



## The Interstate Compact for Adult Offender Supervision and New York Courts: What Judges Need to Know

**NOTE:** For purposes of providing guidance to courts and judges, this document refers solely to probationers and their transfer under the Interstate Compact for Adult Offender Supervision.

The Interstate Commission for Adult Offender Supervision is a quasi-governmental administrative body with broad regulatory authority and currently, all 50 states, Washington D.C., Puerto Rico and the U.S. Virgin Islands are members of the Commission. **The Commission promulgates rules to achieve the goals of the Interstate Compact for Adult Offender Supervision (Compact). Such rules have the force and effect of federal law.**

The Commission works to ensure the lawful interstate transfer of probationers and parolees under community supervision, the timely notification to victims and jurisdictions where Compact offenders are authorized to travel or relocate, and the establishment of a uniform data collection system. **New York State Executive Law 259-mm sets forth the Compact. Therefore, all courts and executive agencies must enforce the Compact and take all necessary actions to effectuate its purposes.**

### Compact Transfer Eligibility

Probationers subject to community supervision who wish to relocate to another state and their offense or case meets the following criteria:

1. <b><u>A felony</u></b> or
2. <b><u>A misdemeanor</u></b> where the sentence is one year or more of supervision <u>and</u> the instant offense includes one or more of the following: <ul style="list-style-type: none"> <li>• A person incurred direct or threatened physical or psychological harm.</li> <li>• A second or subsequent conviction of driving while impaired by drugs or alcohol.</li> <li>• Use or possession of a firearm.</li> <li>• Sexual offense requiring registration in the sending state.</li> </ul>
3. <b><u>Deferred Sentences (Rule 2.106):</u></b>  If criteria (1) or (2) above are met and there is a finding of guilt or a plea has been entered, and the offender has given up the right to trial. Interim Probation Supervision cases are considered a deferred sentence and are eligible for transfer if they meet the criteria.

**NOTE:** No state shall permit a probationer, who is eligible for transfer under the Compact, to relocate to another state except as provided by the Compact and its rules. Relocate means to remain in another state for more than 45 consecutive days in any 12-month period. If a probationer has relocated to another state outside the Compact, the sending state **MUST** order his/her return. If the probationer fails to return, the sending state must issue an interstate warrant with a nationwide pick-up radius.

### Compact Eligibility - Residency Requirements: ALL Transfers are Solely at Discretion of Sending State

<b>MANDATORY</b> Receiving state <i>MUST</i> accept supervision if:	<b>DISCRETIONARY</b> Receiving state has discretion to accept or reject supervision if:
<ul style="list-style-type: none"> <li>• More than 90 calendar days of supervision remaining; and</li> <li>• There is a valid 'plan of supervision'; and</li> <li>• In 'Substantial compliance' with terms of supervision; and</li> <li>• Qualifying reason <ul style="list-style-type: none"> <li>▪ Resident of receiving state</li> <li>▪ Resident family in receiving state and means of support</li> <li>▪ Military member or living with family who is military member, employment transfer or living with family member whose employment has transferred or veteran referred for medical and/or mental health services in another state.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Offenders is not eligible for mandatory transfer</li> <li>• Sending state must justify reason for request to relocate, and/or why it is necessary for the offender to be supervised in the receiving state</li> </ul>

## Probationers Returning Home After Sentencing and Emergency Requests

All eligible probationers, including those under interim probation supervision, who meet eligibility criteria for transfer under the Compact, must be directed to report to the probation department prior to returning or relocating to another state.

The probation department will determine if the probationer is eligible for immediate return to his/her home state. The probation department will ensure that the offender's interstate application is accurately completed and signed, will grant the probationer a travel permit, and request reporting instructions from the receiving state.

Probationers with a sex offense, or those registered for a previous sex offense, are not permitted to immediately return to their home state. The probation department will submit a request for reporting instructions to the receiving state. Upon approval by the receiving state, the probation department will complete and have the interstate application signed.

The ICAOS Rules allow for other emergency requests (e.g.: victim safety, medical reasons, etc.) for reporting instructions to be made. In these instances, travel permits will not be issued until approved reporting instructions are received.

## Out of State Transfer Process

The probationer requests transfer and if the probation department agrees, the probation department will submit a Compact transfer request packet to the receiving state for investigation. The probationer, unless granted reporting instructions, must remain in the sending state pending the official acceptance. The receiving state has 45 calendar days to provide its reply.

The sending state determines the sentence and length of supervision. The receiving state determines the level (degree) of supervision.

Upon acceptance, probationers are subject to any conditions imposed by the receiving state, consistent with conditions imposed on similar offenders sentenced in the receiving state.

The sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on a probationer.

**NOTE:** If the probationer is in the receiving state and the transfer request is rejected, the sending state must order the return of the probationer. If the probationer fails to return, the sending state must issue an interstate warrant with a nationwide pick-up radius.

## Significant Violations and Retaking by the Sending State

Significant violations are those that, if occurring in the receiving state, would result in a request for revocation of supervision. A violation of any condition imposed by the receiving state shall receive the same consideration as a violation of a condition imposed by the sentencing Court.

For significant violations of probation supervision reported by the receiving state, the sentencing court should take one of the following actions:

Receiving State Requests Retake	Mandatory Retake	Sentencing State Court Action
Report of first or second significant violation by the receiving state	<b>NO</b>	Court may take no action, issue warrant or order return
Report of third significant violation by the receiving state	<b>YES</b>	Court must issue warrant or order probationer to return within 15 business days. Court in sending state may request supervising authority in receiving state to conduct probable cause hearing.
Conviction of new felony or new violent crime	<b>YES</b>	Court must issue warrant
Absconder	<b>YES</b>	Court must issue warrant

The Courts in the receiving state have no legal jurisdiction over interstate probation sentences. All matters of violation of probation should be heard solely in the Court of the sending state.

Retaking is the act of the sending state removing a probationer from the receiving state. When retaking requires a warrant (nationwide pick-up radius), the probationer is to be detained and is not eligible for bail, bond or any other form of release. The sending state must retake the offender within 30 calendar days.

**For more information, call the DCJS Interstate Compact Unit: (518) 485-2402**