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The Interstate Compact for Adult Offender Supervision: Parolee and Probationer Supervision Enters the Twenty-First Century

James G. Gentry

Code Sections Affected

Penal Code §§ 11180, 11181 (new).
SB 2023 (Lewis); 2000 STAT. Ch. 658

I. INTRODUCTION

Imagine that Ms. Jones is a stalking victim.¹ Her stalker was recently imprisoned in Northern California. Still fearful, an instinct from deep within her tells her to flee, to move away, and to put the traumatic events of this crime behind her. She has family in Georgia, and is ready to start her life over. Ms. Jones is informed by the local District Attorney's Stalking Victims Unit that there are a number of victims' rights organizations, both public and private, where she can receive counseling and help from others who are all too familiar with the feeling of helplessness she is presently experiencing. Ms. Jones visits a counselor and discusses her desire to move away, and live with family out-of-state. The counselor explains to Ms. Jones that such a move could be a dangerous choice and may put her life in more jeopardy than if she remained in California.²

The reason Ms. Jones is likely to be safer in California is because California law enforcement officials know who she is, who her offender is, and where her offender is.³ When her offender is released on parole, she has a legal right to be notified.⁴ Ms. Jones can request that her offender be paroled more than 35 miles from her residence or place of employment.⁵ Ms. Jones has a relationship with local police agencies and the courts, where she can obtain a restraining order against her offender and where the police, who know the judges, are not likely to question such

1. "Ms. Jones" is a hypothetical person used to illustrate the current problem of tracking offenders throughout the United States through local jurisdictions and numerous law enforcement agencies.

2. Telephone Interview with Carole Taverna, Counselor, Sacramento District Attorney Stalking Victims Unit (May 27, 2000) (notes on file with the *McGeorge Law Review*).

3. *Id.*

4. See CAL. PENAL CODE § 646.92 (West Supp. 2001) (providing that a stalking victim may request that she be given notification when her offender's parole status changes, including when the offender has a change of address, any relevant parole violations, and when the offender is to be released from parole).

5. See CAL. PENAL CODE § 3003(h) (West Supp. 2001) (providing that a victim may request of parole authorities that her offender not be paroled within 35 miles of her place of employment). Existing law already provides that the victim may request that her offender not be paroled within 35 miles of her residence. *Id.*

an order.⁶ Because of these facts, Ms. Jones' counselor recommends she not escape to Georgia, but remain in California where more protections are available.⁷

The reality is that law enforcement agencies from state to state are often inefficient in tracking the movement of parolees and probationers across state lines.⁸ Modern-day ease and frequency of travel have prompted California and eight other states to enact legislation with the assistance of the Council of State Governments (CSG),⁹ creating the Interstate Compact for Adult Offender Supervision (ICAOS).¹⁰ Under the ICAOS, an Interstate Commission¹¹ will design and maintain a national database¹² of parolees and probationers and establish standardized rules under which a state can authorize the sending or receiving of an offender across state lines.¹³

6. *Supra* note 2. A stalking victim may want to discuss with a victim's rights representative whether a restraining order is an appropriate vehicle to prevent stalking behavior. *Id.*

7. *See supra* note 2 (underscoring the importance of a stalking victim building a relationship with local law enforcement authorities).

8. *See* Julia Nienaber & John Mountjoy, *Offenders on the Loose*, STATE GOVERNMENT NEWS, Nov./Dec. 1999, at 20 (stating that, "[w]hen offenders under community supervision cross state lines, there is no effective way to track their movements and ensure they remain under supervision").

9. *See* CAL. PENAL CODE § 11180 (enacted by Chapter 658) (West Supp. 2001) (enacting the ICAOS in California); *see* CSRA § 24-60-2082 (West Supp. 2001) (enacting the ICAOS in Colorado); *see* CT. ST. § 54-133 (amended by 2000 Conn. Legis. Serv. P.A. 00-185 (S.B. 553)(West)); *see* HRS § 353B-1 (West Supp. 2001) (enacting the ICAOS in Hawaii); *see* IC § 20-301 (West Supp. 2001) (enacting the ICAOS in Idaho); *see* KRS § 439.561 (West Supp. 2001) (enacting the ICAOS in Kentucky); *see* VAMS § 589.500 (West Supp. 2001) (enacting the ICAOS in Missouri); *see* 22 OKL. ST. ANN. § 1091 (West Supp. 2001) (enacting the ICAOS in Oklahoma); *see* 28 VSAT 22 § 1351 (West Supp. 2001) (enacting the ICAOS in Vermont); *see also* FAQ about CSG, available at <http://www.statesnews.org/clip/policy/ISC2.htm> (last visited Nov. 17, 2000) [hereinafter *FAQ about CSG*] (noting that those states that have enacted the Interstate Compact for Adult Offender Supervision (ICAOS) implementing language as of November 1, 2000, are California, Colorado, Connecticut, Hawaii, Idaho, Kentucky, Missouri, Oklahoma, and Vermont). Washington has enacted a bill which establishes a task force to examine the ICAOS and make recommendations on its adoption by January 1, 2001. *Id.* *See Interstate Compact for Adult Offender Supervision: State-by-State Status*, available at <http://www.statesnews.org/aboutcsg/csgfaq.html> (last visited Sept. 29, 2000) (explaining that the Council of State Governments operates to serve as a source of information for legislative, executive, and judicial branches of state governments). CSG provides recommendations on state policy and serves as a communications conduit through which state governments can seek answers to questions already broached by other states. *Id.*

10. CAL. PENAL CODE § 11180 (enacted by Chapter 658).

11. *See id.* (establishing, at Article III, the Compact Commission, which is alternatively called the Interstate Commission throughout Chapter 658 and this article).

12. *Interstate Compact for Adult Offender Supervision: Talking Points*, available at <http://www.statesnews.org/clip/policy/Legislative%20Talking%20Points.PDF> (last visited June 6, 2000) [hereinafter *Talking Points*].

13. *See* CAL. PENAL CODE § 11180 (enacted by Chapter 658) (setting forth the powers and duties of the Interstate Commission at Article V).

II. EXISTING LAW

There are currently more than 200 interstate compacts in the United States.¹⁴ California is a member of 26 national and regional interstate compacts.¹⁵ One of these is the Interstate Compact for the Supervision of Parolees and Probationers,¹⁶ first enacted in 1937.¹⁷ The compact is roughly two pages of code¹⁸ and costs states about \$400 per year to participate.¹⁹ The compact is the only state-to-state body of law governing the movement of probationers and parolees across state lines.²⁰ In the years since the compact was first enacted, the ease and frequency of interstate travel has greatly outpaced the scope of the compact's managerial capacity.²¹ The compact's enabling language contains no provision for staff²² and provides no uniform procedure by which states are to manage the movement of parolees and probationers across state lines.²³

While the right to move freely throughout the United States is established as a fundamental right²⁴ as determined by the United States Supreme Court, a parolee²⁵ or probationer²⁶ who is continuing a sentence for committing a misdemeanor or felony, is technically still subject to the supervision and control of the sentencing county while on probation or parole.²⁷ Therefore, an offender has no Constitutional

14. *Talking Points*, *supra* note 12.

15. See William Kevin Voit and Gary Nitting, eds., *Interstate Compacts & Agencies: 1998*, available at <http://www.ssl.csg.org/compactlaws/master98.pdf> (last visited Aug. 1, 2000) (noting at pages 136-37 the twenty-six interstate compacts to which California is a party).

16. See CAL. PENAL CODE § 11175 (West 2000) (providing that this interstate compact may be cited as the Uniform Act for Out-of-State Probationer or Parolee Supervision).

17. See *Talking Points*, *supra* note 12, (indicating that the Interstate Compact for the Supervision of Probationers and Parolees has been unchanged since it was first enacted in 1937).

18. CAL. PENAL CODE §§ 11175-11179.

19. *Talking Points*, *supra* note 12.

20. *Id.*

21. Nienaber & Mountjoy, *supra* note 8, at 20.

22. CAL. PENAL CODE §§ 11175-11179; Nienaber & Mountjoy, *supra* note 8, at 21.

23. See Nienaber & Mountjoy, *supra* note 8, at 21 (indicating that within the more than 860 separate parole and probation agencies nationwide, there are around 3,285 local parole and probation offices which oversee the movements of parolees and probationers across state lines).

24. See *Shapiro v. Thompson*, 394 U.S. 618, 629 (stating that "the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement").

25. See CAL. PENAL CODE § 3074 (providing that "[i]t is in the interest of public safety for a county to provide for the supervision of parolees . . . necessary to assist parolees in the transition between imprisonment and discharge"); see also CAL. PENAL CODE § 3081(a) (stating that "[e]ach county board may retake and imprison any prisoner upon parole granted under the provisions of this article").

26. See CAL. PENAL CODE § 1202.8(a) (West 2000) (indicating that "[p]ersons placed on probation by the court shall be under the supervision of the county probation officer . . ."); see also CAL. PENAL CODE § 1203 (West Supp. 2001) (defining probation as "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer").

27. CAL. PENAL CODE §§ 3081, 1202.8 (West 2000).

right to travel while under the supervision of a county's parole or probation authorities.²⁸

III. CHAPTER 658

A. *The Interstate Commission*

Chapter 658 enacts the Interstate Compact for Adult Offender Supervision (ICAOS).²⁹ The ICAOS is the implementation language that will authorize the standardized regulation of the movement of parolees and probationers across state lines.³⁰ The ICAOS will become binding upon the compacting states once 35 states have enacted enabling language equivalent to Chapter 658, section 1.³¹ Until the thirty-fifth state enacts the ICAOS, the states will continue to operate under the Interstate Compact for the Supervision of Parolees and Probationers.³² Once the ICAOS becomes fully operative, the member states will select a State Commissioner to represent each state at the Interstate Commission.³³ The Interstate Commission will operate similar to a Board of Directors, convening at least once per year.³⁴ The

28. See *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (holding that a parolee enjoys "only conditional liberty properly dependent on observance of special parole restrictions"); *Rizzo v. Terenzi*, 619 F. Supp. 1186, 1189 (1985) (finding that a parolee has no constitutional right to travel and any process by which travel outside the district may be permitted is within the discretion of the probation officer); *Bagley v. Harvey*, 718 F.2d 921, 924 (1983) (affirming that parolee was not denied due process under the Constitution in not being allowed to travel to his state of residence prior to his incarceration, except for purposes of litigation or child visitation); *Paulus v. Fenton*, 443, 476 F. Supp. 473 (M.D.Pa. 1977) (holding that a parolee's right to travel is substantially the same as a prisoner's, and thus not in need of any specific constitutional protection); see also *Berrigan v. Sigler*, 499 F.2d 514, 522 (finding that parolees have a limited right to international travel, but noting that to curtail such travel, the government need only show a legitimate government interest and a sufficient relationship between the prohibited conduct and the objectives of parole). But see *McGregor v. Schmidt*, 358 F. Supp. 1131, 1133-34 (W.D.Wis. 1973) (establishing that parolees do have a constitutionally protected right to travel that can only be infringed upon a showing of a compelling state interest).

29. *Id.* § 11180 (enacted by Chapter 658).

30. *Id.* (providing that the actions taken by the Interstate Commission "are binding upon the compacting states").

31. *Id.*

32. See *Nienaber & Mountjoy*, *supra* note 8 (noting that once the ICAOS becomes effective, states will no longer have the authority under the Interstate Compact for Probationer and Parolee Supervision to send and receive offenders). States not party to the ICAOS will not have the authority to send an offender to or receive an offender from a compacting state). *Id.*; see also CAL. PENAL CODE § 11180 (enacted by Chapter 658) (indicating that the ICAOS attempts to alleviate this problem by providing, at Article IX, Section B, the authority to resolve any issues relating to the transition from the previous compact agreement to the ICAOS and Article XI, which permits non-compacting states to participate in the activities of the Interstate Commission on a non-voting basis).

33. See CAL. PENAL CODE § 11180 (enacted by Chapter 658) (providing the conditions under which a State Council is to be created and the responsibilities that the State Council is to be given).

34. *Id.*

Interstate Commission will create and adopt rules³⁵ and establish by-laws³⁶ governing all member states' activities regarding the transfer of parolees and probationers across state lines.³⁷ The rules established by the Interstate Commission will preempt local and state laws; thereby, establishing uniformity throughout all member states.³⁸ The Interstate Commission will then oversee and coordinate the interstate movement of offenders subject to the rules established by the Interstate Commission.³⁹

The Interstate Commission will establish and maintain an office and personnel sufficient to accomplish its assigned tasks.⁴⁰ One of the first items of concern for the Commission staff will be the development and management of a national database of parolees and probationers.⁴¹

The Interstate Commission is authorized to develop rules that will "have the force and effect of statutory law" and will "be binding in the compacting states to the extent and in the manner provided in this compact,"⁴² and that will "effectively and efficiently achieve the purposes of the Compact."⁴³ Even though there is an existing set of rules under the 1937 Compact,⁴⁴ the Interstate Commission will draft a set of new rules that will carry the weight of statutory law in each of the compacting states.⁴⁵ To overturn a rule, a majority of compacting state legislatures must reject the rule through a legislative measure; thereby, repealing the rule's effect in all compacting states.⁴⁶

B. *The California Council*

In addition to establishing the enabling language for the creation of the Interstate Commission, Chapter 658 includes a section that creates the California Council for Adult Offender Supervision.⁴⁷ The Council is tasked primarily with selecting

35. *See id.* (providing that "[t]he Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact").

36. *See id.* (providing that "[t]he Interstate Commission shall . . . adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact").

37. *Id.*; *FAQ about CSG*, *supra* note 9.

38. CAL. PENAL CODE § 11180 (enacted by Chapter 658).

39. *Id.*; *FAQ about CSG*, *supra* note 9.

40. CAL. PENAL CODE § 11180 (enacted by Chapter 658)

41. *Talking Points*, *supra* note 12.

42. CAL. PENAL CODE § 11180 (enacted by Chapter 658) (establishing the scope of the Commission's authority).

43. *See id.* (providing the Commission's rulemaking functions).

44. *Id.* §§ 11175-11179; *see Interstate Compact for Adult Offender Supervision: Rules* (visited on June 6, 2000) [hereinafter *Rules*] (reproducing the rules established under the Interstate Compact for the Supervision of Parolees and Probationers).

45. *See* CAL. PENAL CODE § 11180 (enacted by Chapter 658) (providing this authority).

46. *See id.* (providing that "[i]f a majority of the legislatures of the Compacting State rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such Rule shall have no further force and effect in any Compacting State").

47. *Id.*

California's representative to the Interstate Commission,⁴⁸ who is referred to within the language of the Interstate Compact both as the state Commissioner and the Compact Administrator.⁴⁹ This representative is charged with implementing and enforcing the rules promulgated by the Interstate Commission in the role of Compact Administrator,⁵⁰ and with voting as California's representative in the Interstate Commission in the role of Commissioner.⁵¹ Each state must name a Commissioner to participate in Interstate Commission activities.⁵²

The California Council consists of seven members, each serving a two-year term.⁵³ The Governor holds a majority of four appointments, two designated and two open.⁵⁴ The council's members must include representatives from the executive, legislative, and judicial branches of the State government.⁵⁵ The Legislature appoints two members to the council, one to be named by the Senate Committee on Rules, the other to be named by the Speaker of the Assembly.⁵⁶ A California Superior Court Judge is named by the Judicial Council of California to serve as the judiciary's council member.⁵⁷ The two designated Governor's appointees represent the local compact administrators and a victim's rights organization.⁵⁸ The Governor's two open appointments are filled at his discretion.⁵⁹

In addition to selecting the California Commissioner, the Council is to "exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state."⁶⁰ The State Council serves a small but important role in the new structure designed to provide better information to law enforcement agencies nationwide.⁶¹

48. *Id.* § 11181 (enacted by Chapter 658).

49. *See id.* (providing definitions of terms including the representative).

50. *See id.* §§ 11180-11181 (enacted by Chapter 658) (defining and describing the qualification and duties of, at section 11181(b), the "Compact Administrator").

51. *See id.* §§ 11180-11181 (enacted by Chapter 658) (defining and describing the qualification and duties of, at Section 11181(b), the "Commissioner").

52. *See id.* § 11180 (enacted by Chapter 658) (providing for the creation of a State Council).

53. *Id.*

54. *Id.*

55. *Id.* § 11180 (enacted by Chapter 658) (providing for the representation on the State Council).

56. *Id.*

57. *Id.*

58. *Id.* § 11181 (enacted by Chapter 658).

59. *Id.*

60. *Id.* § 11180 (enacted by Chapter 658).

61. *Id.* § 11181 (enacted by Chapter 658).

IV. ANALYSIS AND CASE STUDIES

A. *Analysis: Problems and Solutions*

California has nearly 300,000 adults on probation and parole.⁶² This is second only to Texas, with 425,000.⁶³ Because California has such a high number of parolees and probationers, it stands to gain more than many other states from increased and dependable communication regarding the interstate movement of these individuals.⁶⁴ Furthermore, the purpose of the Compact is to remove some of the uncertainty that currently exists in determining the actual number of parolees and probationers not currently living in the state where they were sentenced.⁶⁵ The CSG estimates that there are around 250,000 offenders at any given time outside of their sentencing state.⁶⁶ While there is much speculation that has gone into the tabulation of this figure,⁶⁷ the CSG has indicated that nobody truly knows how many out-of-state parolees and probationers there currently are in the United States.⁶⁸ By separating out-of-state parolees and probationers into three categories, the need for better communication among the states is revealed.⁶⁹ First, the state Compact Administrators reported to the CSG that there were 115,362 individuals under permanent supervision in states other than the state where they were sentenced.⁷⁰ Second, there are a significant number of parolees and probationers on “travel permits” whose cases are “not officially transferred, even though the parolee or probationer has been authorized to travel to another state for a period of time.”⁷¹ The number of parolees and probationers on travel permits is impossible to tabulate.⁷² The CSG estimates that there are at least as many parolees and probationers in other states on travel permits as there are parolees and probationers permanently

62. Nienaber & Mountjoy, *supra* note 8, at 22.

63. *Id.*

64. *Id.*

65. See CAL. PENAL CODE § 11180 (enacted by Chapter 658) (declaring at Article I the purposes of the ICAOS); *Fourteen Frequently Asked Questions Concerning The Interstate Compact for Adult Offender Supervision available at* <http://www.statesnews.org/clip/policy/faq.pdf> [hereinafter *Questions*] (last visited on June 6, 2000) (copy on file with the *McGeorge Law Review*).

66. Nienaber & Mountjoy, *supra* note 8.

67. See *Questions*, *supra* note 65 (indicating that the figure of 250,000 out-of-state offenders generated by the CSG comes from a survey of state Compact Administrators conducted at the beginning of the new Interstate Compact project, many of whom were unable to indicate with certainty the number of offenders their state has received).

68. *Id.*

69. See *id.* (describing three categories of out-of-state offenders: the permanently transferred offender, the temporary traveler, and the at large offender).

70. *Id.*

71. *Id.*

72. *Id.*

transferred.⁷³ These estimates, however, do not include the third category of out-of-state offenders, those parolees and probationers who are at large in states other than where they were sentenced.⁷⁴ “Nobody will even hazard a guess as to the additional number of convicted adult offenders going to other states outside [the] knowledge of compact authorities.”⁷⁵ A fundamental purpose for the formation of the ICAOS is that the unknown number of parolees and probationers across state lines presently unaccounted for will be tracked⁷⁶ and their location, whether as a permanent transferee or a temporary traveler, will be made available to law enforcement.⁷⁷

The 1937 Compact has acquired the support and membership of all fifty states.⁷⁸ However, the ICAOS is designed to go into effect when 35 states enact the enabling language.⁷⁹ When that happens, the result will be two compact regimes in effect, but no provision for their interaction.⁸⁰ That is, members to the 1937 Compact who have not yet enacted the ICAOS will be unable to participate in the sharing of information through the national database.⁸¹ The 1937 Compact will continue to operate among those states that have not enacted the ICAOS.⁸² This will create, hopefully only for a short time,⁸³ two regimes among two different sets of states for the transfer and supervision of parolees and probationers.⁸⁴

According to the CSG, this eventuality is by design.⁸⁵ The incentive is strong for those states yet to become members of the ICAOS to become members if they are initially denied access to an important public safety tool.⁸⁶ If the situation were otherwise, states would be permitted to benefit from information developed through the national database, but not required to put their own affairs in order. This would put their respective receiving states at a greater risk of admitting offenders not accounted for in the system, not to mention the continued lack of a uniform system

73. See *id.* (indicating that the CSG doubled the number of individuals permanently transferred out-of-state to derive the 250,000 figure based on an assumption that the number of offenders out-of-state on temporary travel permits is roughly equal to the number of offenders permanently transferred at any given time).

74. *Id.*

75. *Id.*

76. *Id.*

77. See CAL. PENAL CODE § 11180 (enacted by Chapter 658) (declaring the purpose of the ICAOS).

78. *Context for Amending the Parole and Probation Interstate Compact*, available at <http://www.nicic.org/inst/compact-bkgnd.htm> [hereinafter *Context*] (last visited June 6, 2000) (copy on file with the *McGeorge Law Review*).

79. See CAL. PENAL CODE § 11180 (enacted by Chapter 658) (providing that the “initial effective date shall be the later of July 1, 2001, or upon enactment into law by the 35th jurisdiction”).

80. *Id.* §§ 11180-11181 (enacted by Chapter 658).

81. Telephone Interview with Rick Masters, Attorney, Council of State Governments (Nov. 16, 2000) (notes on file with the *McGeorge Law Review*).

82. *Id.*

83. *Id.*

84. Compare CAL. PENAL CODE §§ 11175-11179 (West 2000), with CAL. PENAL CODE §§ 11180-11181 (enacted by Chapter 658).

85. *Supra* note 81.

86. *Id.*

for transfer.⁸⁷ With no perfect solution available, the CSG opted to take this approach to encourage the swiftest shift from the 1937 Compact to the ICAOS.⁸⁸

B. Case Studies

The CSG has provided a number of “Case Studies” for states to review in deciding whether to enact the Compact’s implementation language.⁸⁹ The Case Studies illustrate that the strongest recommendation for implementation of the ICAOS is that the new law will provide an up-to-date system for state law enforcement agencies to utilize in tracking parolees and probationers in their state,⁹⁰ which will in turn benefit the public safety.⁹¹

The following examples illustrate current problems which are specifically addressed through the implementation of the ICAOS.⁹² First, the new Interstate Compact provides more complete information to receiving states regarding the special conditions of a parolee’s supervision.⁹³ For instance, if a parolee requests a transfer to another state where he used to live, but the transfer request does not include all the details under which the parolee is to be supervised or any special conditions of parole, the local law enforcement in the receiving state will not have those special conditions readily available.⁹⁴

One such condition may be that the parolee is not to have contact with any known gang members.⁹⁵ After moving back to a state in which the parolee used to live, he moves into an apartment with a number of known gang members.⁹⁶ The local police and even his parole agent do not know that this is in violation of the conditions of his parole.⁹⁷ If the parolee’s sentencing judge determined that the parolee was not to associate with known gang members in order to better insulate him from a lifestyle of crime,⁹⁸ but the system by which he is supervised is not capable of ensuring that such conditions are met,⁹⁹ then this parolee is disserved

87. *Id.*

88. *Id.*

89. *Interstate Compact for Adult Offender Supervision: Case Studies*, available at <http://www.statesnews.org/clip/policy/Case%20Studies%20.pdf> [hereinafter *Case Studies*] (last visited July 13, 2000) (copy on file with the *McGeorge Law Review*).

90. *Id.*; Nienaber & Mountjoy, *supra* note 8, at 22.

91. *Case Studies*, *supra* note 89; Nienaber & Mountjoy, *supra* note 8, at 22.

92. *Case Studies*, *supra* note 89.

93. See CAL. PENAL CODE § 11180 (enacted by Chapter 658) (declaring the purpose of the ICAOS).

94. *Case Studies*, *supra* note 89.

95. *Id.*

96. *Id.*

97. *Id.*

98. See CAL. PENAL CODE § 3000 (West 2000) (stating that it is the intent of the legislature “that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship” and therefore the state is to provide supervision in a manner cognizant of the needs of the public safety to assist in such reintegration).

99. Nienaber & Mountjoy, *supra* note 8, at 21.

by the system designed to assist him in his rehabilitation and reintegration into society.¹⁰⁰ Therefore, the national database created by the Interstate Commission will assist offenders' supervising agencies not only to provide better protection to the public, but to also help offenders maintain their commitment to rehabilitation.

Second, the administrative mechanism and the national database of parolees and probationers to be set up under the Interstate Commission will help to ensure that parolees and probationers transferring from state to state are not overlooked or lost in the shuffle of paperwork.¹⁰¹ The uniform system regulating transfer would maintain constant oversight over those entered into the database; thereby, limiting the likelihood that an individual will go without supervision for any period of time during the process of transferring supervision from one state to another.¹⁰² The nationally-based system for tracking parolees and probationers is important for both law enforcement and victims.¹⁰³ In the hypothetical case of a stalker paroled to another state for work-related reasons, once that stalker is in the other state, the victim and any law enforcement agency in the state where the offender was originally sentenced promptly loses track of him or her.¹⁰⁴ The stalker can request transfers from state to state until he finally requests to be transferred back to the sentencing state where he finds an apartment one mile from his stalking victim's home.¹⁰⁵ Under the existing system, the stalker would likely go unnoticed by local law enforcement until he committed another crime.¹⁰⁶ Under the ICAOS and with the national database of parolees and probationers in place, the stalker's request to return to the sentencing state and the fact that he desires to reside within one mile of where his victim lives would be brought to the attention of law enforcement officials.¹⁰⁷

Recalling the fictional Ms. Jones, she was advised not to move out-of-state because the system of tracking parolees and probationers across state lines can be ineffective in a situation as delicate as hers.¹⁰⁸ However, Ms. Jones must be equally cognizant of the possibility that her stalker can use the system's inherent problems to hide from law enforcement agencies in California should he return to the state.¹⁰⁹ That is, by using the system's procedures for interstate transfer, Ms. Jones' stalker can move from state to state until his legal transfer back to California is permitted without alerting his local parole agent to the fact that his original stalking victim

100. CAL. PENAL CODE § 3000 (West 2000).

101. *Talking Points*, *supra* note 12.

102. *Case Studies*, *supra* note 89.

103. *Talking Points*, *supra* note 12.

104. *Case Studies*, *supra* note 89.

105. See CAL. PENAL CODE § 3003(h) (West 2000) (stating that a stalker living less than 35 miles from his victim may be in violation of California law).

106. *Id.*

107. *Id.*

108. Nienaber & Mountjoy, *supra* note 8, at 21.

109. *Case Studies*, *supra* note 89.

lives in the area of his residence.¹¹⁰ This is but one of a number of other “loopholes” that would leave Ms. Jones in a threatening situation.¹¹¹

Third, there are instances where, with respect to the offender’s best interest, more fluid communication and transfer procedures would help to prevent the worsening of her situation.¹¹² Consider the scenario where a college honors student on summer break is convicted in her home state for underage possession of alcohol.¹¹³ If the co-ed desires to return to her university out-of-state, she may be placed on probation and be required to attend counseling as a condition of her sentence.¹¹⁴ Because she is a misdemeanor, the receiving state has no procedure for her supervision and must reject her request for transfer.¹¹⁵ The co-ed’s sentencing judge is placed in the undesirable position of choosing between denying this honors student the opportunity to return to college in the receiving state, terminating her supervision altogether, or sending her unsupervised to the receiving state.¹¹⁶ The choices are unenviable, but under the rules to be established by the Interstate Commission, the sending state judge could appeal the decision of the receiving state not to accept the co-ed’s transfer application¹¹⁷ because the Interstate Commission will provide for a uniform practice under which both misdemeanants and felons can legally transfer supervision to any member state.¹¹⁸

Fourth, consider a situation where the offender’s interests are in compliance with public policy desires to rehabilitate and reintegrate an offender into society, but are not provided for under the existing compact.¹¹⁹ The following example illustrates the issue of “sending state liability.”¹²⁰ A sending state can, without the receiving state’s authority, permit a parolee or probationer to “travel” to another state.¹²¹ These offenders may or may not be traveling with the knowledge of the receiving state.¹²² When a state permits a parolee or probationer to travel to another state without the receiving state’s knowledge, the sending state can be liable for damage caused by the offender under a tort theory of negligent supervision.¹²³ The CSG estimates that as many as 115,000 parolees and probationers are out-of-state on travel permits.¹²⁴

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Supra* note 81.

119. *Case Studies, supra* note 89.

120. *See supra* note 81 (recounting the CSG’s definition of “sending state liability” to be the risk of tort liability a state assumes when sending a parolee or probationer to another state without giving notice and legally transferring supervision).

121. *Supra* note 81.

122. *Supra* note 81.

123. *Supra* note 81.

124. *Questions, supra* note 65.

In a situation where an offender's only available option is to live with his parents in another state, where she has an offer of employment, the receiving state may reject the transfer request for any number of reasons.¹²⁵ When one of these reasons is cited in the document denying the transfer and the sending state has no opportunity to cure the stated reason for denial, the sending state can authorize the offender to "travel" to the receiving state without a formal transfer.¹²⁶ In so authorizing, the sending state has accepted liability for the individual while in the receiving state under the common law tort theory of negligent supervision.¹²⁷ By establishing a uniform system of transfer and providing a mechanism by which states can maintain strict oversight of parolees and probationers, states participating in the ICAOS will face fewer instances where liability may attach.¹²⁸

With the recent passage of "Aimee's Law,"¹²⁹ which increases states' exposure to liability for sending violent offenders to other states,¹³⁰ states will benefit significantly from the administrative mechanism to be established under the ICAOS.¹³¹ Aimee's Law provides that states may be found liable and face monetary penalties if that state paroled a convicted murderer, rapist, or child molester and that parolee commits murder, rape, or child molestation in another state.¹³² However, any member of the ICAOS in compliance with the rules regarding transfer as set forth by the Commission will likely be able to establish a due diligence defense.¹³³ Therefore, membership in the ICAOS and compliance with its rules for offender transfer not only provides additional public safety and security through its increased tracking ability, standard transfer procedures, and national database, but it also helps to mitigate a state's liability in the unfortunate circumstance that a parolee commits a crime while out-of-state.¹³⁴ This is not to say that membership itself is a mitigating factor or that membership demonstrates due diligence on its face.¹³⁵ However, if a defendant state satisfies all applicable rules established by the Commission under the ICAOS, the burden on a receiving state to show negligent supervision becomes increasingly difficult.¹³⁶ Certainly, membership in the ICAOS will assist in diminishing the number of occasions where a receiving state is unaware of an

125. See *Case Studies*, *supra* note 89 (stating that such reasons may include the failure of the sending state to provide a psychological evaluation of the offender); see *Rules*, *supra* note 44 (providing, at Section 2-111, that a sending state may be required to disclose extraordinary medical or psychological conditions of an offender and that the receiving state is permitted sufficient opportunity to conduct an investigation of "the prospective plan of the individual prior to movement to the receiving state").

126. *Case Studies*, *supra* note 89.

127. *Supra* note 81.

128. *Id.*

129. Aimee's Law, Pub. L. No. 106-386, 114 Stat. 1539.

130. *Id.*

131. *Supra* note 81.

132. Aimee's Law, Pub. L. No. 106-386, 114 Stat. 1539.

133. *Supra* note 81.

134. *Id.*

135. *Id.*

136. *Id.*

incoming offender.¹³⁷ That, by itself, reduces a sending state's exposure to potential tort liability because while the number of offenders in a receiving state will likely not change significantly, the number of such offenders present without the receiving state's knowledge should be significantly reduced.¹³⁸

V. CONCLUSION

With 250,000 parolees and probationers to be supervised out-of-state this year,¹³⁹ a growing public safety concern exists in ensuring that these offenders can be adequately tracked when they leave their sentencing state.¹⁴⁰ The existing law, in effect for more than 60 years, is inadequate to address the modern problems parole and probation agencies face when trying to keep up with the interstate movements of offenders.¹⁴¹ California and nine other states have taken legislative action in passing Chapter 658, the Interstate Compact for Adult Offender Supervision (ICAOS).¹⁴² California's early involvement in the creation of the Interstate Commission, which is to be established as a result of the ICAOS, will encourage other states to enact this legislation, in hopes of achieving the necessary 35 states for the Interstate Commission to become operational.¹⁴³ The two most important activities of the Interstate Commission will be the establishment of rules, which will govern the member states' procedures for transferring parolees and probationers across state lines,¹⁴⁴ and the creation of a national database of parolees and probationers, the center-piece of the ICAOS.¹⁴⁵ With standardized rules in place, states which have uniform procedures for requesting out-of-state supervision, will reduce the likelihood that an offender will be refused a transfer simply because of incompatible systems.¹⁴⁶ With the national database for tracking parolees and probationers, the ICAOS promises to reduce the number of offenders in receiving states without that state's knowledge.¹⁴⁷ However, with new technology and better communication among our law enforcement agencies, the hope is that people like Ms. Jones will be afforded greater protection.

137. *Id.*

138. *Id.*

139. *Questions, supra* note 65.

140. Nienaber & Mountjoy, *supra* note 8, at 21.

141. CAL. PENAL CODE §§ 11175-11179; Nienaber & Mountjoy, *supra* note 8, at 21.

142. *Id.* §§ 11180-11181 (enacted by Chapter 658).

143. *Id.* § 11180 (enacted by Chapter 658).

144. *Id.*

145. *Talking Points, supra* note 12.

146. *Talking Points, supra* note 12; *Questions, supra* note 65.

147. *Talking Points, supra* note 12.