

FILED

JAN 4 1996

NOEL K. DESSAINT
CLERK SUPREME COURT
BY *JK*

SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF:

**ADMINISTRATIVE REQUIREMENTS
FOR ADULT INTERSTATE COMPACT
PROBATION PROGRAM**

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**ADMINISTRATIVE ORDER
NO. 96- 1**

Congress enacted 4 U.S.C. § 112 authorizing the states to enter compacts for cooperation in the enforcement of criminal laws. Accordingly, all fifty states have adopted the Interstate Compact for the Supervision of Parolees and Probationers (Compact), A.R.S. §§ 31-461 et seq.

As provided in the Compact, the Governor appointed the Director of the Department of Corrections (DOC) to perform the duties of Compact Administrator. The forty-second Legislature (Laws 1995, 1st Sp. Sess., Ch. 1, Sec. 5) authorized transfer of funds appropriated to DOC and responsibility for probation administration and supervision under the Compact to the Administrative Office of the Courts (AOC). Accordingly, the DOC and AOC entered into an intergovernmental agreement transferring the money and responsibility for probation supervision from DOC to the AOC. The intergovernmental agreement authorizes transition of services to begin October 25, 1995 and to be completed by January 1, 1996 with services to continue subject to legislative appropriation.

Based upon Arizona Constitution, Article 6, Sections 3 and 11 and A.R.S. § 12-254(A)(1) and (2), this order provides administrative direction regarding the AOC and Superior Court administration and supervision of probationers transferred to and from Arizona pursuant to the Compact.

A previous Administrative Order (95-60) was issued on November 17, 1995, providing administrative direction in this matter. On December 20, 1995, the Arizona Judicial Council (AJC) met and considered options regarding the manner in which the Adult Interstate Compact Probation Program (ISC) Probable Cause Hearings for ISC probation violators would be conducted. The AJC voted to recommend an administrative hearing process for ISC probation violators to be instituted by the superior court presiding judge of each county. The language contained in Section F., (1) of Administrative Order 95-60 has been revised to reflect the council's recommendation, and is contained in Section E. (1) of this administrative order.

IT IS ORDERED that this administrative order rescinds and replaces, nunc pro tunc, Administrative Order 95-60.

A. Administration

1) The AOC shall only administer ISC probationers under the Compact. Parolees, community supervision releasees or other types of institutional releasees will be supervised by DOC.

2) The Administrative Director of the AOC shall establish policies and procedures for ISC. These policies and procedures may include the establishment of financial and program or case management reports/forms necessary for the administration and operation of ISC. The AOC Deputy Compact Administrator shall administer ISC probation and inspect, audit, or have audited, the financial and case records of Adult Probation Departments pertaining to ISC.

3) The AOC Deputy Compact Administrator shall promote public safety in performing the following duties:

- a) Execute and interpret all applicable Compact laws, rules, policies and procedures;
- b) Contact other compact or deputy compact administrators, and the Parole and Probation Compact Administrators' Association as needed for the proper oversight of ISC probation case investigations, transfers, and returns;
- c) Coordinate and resolve state Compact issues or concerns;
- d) Inform and assist the courts, adult probation departments, criminal justice system and, as permitted by law, rule and/or order, public concerning any facet of ISC probation;
- e) Manage and maintain the ISC probation database for statistical and operational reports;
- f) Timely disburse appropriated funds to the adult probation departments of the superior court in proportion to the caseload of each department and in accordance with the AOC financial policies and procedures.

4) The adult probation departments of the superior court shall investigate, supervise, and, as deemed necessary, pursue return or revocation of probation of ISC probationers.

B. *Eligibility, Investigations and Acceptance Criteria*

1) A request of an Arizona probationer for interstate compact placement in another state may be forwarded to the compact administrator of that state at the discretion of the AOC Deputy Compact Administrator for probation supervision based upon policies and procedures adopted by the AOC. Prior to transfer of an Arizona probationer to another state the Arizona probation department shall obtain a waiver of extradition to Arizona from the probationer.

2) A person placed on probation in another state for a criminal offense committed six months or less after the person began residing in that state shall be accepted for ISC probation in Arizona if the person or the person's family resided in Arizona continuously for at least one (1) year prior to changing residence to the other state unless no effective supervision plan can be developed or the transfer would otherwise compromise public safety. If an effective supervision plan can be developed and public safety would not be compromised, the AOC Deputy Compact Administrator may accept ISC probationers regardless of the residency of the probationer.

3) When a person applies to the AOC for ISC supervision, a home and employment investigation shall be performed within forty-five (45) days of the receipt of the request by the adult probation department of the county in which the applicant seeks to reside.

4) Transfer of supervision of a probationer shall not be accepted until the probationer has waived extradition to the sending state.

5) A probation department shall not accept supervision of probationers who reside in another country or state except as authorized in this order.

C. Supervision Process, Length and Termination

1) A probationer accepted for adult probation supervision in Arizona shall be required, as a condition of remaining in Arizona, to comply with the sending state's terms and conditions of probation. The ISC probationer will also be required to adhere to the terms and conditions established by an Arizona adult probation department and the superior court.

2) A probationer transferred to Arizona shall be supervised in accordance with Arizona laws, rules, policies and procedures including the operational procedures developed by the supervising adult probation department pursuant to A.R.S. § 12-254(A)(1) and (2).

3) The length of adult probation supervision for each ISC probationer transferred to Arizona shall *not* be modified, extended or terminated early except as authorized by the appropriate jurisdiction of the sending state.

D. Warrants, Arrests and Release

1) Probation and surveillance officers may perform warrantless arrests and searches of ISC probationers as peace officers in accordance with Arizona law, court rules and probation department procedures.

2) Any arrest or search warrants involving ISC probationers shall be issued by the court pursuant to Rule 3, Rules of Criminal Procedure, and A.R.S. § 13-901(C).

3) The court or adult probation department may seek the assistance of appropriate law enforcement agencies for the arrest and search of any alleged ISC probation violator.

4) The court or adult probation department may place detainers or holds on ISC probation violators arrested for a new offense according to applicable law.

5) Pending a probable cause hearing pursuant to this section, the appropriate officers of this state may take custody of and detain an ISC probationer for a period not to exceed fifteen (15) days prior to the hearing. If it appears to the court that retaking or reincarceration is likely to follow, the court may order that a probationer be held in custody for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

6) An ISC probationer arrested for an alleged probation violation shall be presumed to be a flight risk and held without bond unless the court determines release is appropriate pursuant to Rule 7, Rules of Criminal Procedure.

E. Violations and Probable Cause Hearings

1) An ISC probationer who allegedly violates probation terms and conditions shall be entitled to an administrative hearing to determine whether there is probable cause to believe that a violation has been committed that may lead to revocation of probation. These hearings will be conducted in accordance with A.R.S. §§ 31-462 through 31-464. The superior court presiding judge in each county shall appoint a neutral hearing officer(s) who may be either a judicial or non-judicial officer(s). This hearing may be waived by the probationer.

2) The probation department shall notify the AOC Deputy Compact Administrator, and sending state whenever, in their view, consideration should be given to retaking or reincarceration of the probationer for an alleged probation violation.

3) The AOC Deputy Compact Administrator or an adult probation department shall, as soon as practical following termination of any probable cause hearing, report the results of the hearing to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the probationer by the sending state.

F. Retaking and Extradition

1) Arizona probation officials shall cooperate with properly credentialed officials of the sending state who enter Arizona to return an ISC probationer to the sending state. Arizona authorities may not prevent the retaking of an ISC probationer unless an Arizona criminal charge is pending against the probationer. No action by probation staff or the court is required to authorize a sending state to retake an ISC probationer when the probationer waived extradition rights before transfer to Arizona. Arizona waived extradition requirements by adopting the interstate compact. A.R.S. § 31-461(3).

2) An ISC probationer found in violation of probation following an ISC probable cause hearing may be retaken by a duly accredited officer based upon prior waiver of extradition in accordance with A.R.S. § 31-461(3) and the operational procedures developed by the AOC and adult probation departments of the superior court.

3) Following reasonable notice, Arizona peace officers may enter any state supervising an Arizona probationer under the compact to return the probationer to Arizona without any proceedings in that state unless a criminal charge is pending against the probationer or Arizona officials failed to secure an extradition waiver.

G. Fees

1) In accordance with the A.R.S. § 31-466(A) probation departments shall require a person supervised in this state pursuant to this article, as a condition of probation, to pay a monthly supervision fee of not less than \$30 unless, after determining the inability of the person to pay the fee, the court requires payment of a lesser amount.

2) In accordance with A.R.S. § 31-466(B) the monies collected pursuant to A.R.S. § 31-466(A) shall be forwarded to the state treasurer for deposit in the Victim Assistance Fund established pursuant to A.R.S. § 41-2408.

Dated this 2nd day of January, 1996, to be effective October 25, 1995, nunc pro tunc.

STANLEY G. FELDMAN
Chief Justice