

Interstate Compacts

Overview & Use



History

- Interstate Compacts are rooted in the colonial past. Because each colony was independent, disputes between them were worked out by negotiation that was submitted to the king for approval.
- Thus interstate compacts are not new. What has changed in the last century is the use of interstate compacts to create on-going administrative agencies.

The Compact Mechanism

- A simple, versatile and proven tool
- Principal advantage: provides states with an effective, enforceable means of cooperatively addressing common problems – even though their own laws may differ – without relinquishing authority to the federal government

Interstate Compacts

- Agreements between states authorized under Article I, Section 10, Clause 3 of the U.S. Constitution – the “Compact Clause”
- “No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State”
- The U.S. Supreme Court has consistently held that Congressional consent is only required for compacts that tend to increase the political power of the states in a manner that encroaches upon or interferes with the just supremacy of the United States.
[U.S. Steel Corp. v. Multi-state Tax Commission, 434 U.S. 452 (1978)]

Uses of Interstate Compacts

- Long history of compacts pre-dates the Constitution
- Flexibility evident in variety of forms and uses:
 - Scope: bi-state, regional, national
 - Creation: negotiated
 - Purpose: fixed agreements, advisory boards, regulatory entities
 - Issues: transportation, environment, taxation, education, health, emergency management, corrections and public safety

Compacts

- Approximately 200 compacts formed since the founding of the U.S.
 - About 38 are inactive
 - On average, each state is a member of 23 compacts

- Creation of the Port Authority of New York and New Jersey in 1921 signaled a new era in regulatory compacts.



3 Primary Purposes

- Resolve boundary disputes;
- Institutionalize and manage interstate issues pertaining to allocation of natural resources;
- Create on-going administrative agencies that have jurisdiction over a wide variety of concerns:
 - State transportation
 - Taxation
 - Environmental matters
 - Regulation
 - Education
 - Corrections
 - Public safety

Uses of Compacts cont.

- Many well known compacts:
 - NY-NJ Port Auth. Compact of 1921
 - Colorado River Compact (1929)
 - Interstate Compact on the Placement of Children (1960)
 - Washington Metropolitan Transit Authority Compact (1966)
- Increasingly common, broader in scope, more frequent use for regulatory purposes.

Racing & Gaming

- Tri-State Lotto Compact
- Multi-State Lottery Agreement
- State & Indian Gaming Compacts
- * National Racing Compact

Common Law

Contract Principles

- An offer to enter the agreement is expressed by statutory language enacted by the first state to join the compact and each subsequent jurisdiction accepts this offer by enacting statutory language, which is substantially similar to that enacted by the offering jurisdiction;
- Once enacted by two or more states, a compact, like any other contractual agreement, is protected from impairment by the states under Article I, Section 10, Clause 1 of the U.S. Constitution;
- Although a state cannot be bound by a compact to which it has not consented, once enacted a compact takes precedence over conflicting statutes of the state;
- A state cannot unilaterally nullify, revoke, or amend one of its compacts if the compact does not so provide.

Why are compacts so appealing?

Important Advantages:

- Flexible, enforceable means of cooperation.
- Interstate uniformity without federal intervention – i.e., best of both worlds.
- States give up right to act unilaterally, but retain shared control (“collective sovereignty”).
- Alternative/deterrent to federal intervention and preemption.

Rulemaking

- Perhaps the most innovative change in the use of interstate compacts in the modern era is the use of compacts for regulatory purposes through the legislative delegation of administrative rulemaking.
- Like other administrative agencies the rules promulgated are binding on the states and all officials of the state; they are not discretionary

- A state legislature's ability to delegate regulatory authority to an administrative agency is "*one of the axioms of modern government*"

-- Justice Felix Frankfurter

- Extends to the creation of interstate commissions by compact

-- *West Virginia ex rel. Dyer v. Sims*,
341 U.S. 22 (1951)

Interstate Compacts

- *Key Benefits* -

1. Effectiveness and efficiency

- *Goal achievement with lower costs (economies of scale)*

2. Flexibility and autonomy compared to national policy

- *"One size does not fit all"*

3. Dispute settlement among the states

4. State sovereignty

- *Protection against "coercive regulatory federalism"*

5. Cooperative behaviors leading to "win-win" situations

6. Threats of Federal preemption or mandates

- *Disparate state regulatory statutes*
- *Technology development*
- *Lobbying by other special interest groups*

Interstate Compacts

- Operational Benefits -

- National data & information sharing systems
- Enhanced enforcement and compliance mechanisms
- Uniform compact language and rules
- National office and staff (*if necessary*)
- Effective governance structures
- Centralized national training
- Uniform operations and procedures
- National interface with external stakeholders / national organizations
- Coordination with other interstate compacts

Interstate Compact for Adult Offender Supervision

- 50 state compact (w/ DC, PR, VI)
- Controls movement of parolees & probationers between states
- Over 300,000 state-to-state transfers annually
- Drafted in 1937; updated in 2000
- Adopted by 35 states in less than 30 months (3 legislative cycles)
- National Commission (rulemaking, oversight, training and national staff)
- State Councils for in-state promotion and coordination

Interstate Compact on Educational Opportunity for Military Children

- 10 state compact (AZ, CO, CT, DE, FL, KS, KY, MI, MO, OK; as of July 2, 2008)
- Creates educational equity for the children of military families faced with multiple moves between schools
- Over 650,000 active duty military children
- Enrollment, Eligibility, Placement, Graduation
- Drafted in 2007
- Adopted by 10 states in less than 6 months (1 legislative cycle)
- National Commission (rulemaking, oversight, training)

Interstate Compact Development

- *Key Players* -

State Government

- Governors and policy staff
- Elected executive officials
- Executive agency directors
- Legislative leaders
- Legislators and staff
- Legislative Service Agency directors

External Stakeholders

- National Associations / Groups
- Media
- Academic / Scientific Researchers
- Industry
- Federal agencies

Interstate Compacts

- Development -

Model Process

Advisory Board

- Composed of state officials, stakeholders, issue experts
- Examine the issues and current policy spectrum of issue
- Examine best practices and alternative structures
- Establish recommendations as to the content of an interstate compact

Drafting Team

- Composed of 5-8 state officials, stakeholders, issue experts (typically some overlap w/ Advisory)
- Craft interstate compact solution based on Advisory Group recommendations
- Circulate draft compact to specific states and relevant stakeholder groups for comment

Final Product

- Drafting team considers comments and incorporates into compact
- Final product circulated to Advisory Group
- Released to states for consideration

Interstate Compacts

- Education & Enactment -

Model Process

Education

- Develop comprehensive *Resource Kit* and other print promotional materials
- Develop informational Internet site with state-by-state tracking and support documents
- Convene "National Legislative Briefing" to educate state legislators and other key state officials

State Support

- Develop network of champions (state legislators, Governors, etc.)
- Provide on-site technical support and assistance (state-by-state via network)
- Provide informational testimony to legislative committees considering the compact

State Enactments

- Track and support state enactments

Interstate Compacts

- Transition & Operation -

Model Process

Transition

- Enactment threshold met
- State notification
- Interim Executive Board appointed
- Interim Committee's established (*if needed*)
- Convene first Compact meeting

Operation

- Ongoing state control and governance
- Staff support
- Annual meeting
- Long-term enhancements / upgrades

Interstate Compacts

- *Bottom Line* -

- Self-interests v. **Cooperative Behaviors**
- Individual v. **Collective Actions**
- Disparity v. **Uniformity**
- State Rivalry v. **State Alliance**
- Competition v. **Cooperation**
- **"Federalism without Washington"**

Additional Questions

www.csg.org

John Mountjoy

CSG's Director of Policy & Research

Rick Masters

Special Counsel, National Center for Interstate Compacts

2760 Research Park Dr.
Lexington, KY 40511

(502) 262-5881
rmasters@csg.org



Congressional Consent Requirement

Art. I, Sec. 10 (Compact Clause) prohibits states from entering into compacts without the consent of Congress.

- Originally applied to all compacts – now only to those that:
 - alter the political balance within the federal system; or
 - affect a power delegated to the federal government

-- *Virginia v. Tennessee*, 148 U.S. 503 (1893)

May be express or implied; may be given before or after the compact is created.

Implications of Congressional Consent

- Transformative effect: equivalent of federal law under the “law of the union doctrine.” *Delaware River Comm’n v. Colburn*, 310 U.S. 419, 439 (1940); *Cuyler v. Adams*, 449 U.S. 433 (1981); *Texas v. New Mexico*, 482 U.S. 124 (1987).
- Relevant for jurisdictional and interpretative purposes, but also gives compact the weight of substantive federal law.
- Compacts enforceable under the Supremacy Clause and the Contract Clause.
- But they remain subject to control of party states, who may amend or repeal them.

Absence of Consent

- Where not required, the absence of consent does not mean a compact is unenforceable – it remains a contract between the states.
- It does mean that the agreement is interpreted as state and not federal law, which can lead to multiple interpretations, e.g. the ICPC.
- Enforcement is ultimately achieved in the Supreme Court under its original jurisdiction.

What's the downside?

Potential/Perceived Disadvantages:

- Lengthy and challenging process.
- Lack of familiarity with the mechanism.
- Loss of individual state sovereignty.
- Delegation of state regulatory authority to interstate entities

Questions

Implications, Cont'd

Congressional consent also:

- Places ultimate responsibility for interpretation and enforcement in the federal courts, and finally the U.S. Supreme Court.
- Requires that all courts give effect to a compact even to the extent that state law (constitutional or statutory) must yield to its terms and conditions. See, *WMATA v. One Parcel of Land*, 706 F.2d 1312 (4th Cir. 1983).
- Precludes state courts from declaring compacts invalid on state constitutional grounds without subjecting that normally unreviewable decision of state law to further U.S. Supreme Court review (to protect the federal interest and the interests of the other signatories). *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951).

Implications, Cont'd

- Compacts that receive Congressional Consent and that provide for continuous amendment represent the *only* example of state legislatures actually altering federal law.
- By their terms, some compacts can allow for amendment without the need for further Congressional action.

Implications, Cont'd

- Once given, it is generally thought that Congress cannot withdrawal or amend its consent. *Tobin v. U.S.*, 306 F.2d 270 (D.C. Cir. 1962)
- However, subject to certain considerations, nothing limits Congress's authority to legislate in areas otherwise subject to a compact or through legislation to preempt a compact.
- The granting of consent is a political judgment not subject to review save for whether congress has acted in a constitutional manner.

The Safe & Timely Interstate Placement of Foster Children Act of 2006

- “It is the sense of Congress that –
(1) The States should expeditiously ratify the revised Interstate Compact for the Placement of Children recently promulgated by the American Public Human Services Association”

(Section 2)

STIPFCA cont.

- “Section 471 (a) of the Social Security Act (42 U.S. C. 671(a) is amended -- . . . (3) by adding at the end the following:
(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporated with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirements of this paragraph.”
(Section 3)

Under the Compact Clause Consent is Given in 1 of 3 Ways

- Explicit Consent Upon Submission of a Compact by the Member States for Approval (See SC-GA boundary compact)
- Advance Consent by Adopting Legislation encouraging states to enter into a compact (See Crime Control Act of 1934)
- Implied Consent by congressional acquiescence to a compact (Border compacts)

STIPFCA Appears to Contain Advance Consent Language

- Explicit reference in Sections 2 and 3 of the Act
- U.S. Supreme Court has held the relevant question is: “Has Congress, by some positive act, in relation to such agreement, signified the consent of that body to its’ validity.” *Green v. Biddle* 21 U.S. @86
- 42 U.S.C. Sec. 673(a), amended by STIPFCA, gives prospective consent to compacts under which interests of adoptive children who are subjects of adoption assistance agreements.

Rulemaking Power

- Commission rules must be adopted in a manner that is substantially similar to the process of the Administrative Procedures Act.
- Once adopted, the rules have the force and effect of statutory law and supercede any inconsistent state laws.
- Majority of state legislatures can reject a proposed rule.

STIPFCA Consent Language cont.

- STIPFCA Purpose Statement

“To improve protections for children and to hold States accountable for the safe and timely placement of children across State lines, and for other purposes.”

Congress has determined under Article I Section 8 the ‘appropriateness’ of some form of national legislation.

[See *Cuyler v. Adams* 449 U.S. 433, 440 (1981)]



Judicial Presentation

Presented by: Richard Masters
Dori Ege

[Revision 07/16/07]

Contact

- Interstate Commission for Adult Offender Supervision
PO Box 11910
Lexington KY 40578-1910
(859) 244-8008 Phone
(859) 244-8001 Fax
- Commission Website
www.interstatecompact.org

Key Personnel

- Commission Chair
 - Mr. Warren Emmer, North Dakota
- Executive Director
 - Harry Hageman
- General Counsel
 - Mr. Richard L. Masters, Esq.

Presentation Objectives

- Overview of interstate compacts: nature, legal underpinnings, elements
- Use, prevalence, pros and cons of compacts
- Unique characteristics and implications – consent requirement
- Discuss judicial considerations of the ICAOS
- Describe sentencing considerations and special considerations of the ICAOS
- Review Victim's Rights

Background

**The Compact
was born out of a need to
control offender movement.**

The Interstate
Compact for the
Supervision of
Probationers and
Parolees was
established
in 1937



Interstate Compact for Adult Offender Supervision

- Enacted June 19, 2002
- All 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are members of the Interstate Compact
- Passed state legislation governing participation in ICAOS
- Establishes a national governing body
- Rule making authority which has effect of law

- Every jurisdiction (Courts, Parole Boards, Community Corrections) are subject to ICAOS rules
- Commission has statutory authority to enforce compliance
- Pays an annual assessment fee
- Every state shall establish an Advisory Council
- Establishes uniform system for reporting, collecting & exchanging data

Purpose

- Promote public safety
- Protect rights of victims
- Control movement of offenders
- Provide for effective tracking
- Supervision
- Rehabilitation

Legal Foundation

Crime Control Act

4 U.S.C. Section 112 (1965)

- * Originally enacted in 1934
- Authorizes and encourages states to form interstate compacts for cooperative efforts and mutual assistance in the prevention of crime.
- Both ICPP and ICAOS were adopted pursuant to this consent statute.

Congressional Consent & ICAOS

- Congressional consent requirement applies to ICAOS, as it did to its predecessor (ICPP), because the compact arguably affects powers delegated to Congress:
 - Authority to regulate interstate commerce
 - Authority to regulate extradition
 - See, e.g. *Cuyler v. Adams*, 449 U.S. 433, 442 (1981) (Interstate Agreement of Detainers is an interstate compact within the meaning of Art. I, § 10 because it implicates Congress's power to legislate in the area of interstate commerce and extradition).
- Consent given under Crime Control Act of 1934 (authorized and encouraged states to form compacts for cooperative efforts in crime prevention)

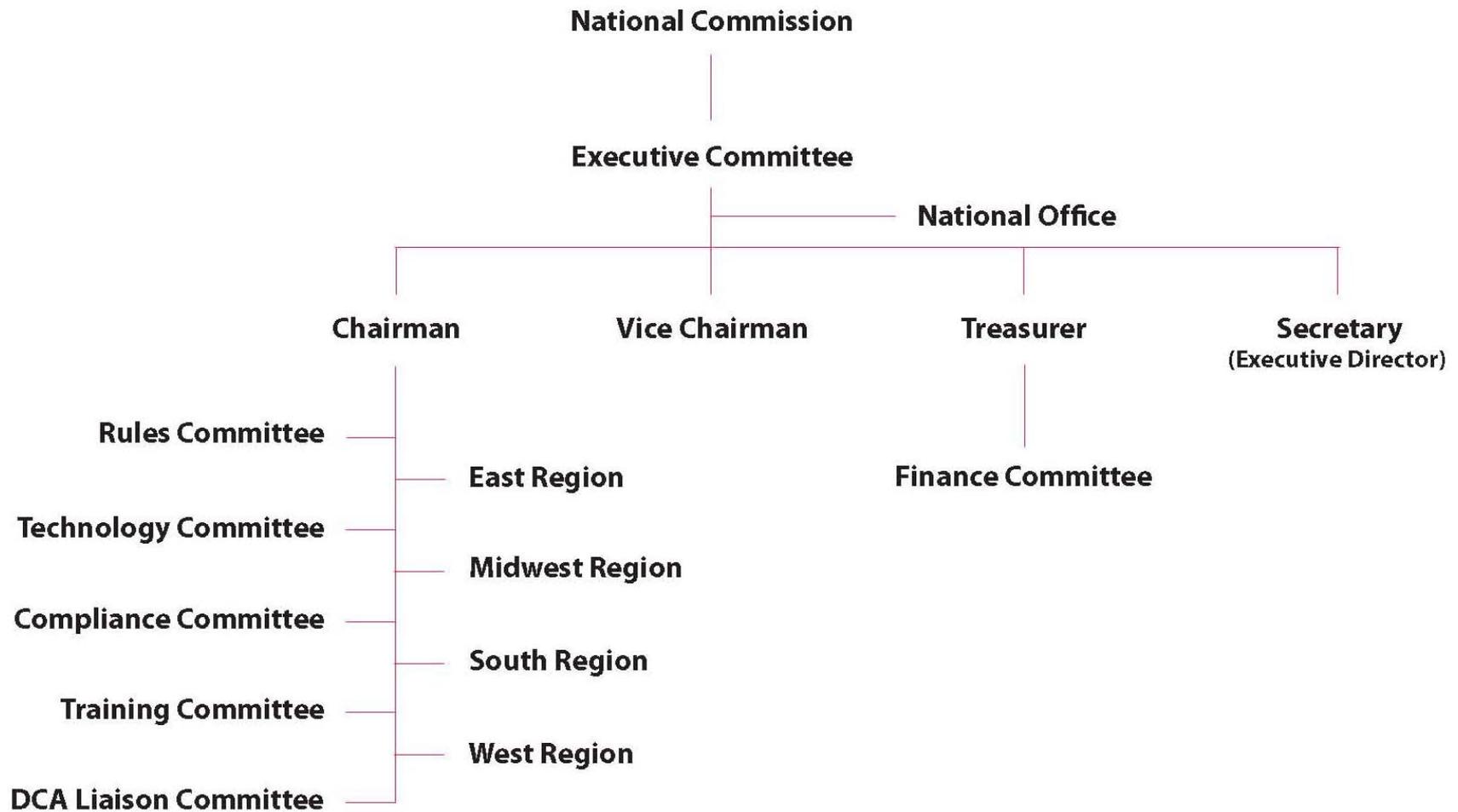
Summary

- Article I, Section 10, Clause 3 of the U.S. Constitution authorizes compacts between states;
- Crime Control Act of 1934 gave Congressional consent to ICAOS;
- A compact with Congressional consent becomes a “law of the United States” Texas vs. New Mexico, 482 U.S. 124 (1987).

Judicial Sentencing Practices

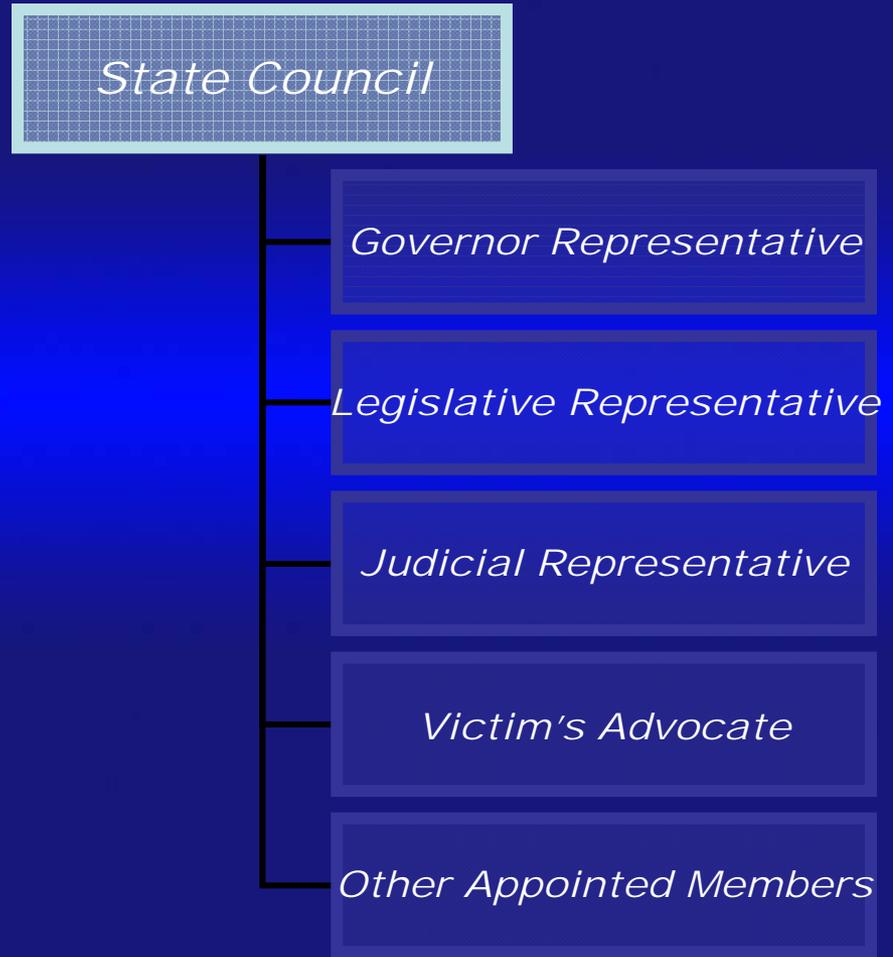
- ICAOS is NOT about telling judges how to sentence criminal offenders nor about telling prosecutors how to charge offenses.
- It is about controlling the movement of certain categories of criminal offenders after sentencing.
- Although a compact has been in effect since 1937, the ICAOS was compelled by several notorious cases of offenders moving interstate without anyone monitoring them.

National Structure



State Structure

- Provide mechanism for empowerment of Compact process;
- Assist in developing Compact policy;
- Determine qualifications for membership on Council;
- Appoint Acting Commissioner when Commissioner is unable to attend.



Missouri Interstate Compact

- RSMo 589.500 to 589.569 may be cited as “The Interstate Compact for Adult Offender Supervision”

Contact: Wanda La Cour, DCA

Wanda.LaCour@doc.mo.gov

Mary Kay Brand, Asst. DCA

MaryKay.Brand@doc.mo.gov

Missouri Council for Interstate Adult Offender Supervision

- Commissioner – Steve Long
- Senator – Vacant
- Representative – Vacant
- Judicial – Judge Charles Atwell
- Victim's Advocate – Megan Carter
- Governor's/AG's - Craig Chval/James Klar
- Law Enforcement – Maj. Daryl Forte, Capt.
John Copeland
- * DCA – Wanda La Cour

Enforcement Power

- Commission has authority to enforce the compact and its rules upon the states by:
 - Require remedial training
 - Require mediation/arbitration of dispute
 - Impose monetary fines on a state
 - Seek relief in federal court, most likely by obtaining an injunction to curtail state action or compel compliance

Transfer of Offenders Under This Compact

- No state shall permit an offender who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules.

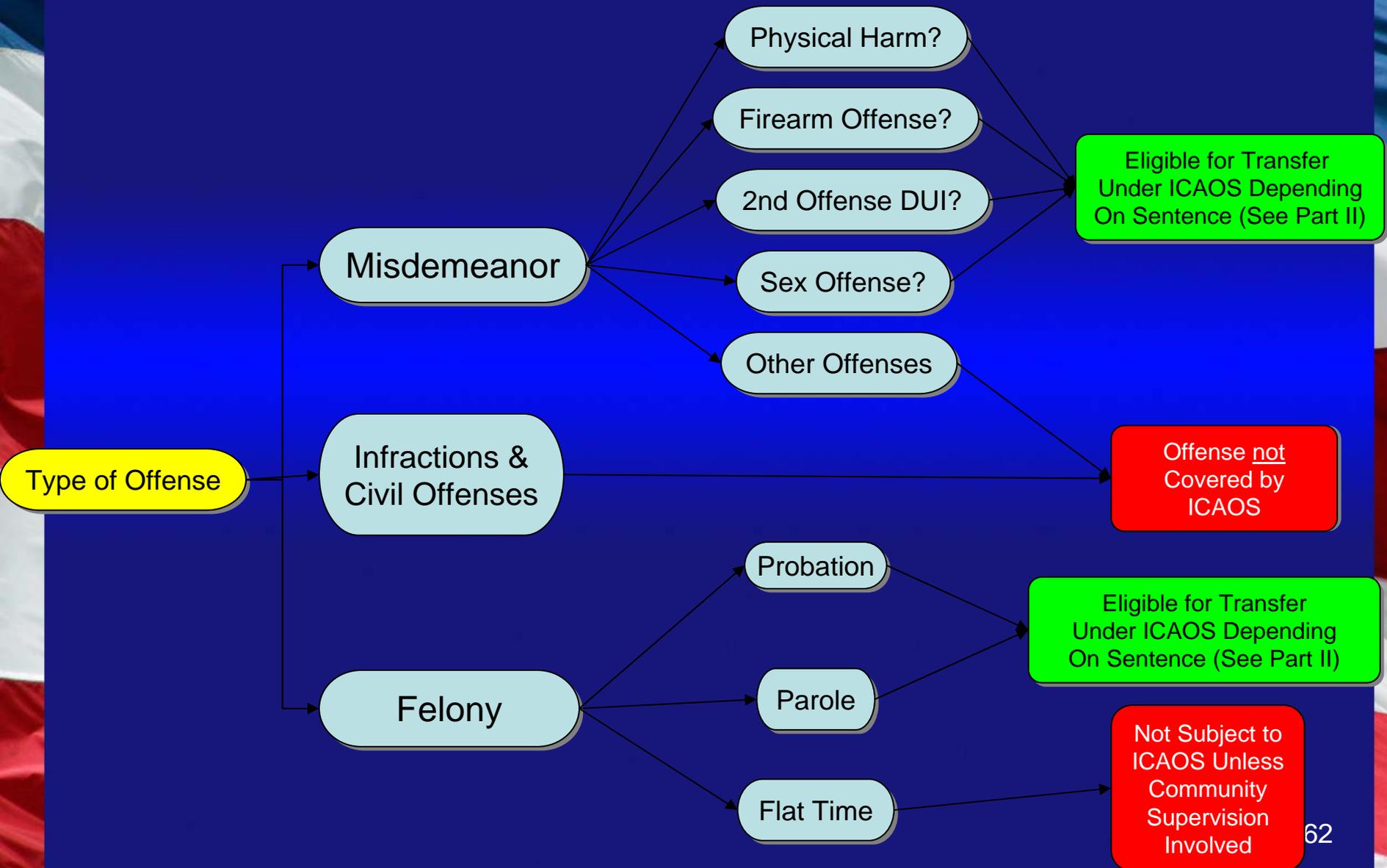
(ICAOS Rule 2.110)

Eligibility Criteria

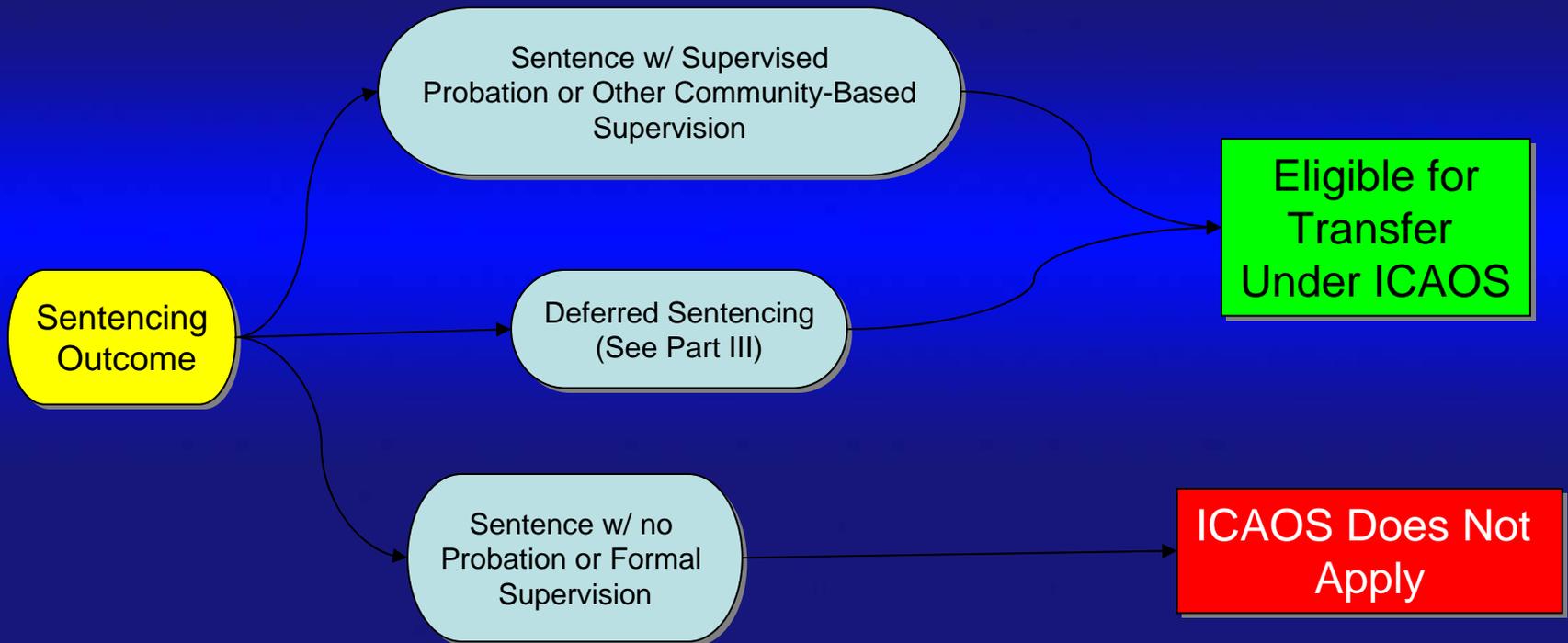
Authority to Regulate

- There is no “right” of convicted persons to travel across state lines. See, Bagley v. Harvey, 718 F.2d 921 (9th Cir. 1988).
- Convicted person has no right to control where they live; the right is extinguished for the balance of their sentence. Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003),

Eligibility for Transfer Part I: Nature of Offense

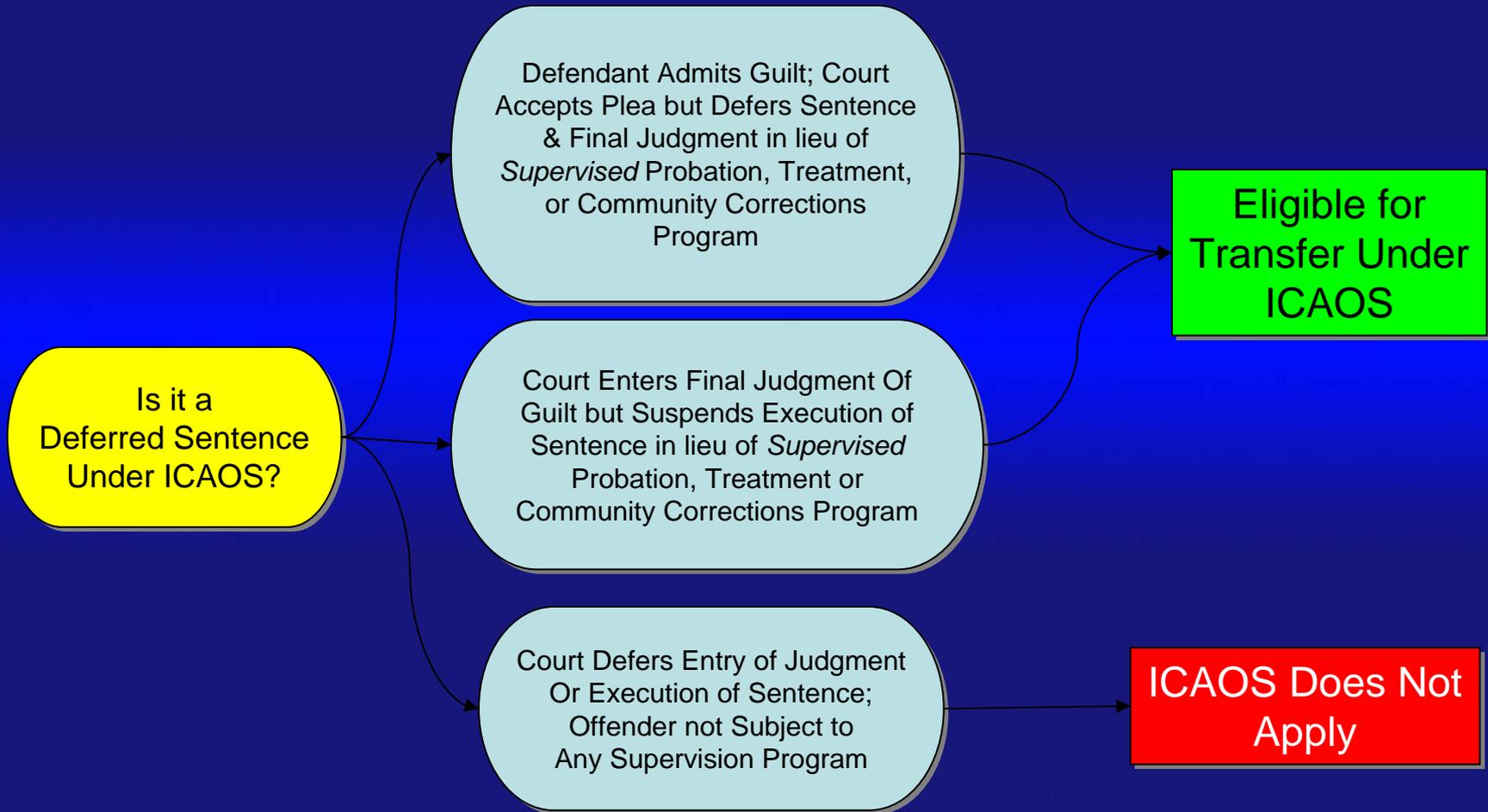


Eligibility for Transfer Part II: Sentencing/Supervision Considerations



Eligibility for Transfer Part III

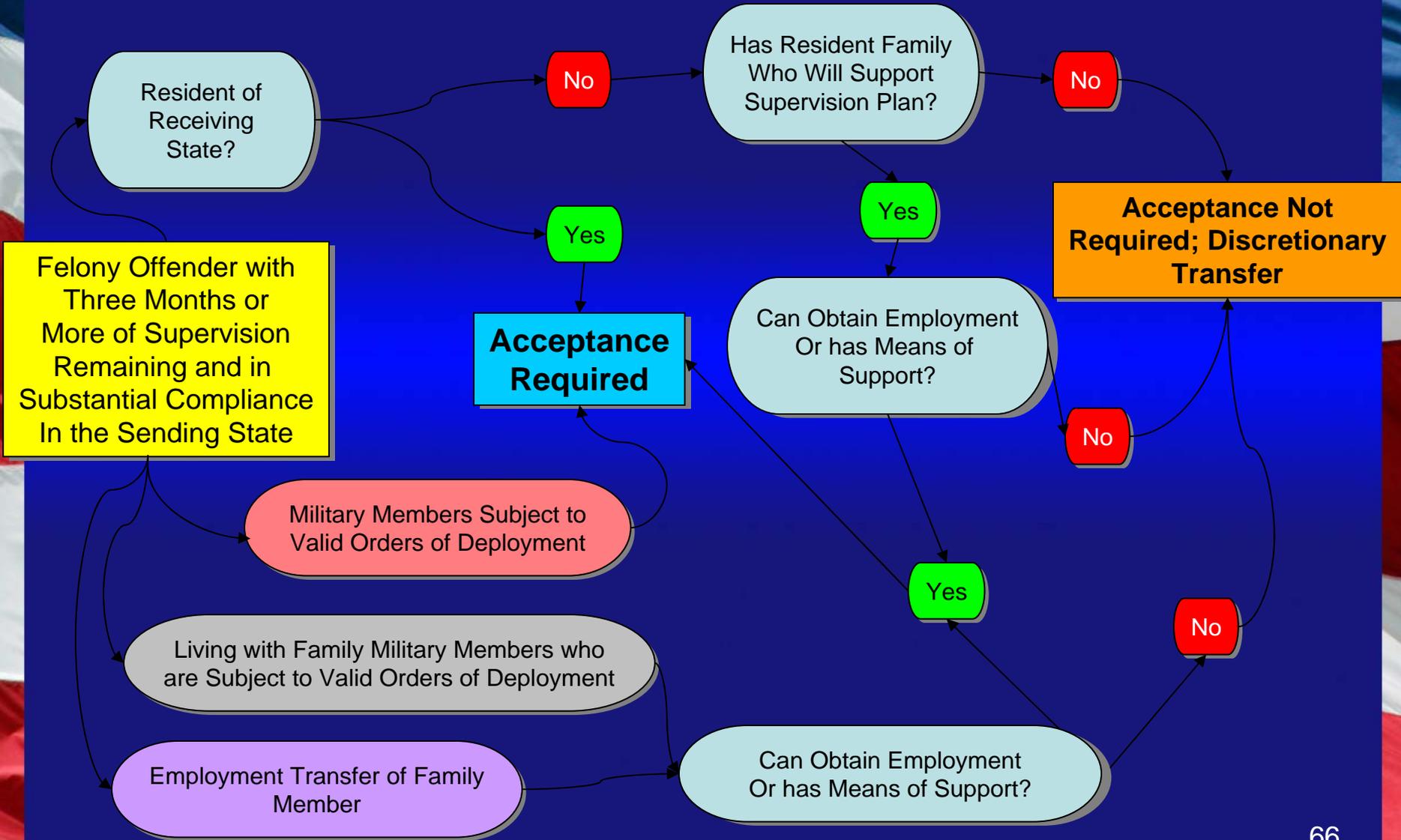
Deferred Sentencing Considerations



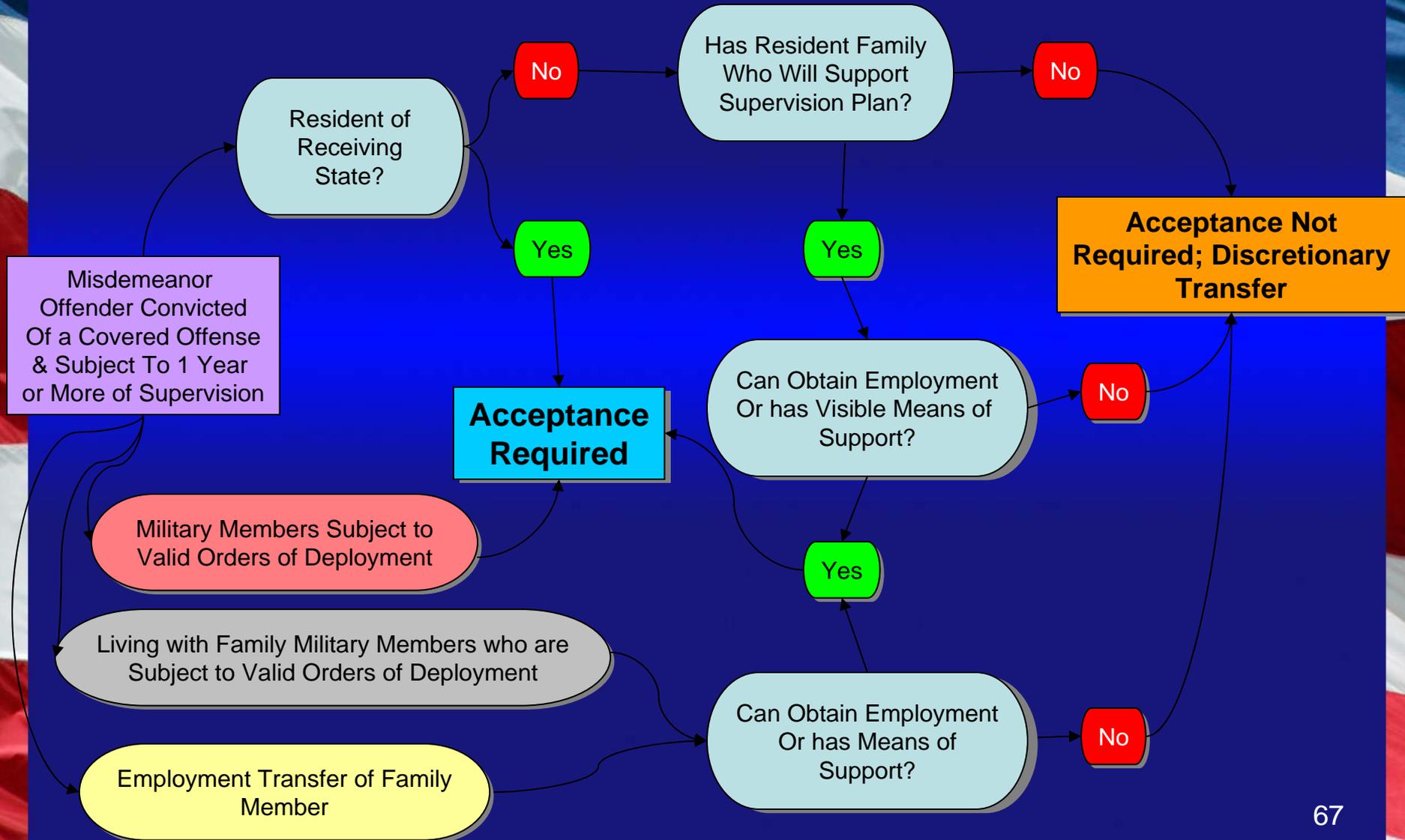
2 Types of Transfers

- **Mandatory** – if the offender meets the criteria to transfer, the receiving state **MUST** accept supervision
- **Discretionary** –
 - Offenders not eligible for mandatory transfer
 - Sending state must justify “WHY”
 - Receiving state has the discretion to accept or reject supervision
- **ALL TRANSFERS REQUIRE JUSTIFICATION**

Acceptance of Transfer by Receiving State, Felony



Acceptance of Transfer by Receiving State, Misdemeanor



Offender Shall NOT Travel Until:

- Completed application has been submitted;
- Receiving state shall have opportunity to investigate.
 - Advisory Opinion 9-2006: If an offender is in a receiving state prior to acceptance, the Receiving State can properly reject the request for transfer.

Rule 3.102

Exceptions

- Exceptions exist for certain offenders:
 - Offenders living in the receiving state at the time of sentencing. (Rule 3.103)
 - Emergency situations. (Rule 3.106)
 - Military Member, Residing with Family of Military, Residing with Family Member who's Employment Transfers (Rule 3.101-1)
- If these offenders meet criteria, reporting instructions may be issued to allow offender to proceed to Receiving State prior to acceptance.

Notification to Victims

Both states shall notify known victims in their respective states in accordance with their own laws or procedures. The receiving state is responsible for reporting information to the sending state when an offender:

1. Commits a significant violation.
2. Changes address.
3. Returns to the sending state where victim resides.
4. Departs receiving state under approved plan in subsequent receiving state.
5. Issued a temporary travel permit in a victim sensitive case.

The receiving state shall respond to requests for offender information from the sending state no later than the 5th business day following the request.

Victim Comment Confidentiality

Rule 3.108(b)

70

Victim Rules

- Victim's Right to be Heard (Rule 3.108-1)
 - Sending state's compact office can be contacted.
 - Victim's have 10 business days to respond to sending state's notification to give input.
 - Receiving state shall continue to investigate.
- Victim Comment Confidentiality

Rule 3.108

Supervision Rule 4.101

- Receiving state shall supervise an interstate offender consistent with the supervision of other similar offenders sentenced in the receiving state.
- Duration of supervision is determined by the sending state.



Effect of Special Conditions or Requirements

- For purposes of revocation or other punitive action against an offender, the probation or paroling authority of a sending state shall give the same effect to a violation of special conditions or requirement imposed by a receiving state as if those conditions or requirement had been imposed by the sending state.
- Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state.
- For purposes of this rule, the original plan of supervision shall include, but not be limited to, any court orders setting forth the terms and conditions of probation, any orders incorporation a plan of supervision by reference, or any orders or directives of the paroling or probation authority.

Authority to Arrest and Detain

- An offender in violation of the terms and conditions of supervision may be taken into custody or continued in custody by the receiving state.
 - *(Only if you have the authority to arrest in-state offenders without a warrant from the Court.)*

Rule 4.109-1

Retaking

Waiver of Extradition

- Prior to an offender transferring or leaving the state under the compact, they shall sign a waiver of extradition.
- States party to this compact waive all legal requirements to extradition of offenders who are fugitives from justice.

Rule 3.109

Retaking

- Except as required in Rules 5.102,5.103, at its sole discretion, a sending state may retake an offender unless charged with a new criminal offense in receiving state.
- If offender has been charged with new offense in receiving state, the offender shall not be retaken:
 - without the consent of receiving state
 - or until charges have been dismissed
 - or offender released to supervision for new offense.

– Rule 5.101



Mandatory Retaking

Rule 5.102 & 5.103

- Upon 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
 - completion of a term of incarceration for that conviction; or
 - placement under supervision for that felony offense.
- Upon 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 non-compliance 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

If offender does not return as ordered, the sending state shall issue a warrant that is effective in all compact member states.

Retaking

- Sending state shall retake an offender within 30 calendar days after the decision to retake or offender has been released from incarceration in the receiving state. (Rule 5.105)
- Officers of the sending state may enter a state where the offender is found and apprehend & retake the offender subject to this compact and due process requirements.
- The sending state shall be required:
 - to establish the authority of the officers
 - and the identity of the offender to be retaken.(Rule 5.107)

Probable Cause Hearings

Morrisey vs. Brewer 408 U.S. 471 (1972)

Gagnon vs. Scarpelli 411 U.S. 778 (1973)

U.S. Supreme Court cases associated with probable cause hearings and probation/parole violations.

Probable Cause Hearing

- **Offenders are entitled to a probable cause hearing in the receiving state:**
 - Close proximity to where the violations occurred
 - An “administrative” hearing – not to determine guilt/innocence
 - Conducted by a “neutral and detached” person
- **Offenders rights at the hearing:**
 - Written notice of the alleged violation(s);
 - Disclosure of non-privileged or non-confidential evidence;
 - The opportunity to be heard in person, present witnesses and evidence;
 - The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

Probable Cause Hearing

Rule 5.108 1/1/2007

- No waiver of a PC Hearing shall be accepted unless accompanied by an admission to one or more significant violations.
- A copy of the conviction of a new felony offense shall be proof that an offender may be retaken by a sending state without the need for a PC Hearing
- A written report of the PC Hearing must be sent to the sending state within 30 days of the hearing.

After the PC Hearing...

- **If probable cause is established,**
 - Receiving state SHALL continue to hold the offender in custody
 - Sending state SHALL notify the receiving state of the decision to retake within 30 calendar days of receipt of the report
 - Sending state SHALL retake offender within 30 calendar days from determination to retake
- **If probable cause is NOT established, the receiving state SHALL:**
 - Continue Supervision
 - Notify the sending state to vacate the warrant and continue supervision upon release if the offender is in custody.
 - Vacate the receiving state's warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

Denial of Bail

An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted bail or other release conditions in any state.

Rule 5.111

Liability

Negligent Supervision

1. Negligent release of an offender on parole after which the offender commits a foreseeable crime.

Johnson vs. State, 553 N.W. 2d 40 (Minnesota, 1996)

Pate vs. Alabama Board of Pardons and Paroles, 409 F. Supp 478 (1976)

Martinez vs. California, 444 U.S. 277 (1980)

Negligent Supervision, cont.

2. Liability arising from the negligent supervision of offenders on parole or probation.

Reynolds vs. State, 471 N.E. 2d 776 (Ohio, 1984)

Doe vs. Arguelles, 716 P.2d 279 (Utah, 1985)

Hansen vs. Scott, 645 N.W. 2d 223 (ND, 2002)

Tuthill case in Maryland

Small vs. McKennan Hosp. 403 N.W. 2d 410 (SD 1987)

Status of Public Employees

- In the public employment context, the issue of immunity and liability are controlled by the types of acts undertaken.
- Most public employees think they are immune from suit by the ancient principle of sovereign immunity. They are not.
- Depending upon the state, sovereign immunity may have only limited application and offer only limited protection.

Types of Public Acts

Generally two categories:

- Discretionary: acts in which the public employee has the freedom to exercise good judgment and care in carrying out an act. These acts are not mandatory in the sense of imposing an affirmative duty.
- Ministerial: acts that a public employee is required by law to fulfill. Most often these acts are defined by “shall”; they impose a mandatory duty without regard to discretion.

Liability

- Generally, public employees are immune from suit for discretionary acts. The failure to exercise discretion as a plaintiff might desire IS NOT grounds for liability. For example, the decision to parole someone is usually a discretionary act. However, the conduct must not violate the principle of “reasonableness” and clearly established statutory or constitutional rights.
- Generally, public employees are not immune from suit for failing to fulfill a ministerial act and may be personally liable. For example, a probation plan that *mandates* a minimum of five meetings a month imposes a ministerial duty.

Judicial Immunity

- Important only in the context of probation; generally no application to the parole setting.
- Judicial immunity provides “judicial officers” with immunity for their JUDICIAL actions.
- NOTE: Not even judges have absolute judicial immunity for non-judicial, administrative actions. Judges may be subject to liability for administrative actions, i.e. employment decisions, and such liability may extend to federal civil rights law.

42 U.S.C. 1983

Judicial Immunity & Probation Officers

- Example, probation officers may have qualified judicial immunity in preparing a pre-sentence investigation report because this is integral to a judge exercising judicial power in a case.
Acevedo v. Pima Cty. Adult Probation, 142 Ariz 319 (1984).
- Whether immunity applies in a particular case must be determined by examining the nature of the function, the class of officials to whom it has been entrusted, and the effect to which exposure to liability would have on the proper exercise of the functions. Officials seeking exemptions from personal liability have the burden of showing that such exemption is justified by overriding considerations of public policy.
Forester v. White, 484 U.S. 219 (1988)
- **Generally**, probation officers are cloaked with qualified (not absolute) judicial immunity; that is, limited to actions that are integral to the judicial process.

42 USC 1983 Liability

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

ICAOS
Interstate Commission for Adult Offender Supervision

Ensuring Public Safety for the 21st Century

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- [Chapter 2 - 'General Provisions'](#) - added 4/9/2007
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- [Chapter 4 - 'Supervision in Receiving State'](#) - updated 3/29/2007
- [Chapter 5 - 'Retaking'](#) - updated 3/29/2007

Requirements: Internet Explorer 6.0 or above, [Adobe Flash Player](#) and either [Windows Media Player](#) or [RealPlayer](#). (Presentation does not work correctly in FireFox or without Adobe Flash Player)

System Checker: See if your [system is ready](#) to play the On Demand Modules.

Questions