



Presented 6/12/2023

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# Crossing State Lines

Interstate Compact for Adult Offender Supervision

*\* Note: "Offender" is an ICAOS-defined term*

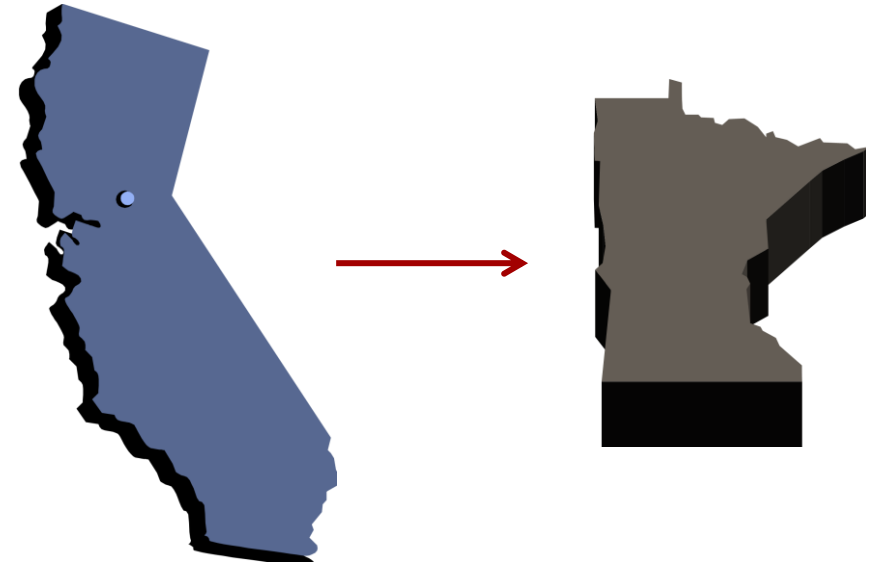


# Interstate Compact for Adult Offender Supervision



ICAOS regulates how supervisees are:

- › Transferred from one state to another
- › Supervised while transferred
- › Returned to a sending state when supervision is not successful





# Purpose of ICAOS

Promote Public Safety

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Ensure effective  
Supervision &  
Rehabilitation.

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Protect the Rights  
of Victims

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Control/Track  
Movement of  
Offenders.

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# Authority to Regulate



There is no “right” of convicted persons to travel across state lines or to serve one’s sentence in a particular state. See, *Jones v. Harris*, 452 U.S. 412 (1981); *Meachum v. Fano*, 427 U.S. 215 (1976)

Convicted persons have 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), *Pelland v. RI*, 317 F. Supp. 2d 26 (2004)

# The Compact Mechanism

## Simple, Versatile & Proven Tool

Provides effective, enforceable means of cooperatively addressing common problems

- › Even if state laws differ
- › Without relinquishing authority to the federal government

# Authority of an Interstate Compact

## Authorized

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The Compact is authorized by US Constitution & Crime Control Act



## Binding

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The Compact is binding upon all state authorities & citizens



## Supersedes

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The Compact rules supersedes conflicting state law



# Compacts Explained

## Advantages

Flexible/Enforceable Means of Cooperation

Uniformity Without Federal Intervention

States Retain Shared Control

## Downsides

Lack of Familiarity of Compacts

Loss of individual state sovereignty, States may not act unilaterally

Delegation of state regulatory authority to interstate entities

# Congressional Consent

## Requirement

Art. I, Sec. 10 of the 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

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)

Places responsibility for interpretation and enforcement in the federal courts and finally the U.S. Supreme Court.

All courts must give effect to a compact even to the extent that state law (constitutional or statutory) must yield to its terms and conditions.

*WMATA v. One Parcel of Land*, 706 F.2d 1312 (4<sup>th</sup> Cir. 1983)



# Interstate Compact Legislation

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Courts, Parole Boards, Community Corrections & Other Executive Agencies:

- › Subject to ICAOS Rules
- › Must enforce & effectuate the Compacts

*§53.1-176.1 and §53.1-176.2 (2004)*

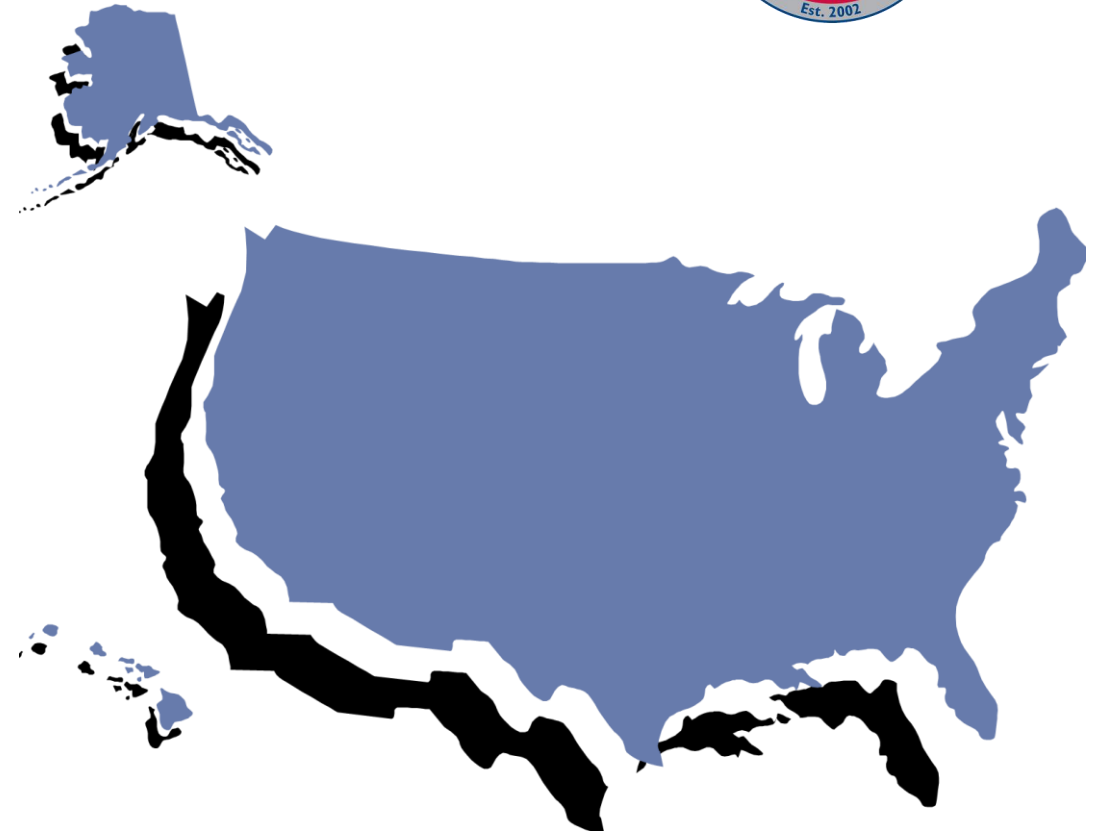


# National Governing Body



## Members of the ICAOS:

- › All 50 states
  - › District of Columbia
  - › US Virgin Islands
  - › Puerto Rico
- 
- Rule Making Authority
  - Compliance Enforcement



# Virginia – An Exporter



› Fourth largest volume of Interstate cases

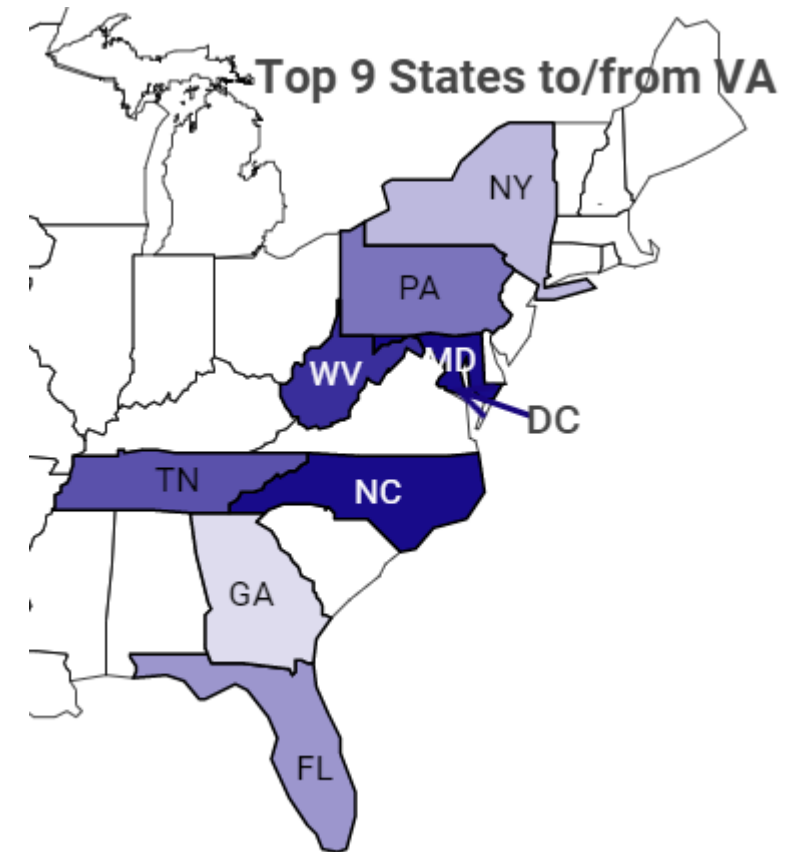
› TX, GA, FL, VA

› 7,766 Interstate cases into & out of VA

*(as of 5/26/2023)*

› 5,320 out: 95% probation, >85% direct from court/jail

› 2,446 in: 79% probation



› Dues: FY2021&FY2023 \$36,674.30    FY2022 \$25,672.01 *(30% reduction)*

# What Triggers the ICAOS?



Pursuant to Rule 2.110, no state may allow a person covered by the Compact to relocate to another state except as provided by the Compact and its rules.

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Therefore, a court cannot order or direct an eligible offender to leave a state and relocate to another state unless such relocation occurs in accordance with the Compact and its rules.

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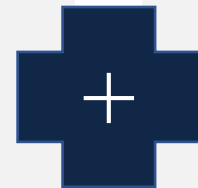
# Key Definitions Determining Eligibility



## Offender

Adult who commits a criminal offense (all felonies & specific misdemeanors)

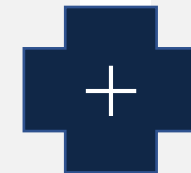
- › Subject to ‘supervision’; and
- › Released to the community under the jurisdiction of:
  - › Courts
  - › Paroling Authorities
  - › Corrections
  - › Other Criminal Justice Agencies



## Supervision

2 Distinct criteria:

- › Oversight exercised by a controlling authority, which includes:
  - › Courts
  - › Paroling Authorities
  - › Corrections
  - › Other Criminal Justice Agencies
- › Required to monitor regulations or conditions, other than monetary



## Relocate

Offender means to remain in another state for **more than 45 consecutive** days in any 12-month period.

# Eligible Offenses: Misdemeanants

Sentence = 1+ years of supervision  
**AND**

Instant Offense includes one or more:

➤ Person incurred direct or threatened physical or psychological harm.

➤ 2<sup>nd</sup> or subsequent conviction of driving while impaired by drugs or alcohol

➤ Use or possession of a firearm involved.

➤ Sex offense requiring registration in the sending state

# What Makes an Offender Eligible for Transfer

1

## Time Remaining on Supervision

The offender has more than 90 calendar days or an indefinite period of supervision remaining

2

## Valid Plan

The Offender has a valid plan of supervision

3

## Compliance

The offender is in substantial compliance with the terms of supervision



# Types of Transfers

## Mandatory

- Resident/Resident Family (88% of Compact Cases)
- Other Mandatory (<1% of Compact Cases)
  - Military Member/Live with Military Family
  - Military Veteran Receiving Treatment
  - Employment Transfers (at direction of employer)

## Discretionary

- All Discretionary (12% of Compact Cases)
- Common Reasons: Treatment/School/New Employment opportunities; other verified means support



# No Travel Prior to Acceptance

## Investigation Period

- › Up to 45 days



## Reporting Instructions Exceptions:

- › Probationer Living in Receiving State at the time of Sentencing
- › Military Members/Veterans Receiving Treatment/Employment Transfer
- › Other verified Emergency Situations (both states must agree)

# Compact Supervision Elements



## Duration

Sentencing Authority in the Sending State determines duration of Supervision



## Conditions

Offender agrees to conditions imposed by BOTH Sending & Receiving States



## Extradition Waiver

Offender applying for transfer must WAIVE rights for extradition

Interstate Commission for Adult Offender Supervision

OFFENDER'S APPLICATION FOR INTERSTATE COMPACT TRANSFER

With a copy here of a consent to return to the sending state when ordered to do so by the sending state where I may be found. This is commonly called the right to return. I have read and understand the terms and conditions of the compact and I have agreed to return to the sending state when ordered to do so either by the sending state or by the receiving state. Therefore, I agree that I will not resist or fight any effort by any state to return me to the sending state. I WAIVE ANY RIGHT I MAY HAVE TO EXTRADITION. I WAIVE THIS RIGHT FREELY AND INTELLIGENTLY.

Offender's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

# Jurisdiction Considerations

## Sending State

- › Retains jurisdiction for revocation of conditional release
- › May require progress reports from the receiving state at anytime
- › Has discretion to return/retake an offender unless required to retake due to documented revocable behavior (initiated by a request of the receiving state)

## Receiving State

- › Has authority to impose additional conditions during supervision term
  - › Including limited terms of incarceration in lieu of revocation
  - › Must be consistent with conditions imposed on similar offenders and must be reported to the sending state
- › May initiate criminal proceedings if offender commits new crime
- › May require retaking when supervision is no longer successful

# Force & Effect of Conditions



The sending state shall give the same force and effect to conditions imposed by a receiving state as if those conditions had been imposed by the sending state.

# Compact Supervision in a Receiving State



Supervision standard consistent with similar offenders sentenced in the Receiving State

Same programs, incentives, sanctions/interventions

~~FAILURE~~  
SUCCESS



*Participation in the ICAOS ensures not only the controlled movement of offenders under community supervision, but also that out-of-state offenders will be given the same resources and supervision provided to similar in-state offenders including the use of incentives, corrective actions, graduated responses and other supervision techniques'*

# Retaking & Warrants

## Retaking Requires a Warrant

Warrants for interstate offenders shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pick-up radius with no bond amount set

### Discretionary Retaking by Sending State

- › Requires notification to authorities in the receiving state
- › May order offender to return in lieu of retaking\*
- › Sending State retains the authority to retake at anytime unless the offender has pending charges in the receiving state

Mandatory Retaking (initiated by a receiving state when corrective actions have been exhausted and documented and supervision is no longer viable)

- › Offender is convicted of new felony or violent misdemeanor;
- › Offender absconded;
- › Offender engaged in revocable behavior\*

# Retaking & Warrants

## Retaking requires a Warrant

Warrants for interstate offenders shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pick-up radius with no bond amount set **within 15 business days**.

### New Pending Felony/Violent Crime Charges in the Receiving State?

- › Offender not available for retaking, unless key stakeholders in both states agree due to public safety concern



### Sending State Responsibilities:

- › Ensure probable cause is established/requested prior to retaking if revocation is possible
- › Retake within 30 days
- › Cost of retaking

### Receiving State Responsibilities:

- › Conduct hearing/establish probable cause
- › Cost of incarceration pending retaking
- › No bail or other release conditions

# Retaking Considerations

## Common Challenges



## Differences in Supervision

- › States' responses to behavior and path revocation vary across jurisdictions
- › Recognizing another state's documentation

## Stakeholder Involvement is Key

- › Ensure sanctions are exhausted before requiring retaking
  - › Actions and documentation must demonstrate noncompliance meets grounds for revocation in receiving state
  - › If offender is retaken, it intends that the sending state will revoke supervision
- › Ensure compliance: warrants, timeframes, costs
- › New pending charges = Offender not available for retaking (*unless key stakeholders in both states agree due to public safety concerns*)



# Implications of Non-Compliance

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It is incumbent upon prosecutors, judges and other state officials to understand the requirements of the Compact and its rules, as well as the consequences of non-compliance.

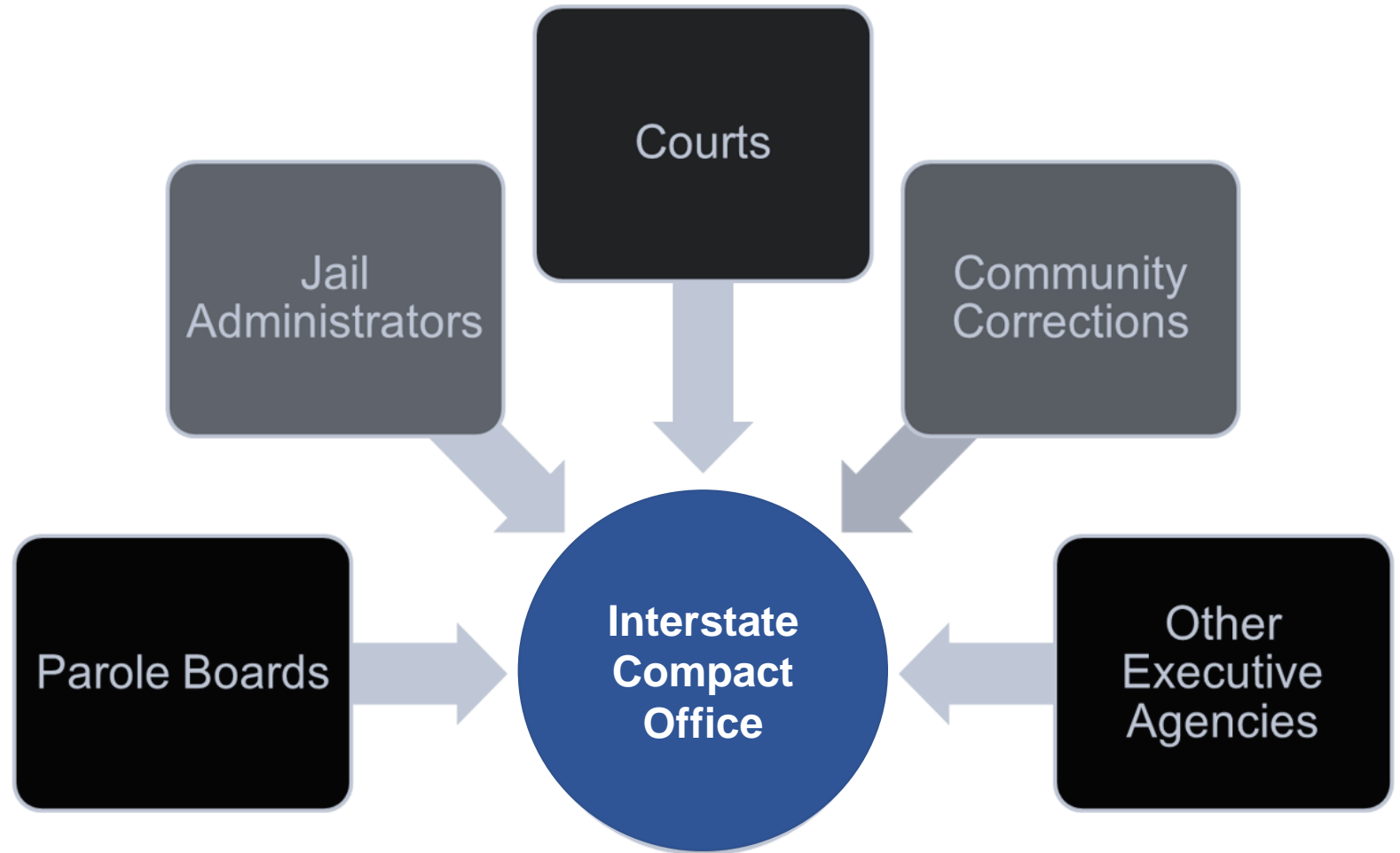
Failure of state judicial or executive branch officials to comply with the Compact and its rules results in the state defaulting on its obligations under the Compact and could lead the Commission to take corrective or punitive action, including suit in federal court for injunctive relief.

# Compliance: Monitoring & Enforcement

- The Commission monitors compliance with the interstate compact and its rules and intervenes to address noncompliance.
- ICAOS conducts annual audits to ensure states' compliance with the Compact and its rules.
- ICAOS resolves state-filed complaints and assists with informal dispute resolution.
- The ICAOS has resolved more than 65 state-filed complaints since 2005.

# Interstate Compact Offices

- Administers the Compact
- Point of contact for case-specific questions
- Conducts training
- Resolves issues with other states
- Ensures rule compliance
- Develops & recommends in-state ISC operating procedures to State Council



ICAOS Directory <https://www.interstatecompact.org/regions-states>

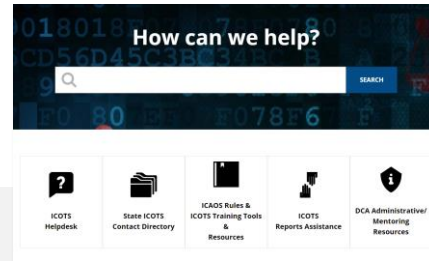
# ICAOS Resources: [www.interstatecompact.org](http://www.interstatecompact.org)



## Compact Online Reference Encyclopedia

A cross-referenced guide on all ICAOS white papers, advisory opinions, training modules, rules, PC Hearing Officer Guide and the bench book.

<https://interstatecompact.org/core-search>



## Training Support

All of the Commission's training material, resources and on-demand modules in one convenient location.

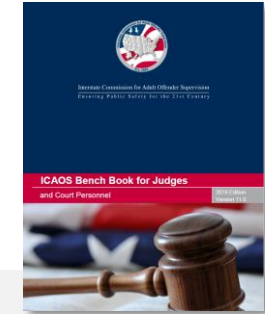
<https://interstatecompact.org/user/login?destination=/litmos-api>



## Interstate Compact Offender Tracking System

The Commission's national tracking system that administers the transfers for all compact offenders.

<https://interstatecompact.org/user/login?destination=/zendesk-api>



## ICAOS Bench Book for Judges and Courts

The Commission's judicial reference tool to assist judges and court personnel on the Compact.

<https://interstatecompact.org/bench-book>

# Legal Resources

## Right to Transfer

- › [Bench Book: General Principals](#)
- › [Rule 2.110](#)

## Eligibility

- › [Bench Book: Eligibility Criteria](#)
- › [Rules 3.101, 3.101-1 & 3.101-2](#)

## Warrants/Retaking

- › [Bench Book: Chapter 4](#)
- › [Rules Chapter 5](#)
- › [Warrant Definition](#)

## Federal Lawsuits

- › [Compact Enforcement](#)

## Liability

- › [Bench Book: Chapter 5](#)
- › [Whitepapers 2011 & 2013](#)

## PC Hearing

- › [Hearing Officer's Guide](#)
- › [OnDemand Training](#)

# Contact Us

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## Emails

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## Phones

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(804) 807-4315 Ms. Lohman



## Website

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[www.interstatecompact.org](http://www.interstatecompact.org)



# Questions

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Interstate Compacts for Adult Offender Supervision



# Thank You

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