection for offenders subject to supervision under this compact and to allow access to information by authorized criminal justice officials;

- (8) monitor compliance with rules established under this compact; and
- (9) coordinate training and education regarding regulations relating to the interstate movement of offenders, for officials involved in this activity.

As further explained by you,

[i]n conjunction with enacting the Compact, the compacting states created the Interstate Commission on Adult Offender Supervision (the Commission) and gave it all the responsibilities, duties and powers contained in the Compact. S.C. Code Ann. § 24-21-1120(A). Those powers include the Commission's authority to "promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this Compact." S.C. Code Ann. § 24-21-1130(2) (emphasis added). The Compact further provides that: "[t]he courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent." S.C. Code Ann. § 24-21-1170(B) (emphasis added).

In examining the Compact, there is the distinction between the "sending state" and the "receiving state". As defined by the Rules of the Interstate Commission, a "sending state" is defined as

...a state requesting the transfer of an offender, or which transfers supervision of an offender, under the terms of the Compact and its rules.

The term "receiving state" is defined as

...a state to which an offender requests transfer of supervision or is transferred.

I note further that pursuant to Section 24-21-1130(3), the Commission has the power "...to oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission."

Section 24-21-1220 states that

(A)(1) Nothing in this article prevents the enforcement of another law of a compacting state that is consistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(B)(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding the meaning or interpretation.

(4) In the event a provision of this compact exceeds the constitutional limits imposed on the legislature of a compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the Interstate Commission must be ineffective and the obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective. (emphasis added).

Section 24-21-1160 states that

(A) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(C) All rules and amendments shall become binding as of the date specified in each rule or amendment. (emphasis added).

You further indicated that

The Commission has promulgated rules pursuant to the requirements of Section 24-21-1160. These Interstate Commission for Adult Offender Supervision Rules (ICAOS Rules) set forth detailed requirements for the supervision, response to violations, and retaking of an offender by a sending state...Notably, the ICAOS Rules provide that: "States that are party to this compact waive all legal requirements to extradition of offenders who are fugitives from justice." Rule 3.109(b), ICAOS Rules.¹ The ICAOS Rules also provide that a sending state may, in its sole

¹Rule 3.109(a) states that "[a]n offender applying for interstate supervision shall execute, at
(continued...)

discretion, retake an offender, and they describe certain circumstances when retaking by the sending state is mandatory. Rules 5.101², 5.102, and 5.103, ICAOS Rules. When a sending state has decided to retake an offender in violation status, it must first order that offender to return to the sending state. (emphasis added).

Rule 5-102 provides that

[u]pon a request from the receiving state, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state upon the offender's conviction for a new felony offense and

- (a) completion of a term of incarceration for that conviction; or
- (b) placement under supervision for that felony offense.

If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographical area.³

¹(...continued)

the time of application for transfer, a waiver of extradition from any state to which the offender may abscond while under supervision in the receiving state.” (emphasis added).

²Rule 5.101 states that

- (a) [e]xcept as required in Rules 5.102 and 5.103, at its sole discretion, a sending state may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.
- (b) [i]f the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, or the offender has been released to supervision for the subsequent offense.

³Consistent with such, Rule 3.103(e)(1) and (2) states that

[i]f the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th calendar day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state immediately and the supervision responsibility shall revert to the sending state.

(continued...)

Rule 5.103 states specifically that

(a) [u]pon a request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of noncompliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state.

(b) If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographic area. (emphasis added).

You also indicated that:

Once the offender is arrested in the receiving state, the ICAOS Rules provide that: “An offender against whom retaking procedures have been initiated by a sending or receiving state shall not be admitted to bail or other release conditions in any state.” Rule 5.111, ICAOS Rules (emphasis added). The ICAOS Rules also provide that a sending state “shall retake an offender within 30 calendar days after the decision to

³(...continued)

If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all compact member states without limitation as to specific geographical area, no later than 10 calendar days following the offender’s failure to appear in the sending state.

Rule 3.106(d)(1) and (2) states

[i]f the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the seventh calendar day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state immediately and the supervision responsibility shall revert to the sending state.

If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all compact member states without limitation as to specific geographic area, no later than 10 calendar days following the offender’s failure to appear in the sending state.

retake has been made.” Rule 5.105, ICAOS Rules (emphasis added); however, the time period an offender may be detained following his arrest could extend beyond thirty days if the offender does not waive his right to a probable cause hearing in the receiving state. This is because the “decision to retake” does not occur until after the sending state’s receipt of the hearing officer’s report and determination. See Rule 5.108(f), ICAOS Rules (“If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of the conditions of supervision, the receiving state shall hold the offender in custody, and the sending state shall notify the receiving state of the decision to retake or other action to be taken within 30 calendar days of receipt of the hearing officer’s report and determination.”⁴ (emphasis added)).

As noted, Rule 3.109(b) states that all extradition requirements are waived and that rule is now the law in South Carolina. S.C. Code Ann. § 24-21-1130(2) (as noted previously, such provision states that the Commission has the power “...to promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.).

You indicated that despite the State statute waiving all legal requirements to obtain extradition of offenders being supervised under the Compact, local law enforcement agents and detention facilities have historically refused to arrest and/or detain out-of-state offenders absent the issuance of a South Carolina “fugitive warrant” as provided for in S.C. Code Ann. § 17-9-10. You stated that “[i]n most instances, the use of fugitive warrants has been successful in facilitating the arrest and detention of out-of-state offenders being returned to the sending state under the Compact; however, the terms of the fugitive warrant statute itself have periodically caused difficulties with carrying out the purpose of the Compact.”

Certain advisory opinions issued by the Interstate Commission are responsive to the questions raised. Opinion No. 12-2006 states that

Under ICAOS Rule 4.112(a)(2), the fact that an offender has absconded allows the receiving state to close supervision in any compact case. While it certainly would serve the interest of public safety for the sending state to issue a warrant for the offender upon notification by the receiving state that an offender has absconded as contemplated in Rule 4.112(a)(1),...neither ICAOS Rule 5.101(b) nor any other current rule requires that a warrant be issued by the sending state when an offender absconds. While Rule 5.101(a) provides that a sending state may retake any compact

⁴Rule 5.108 provides that “[a]n offender subject to retaking for violation of conditions of supervision that may result in a revocation shall be afforded the opportunity for a probable cause hearing in the receiving state consistent with due process requirements.

offender at its sole discretion, except as required under Rule 5.102 and 5.103, neither the time frame nor the means by which the retaking of the offender shall occur are provided. Unquestionably, this rule applies to compact offenders who have absconded and is a viable alternative to the extradition of such offenders under the U.S. Constitution...While it might be implied that a warrant should be issued by the sending state in these circumstances, the absence of explicit provisions in this regard is a matter which is more properly addressed by the ICAOS Rules Committee to provide the necessary specificity consistent with the compact's overarching concern for public safety. (emphasis added).

Opinion No. 2-2005 states that

The relationship between officials in a sending state and officials in a receiving state has been defined by courts as an agency relationship. Courts have generally recognized that in supervising out-of-state offenders the receiving state is acting on behalf of and as an agent of the sending state. In State v. Hill, 334 N.W.2d 746 (Iowa, 1983), the Iowa Supreme Court reversed a trial court decision admitting an out-of-state offender to bail. The Court found that the status of the offender was not controlled by the domestic law of Iowa but rather by the Interstate Compact for Probation and Parole and the determination of the sending state's authorities. The Court further found that "[f]or purposes of determining appellee's status in the present case, we believe that the Iowa authorities should be considered as agents of the sending state." Other courts have similarly held. See, e.g., State ex rel. Ohio Adult Parole Authority v. Coniglio, 610 N.E.2d 1196, 1198 (Ohio Ct. App. 1993) ("For purposes of determining appellee's status in the present case, we believe that the Ohio authorities should be considered as agents of Pennsylvania, the sending state. As such, the Ohio authorities are bound by the decision of Pennsylvania with respect to whether the apprehended probationer should be considered for release on bond and the courts of Ohio should recognize the fact. Therefore, in supervising out-of-state offenders, officials in the receiving state are not acting exclusively as authorities of that state and under the domestic law of that state, but are also acting as agents of the sending state and are, therefore, to a certain degree controlled by the decisions of the sending state officials.

That opinion further states that

...an out-of-state offender is subject to arrest and detention upon demand of the sending state based on its intention to retake the offender. Such a retaking can occur based on a demand by the receiving state (Rule 5.103) or because the sending state intends to revoke probation or parole. Under this circumstance, the sending state may issue a warrant or other process for the offender and request that the receiving state arrest and detain the offender pending retaking. Courts have routinely

recognized the right of a receiving state to arrest and detain an offender based on such a demand from a sending state. See, e.g., *State ex rel. Ohio Adult Parole Authority v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993) (offender cannot be admitted to bail pending retaking); *Crady v. Cranfill*, 371 N.W.2d 640 (Ky.Ct.App. 1963) (detention of offenders proper as only courts in the sending state can determine the status of their jurisdiction over the offender); *Stone v. Robinson*, 69 So.2d 206 (Miss. 1954). The ICAOS recognizes the right of a sending state to at all times retake an offender. See, Interstate Compact for Adult Offender Supervision, Art. I, Purpose.⁵ The retaking of an offender upon demand of the sending state necessarily implies the power of officials in the receiving state to effectuate an arrest and detention of the offender pending the completion of retaking proceedings. Rule 5.108 recognizes this implied power by forbidding officials in a receiving state admitting an offender to bail.... (emphasis added).

Additionally there are public policy reasons under the ICAOS that support the power to arrest an out-of-state offender for violating the terms and conditions of supervision. The purpose of the ICAOS is not solely to regulate the movement of adults offenders across state lines. Rather, regulating the movement of adult offenders fulfills the critical purposes of promoting public safety and protecting the rights of crime victims. See, INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, Art. I. All activities of the Interstate Commission and the member states are directed at promoting these two overriding purposes. All member states, their courts and agencies, are required to take all necessary actions “to effectuate the Compact’s purposes and intent.” See, INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, ART. IX, § A. It does not effectuate the purpose and intent of the ICAOS - which is fundamentally the promotion of public safety - for a state to maintain that it has the power to arrest its own offenders for probation violations but is powerless to arrest an out-of-state offender for similar violations, regardless of the latter’s threat to the safety of the community or disregard to the direct purposes of probation supervision.

Opinion No. 2-2005 further states that

In seeking to have supervision transferred to another state, the offender accepts that a sending state can retake, that formal extradition proceeds are not required, and that he or she is subject to the same type of supervision afforded other offenders in the

⁵See Section 24-21-1105 previously referenced.

receiving state. See, Interstate Compact for Adult Offender Supervision, Art. I. See also, Rules 3.109 and 4.101...⁶

Two final points should be noted. First, it may well be that specific officers in a receiving state charged with supervising offenders do not have the power of arrest. However, such officers may well have the power to effectuate an arrest through an appropriate law enforcement agency. Therefore, even in the absence of the power to physically arrest an offender, officers may effectuate an arrest in cooperation with appropriate local or state law enforcement officials.

In McGovern, supra, it was stated that

[a]n offender who is residing in the receiving state is subject to arrest and detention without bond upon request of the sending state when the sending state intends to retake the offender...The request for retaking may be based upon a violation of probation committed in the receiving state or in the sending state or elsewhere. When the sending state intends to revoke probation, the sending state may issue a warrant for the offender and request that the receiving state arrest and detain the offender pending retaking. (emphasis added).

Referencing the above, in response to your questions, in the opinion of this office a South Carolina law enforcement officer with powers of arrest would be authorized to arrest an out-of-state offender, probationer or parolee, being supervised in South Carolina based solely on an out-of-state arrest warrant charging a violation of the conditions of the offender's supervision. As referenced, State law, specifically Section 24-21-1130(2), recognizes the Commission's authority to promulgate rules which have the force and effect of statutory law which are binding on the compacting states. It is specified by Section 24-21-1220 that "[a]ll lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding on the compact states." Rule 5-102 provides that in the stated circumstances, "[i]f the offender does not return to the sending state as ordered, then the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographical area." See also: Rules 3.103(e)(1) and (2), 3.106(d)(1) and (2), 5-103; Op. No. 2-2005 ("an out-of state offender is subject to arrest and detention upon demand of the sending state based on its intention to retake the offender...Under this circumstance, the sending state may issue a warrant or other process for the offender and request that the receiving state arrest and detain the offender pending retaking...The retaking of an offender upon demand of the sending state necessarily implies the power of officials

⁶Rule 4-101 states that "[a] receiving state shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state."

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in the receiving state to effectuate an arrest and detention of the offender pending the completion of retaking proceedings.”).

As to your question regarding whether a jail is required to accept the prisoner for detention upon delivery of the prisoner and a copy of the out-of-state warrant, in the opinion of this office, the jail would be required to accept the prisoner. See: Ops. Atty. Gen. dated November 3, 2006; January 26, 1993; January 28, 1992 (if a defendant is arrested with a warrant and then taken to a jail, then the jail is required to accept the defendant for detention upon delivery of the defendant and a copy of the warrant).

In your final question you asked whether once an out-of-state offender has been arrested and is detained at a jail, may he be admitted to bail while the sending state is in the process of retaking the offender? As noted previously, pursuant to Rule 5.111 “[a]n offender against whom retaking procedures have been initiated by a sending or receiving state shall not be admitted to bail or other release conditions in any state.” Therefore, in the opinion of this office, the out-of-state offender may not be admitted to bail in such circumstances. See: Hill, supra; Coniglio, supra; McGovern, supra.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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