

## Brief ICOTS Eligibility Discussion

Information for attorneys who have defendants who reside or will soon reside in another state

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## Who Can Transfer?

• **Eligible Offenders:**

- ALL Felons
- Certain Misdemeanants (*Rule 2.105*)
- Deferred sentences (*Rule 2.106*)
  - *Is there a finding of guilt?*
  - *Has a plea been entered?*
- "Unsupervised" Offenders requiring monitoring

• **Non-eligible Offenders:**

- Certain Misdemeanants (*Rule 2.105*)
- Those on work-release (*Rule 2.107*)
- or released under furlough (*Rule 2.107*)
- or on a pre-parole program (*Rule 2.107*)
- Those on a Pre-Trial Intervention Program
- or offenders released on bail

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## Eligible Misdemeanants (per Rule 2.105)

Sentence = 1 year or more of supervision  
Instant Offense includes one or more:

1. An offense in which a person incurred direct or threatened physical or psychological harm;
2. An offense that involves the use or possession of a firearm;
3. A second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;
4. A sexual offense requiring registration in the sending state

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## Transfer Fee

- A sending state may impose an application fee for each transfer application.
- McLean County charges a \$125 non-refundable transfer fee be paid to the McLean County Circuit Clerk's Office before a transfer can be initiated.

Rule 4.107

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## 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

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## Mandatory Transfer Requirements

Decision to transfer is solely at the discretion of the sending state. An Offender shall be eligible and the receiving state shall accept transfer, if the offender:

- Has more than 90 days of supervision remaining; and
- Has a valid plan of supervision; and
- Is in substantial compliance in the sending state; and
- Is a Resident of the Receiving State; or
- (1) has resident family in receiving state who are willing to assist and have the ability to assist. and,  
(2) can obtain employment or has means of support

Rule 3.101

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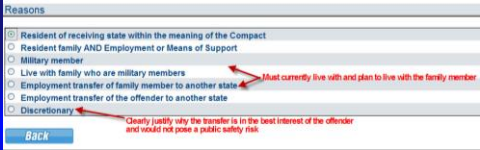
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### Reasons & Justification for Mandatory Transfers



- **Resident:** continuously inhabited at least one year prior to offense
- **Resident Family:** Parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent: has resided in receiving state for at least 180 days and indicates willingness and ability to assist in plan of supervision.
- **Employment Transfer:** At the direction of employer as a condition of maintaining employment

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### Discretionary Transfers

- The receiving state DOES NOT have to accept and there is no way to appeal decision (AZ and FL examples)
- If the Transfer Request is denied, the offender has to stay in Illinois and can not return home (NY and FL example on Sex Offender)
- The receiving state has the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the compact
  - Public Safety
  - Rehabilitation of Offenders

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### Transfer Request - Sex Offender

- A Sex Offender **MUST** remain in the sending state until approved Reporting Instructions are furnished (mandatory) or the Transfer Request is approved (discretionary).
- States have their own rules and regulations regarding residence as well as registration and some offenders will be classified differently and have different residence/registration requirements
- Rule 3.103-3

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## Retaking of an Offender

- Means the act of the sending state physically removing an offender or causing an offender to be removed from a receiving state.
- Retaking requires a warrant & detainer
  - Warrant means:
    - Written order commanding law enforcement to arrest an offender
    - SHALL be entered in the NCIC Wanted Person File with a nationwide pick-up radius
- No bail or other release conditions

Rule 5.101

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### Mandatory Retaking

Rules 5.102, 5.103, 5.103-1, 5.103-2

- Upon the request of the receiving state, the sending state shall issue a warrant and retake:
  - upon conviction of a new felony offense
  - upon conviction of a new violent crime
  - upon notice a "violent offender" has committed 1 significant violation
  - upon notice the offender has committed 3 significant violations. Note: According to AOIC, a significant violation is any behavior that would result in revocation proceedings being filed in the receiving state
  - upon receipt of an absconder violation report and case closure notice
  - Non-violent offenders subject to retaking for significant violations may be ordered to return in lieu of retaking

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## "Violent Offender" and "Violent Crime" Definitions

- "Violent Offender" means an offender under supervision for a violent crime committed in the sending state.
- "Violent Crime" means:
  1. Unlawful exertion of physical force with the intent to cause injury or physical harm; OR
  2. Offense in which a person incurred direct or threatened physical or psychological harm as defined by the criminal code of the state in which the crime occurred; OR
  3. Use of a deadly weapon in the commission of a crime; OR
  4. Sex offense requiring registration

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# Resources

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- ## ICAOS Website
- Rules (PDF & Step-by-Step)
  - By-Laws
  - Benchbook for Judges
  - Advisory Opinions
  - Training Modules (Live Webex-On-Demand)
  - Directory
  - Meeting Announcements

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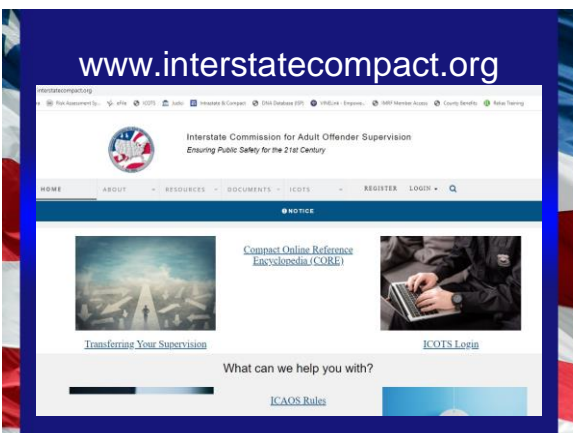
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## Direct link to Bench Book

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

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## Questions?

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## Contact Information

- Clint Wright, Intake Coordinator  
- 309-888-5989;  
clinton.wright@mcleancountyil.gov
- Patti Florez, Intake Officer  
- 309-888-5364;  
patti.florez@mcleancountyil.gov
- Kirk Schweizer, Deputy Director  
- 309-888-5360;  
kirk.schweizer@mcleancountyil.gov

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