

## **Agenda**

### **PRIVATE PROBATION PROVIDERS**

#### **LICENSING BOARD**

June 27, 2013 - 10:00 a.m.

Room 402

Heber M. Wells Building

160 E. 300 S. Salt Lake City, Utah

*This agenda is subject to change up to 24 hours prior to the meeting.*

#### **ADMINISTRATIVE BUSINESS:**

1. Sign Per Diem
2. Approval of the December 15, 2011 Board Meeting Minutes
3. Welcome Wendell L. Roberts
4. Introduction of April Ellis
5. Nominations for Chair

#### **APPOINTMENTS**

6. 10:05 David J. Gardner, Application Review
7. 10:15 Tamara Lynn Himelright, Application Review
8. 10:25 Jim Ingle, Update on Compact Misdemeanor Offenders

#### **DISCUSSION ITEMS**

9. Continuing Education
10. Pre-Trial Felony Supervision

#### **NEXT SCHEDULED MEETING:**

December 19, 2013

**Note:** In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

# REVISED CHECKLIST FOR PUBLIC MEETINGS

I am, Larry Chatterton, chairperson of the Private Probation Provider Licensing Board.

I would like to call this meeting of the Board to order.

It is now (time) 10:00 am on June 27, 2013.

This meeting is being held in room 402 of the Heber Wells Building  
 in Salt Lake City, Utah.

Notice of this meeting was provided as required under Utah's Open Meeting laws.

In compliance with Utah's Open Meetings laws, this meeting is being recorded in its entirety. The recording will be posted to the Utah Public Notice Website no later than three business days following the meeting.

In compliance with Utah's Open Meeting laws, minutes will also be prepared of this meeting and will be posted to the Utah Public Notice Website no later than three business days after approval.

The following Board members are in attendance:

	YES	NO
<u>Larry Chatterton</u> , Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Wendell Roberts</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Ruth Potkins</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>

The following Board members are absent: None  
 The following individuals representing DOPL and the Department of Commerce are in attendance:

	YES	NO
<u>Mark B. Steinagel</u> , Division Director	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>April Ellis</u> , Bureau Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Yvonne King</u> , Board Secretary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____, Compliance	<input type="checkbox"/>	<input type="checkbox"/>
_____, Compliance	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

We welcome any visitors and interested persons at this time. Please be sure to sign the attendance report for the meeting and identify yourself before speaking.

As a courtesy to everyone participating in this meeting, at this time we ask for all cell phones, pagers, and other electronic devices to be turned off or changed to silent mode.

Board motions and votes will be recorded in the minutes.

Let us now proceed with the agenda.

(End of the Meeting) It is now (time) 11:29 (am / pm), and this meeting is adjourned.

# Guest Sign In Sheet

Board Meeting: Private Probation Provider Board

Date: 6-27-2013

## Please Print

	<u>Name</u>	<u>Phone#</u>	<u>Company/Person Representing</u>
1	Tamara Himmelright	435-251-9292	Utah Alternative Programs
2	Jim Ingle	801-495-7706	Utah Dept. of Corrections
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# Utah Interstate Compact Training



## Stephanie Peyton Tuthill

- ▶ Why the Interstate Commission for Adult Offender Supervision (ICAOS) exists today: simply put, to ensure public safety.
- ▶ Interstate Compacts, such as ICAOS, are born out of necessity. For ICAOS, the necessity is for the 50 states, and three territories (District of Columbia, U.S. Virgin Islands, Puerto Rico) to follow identical guidelines on how to handle the transfer of **supervision** for adult offenders from one state to another. This necessity was brought to the attention of this nation by a tragic death in February 1999.
- ▶ Stephanie Peyton Tuthill is the face of this interstate compact. Peyton, a 24 year old graduate student and resident of Florida, was attending college in Colorado at the time she was murdered by Dante Paige.



## Stephanie Peyton Tuthill

- ▶ Paige served 22 months of a 20-year sentence in Maryland for the violent crime of assault and armed robbery at the time he was released and transferred to Colorado. Paige had no family or other contacts in Colorado but was transferred there to participate in a halfway house program. His transfer to Colorado occurred without any notice to Colorado authorities. Paige walked away from his program before he even began it.
- ▶ On February 24 Peyton had a job interview. She returned to her apartment to find it had been burglarized and that the burglar was still there. It was Paige. Paige then proceeded to rape and murder Peyton Tuthill.
- ▶ The Interstate Commission for Adult Offender Supervision exists to ensure public safety. In doing so, all 50 US states and three territories follow the same rules for transferring supervision of adult offenders from one state to another.

## **Learning Objectives**

Understand the legal foundation of the Interstate Compact for Adult Offender Supervision.

Understand how the compact can impact courts in Utah.

Understand which offenders are subject to the compact.

Understand when warrants are required for offenders who have compacted their supervision to another state.

## **Foundation of Compact**

Compacts are authorized under Article I, Section 10, Clause 3 of the U.S. Constitution and have been utilized in American since colonial times.

Approximately 200 compacts have been formed since the founding of the United States.

On average, each state is a member of 23 compacts.

Compacts are enforceable under the Supremacy Clause and the Contract Clause of the U.S. Constitution.

The Interstate Commission has received the delegated power by the state legislatures to act as an administrative body to create rules and manage the interstate compact.

## **Foundation of Compact - continued**

The compact concept was born out of a need to control offender movement.

It was initially called the Crime Control Act of 1934. This act permitted two or more states to enter into agreements to help one another in the prevention of crime. Title 4 USC § 112

In 1937, the first Interstate Compact for the Supervision of Probationers and Parolees was born.

Sixty years later, in 1998, the National Institute of Corrections Advisory Board directed its staff to revise the compact.

The intent of the compact covers transferring offender supervision, NOT controlling sentencing.

## **Compacts – Pro and Con**

### **Advantages of an interstate Compact include:**

- ▶ Flexibility and enforceable means of cooperation.
- ▶ Interstate uniformity without federal intervention.
- ▶ States give up right to act unilaterally, but retain shared control.
- ▶ Alternative/deterrent to federal intervention and preemption.

### **Disadvantages of an interstate Compact may include:**

- Lengthy and challenging process.
- Lack of familiarity with the mechanism.
- Loss of individual state sovereignty.
- Delegation of state regulatory authority to interstate entities.

## **How is Utah involved in the Interstate Compact?**

Utah Code Annotated 77-28c "Interstate Compact for Adult Offender Supervision" required Utah's entry into the compact (specifically Article XIV)

The compact authorizes the adoption of rules by the Interstate Commission for Adult Offender Supervision (UCA 77-28c-103 Article VIII). These rules carry the weight of federal law (see *Cuyler v. Adams*, 449 U.S. 433, 440 (1981)) and are binding upon all member states and courts (see *Scott v. Virginia*, 676 S.E.2d 343, 346).

The Commission is made up of 1 voting member from all 50 states and 3 U.S. Territories. Rules and amendments are voted on once every two years.

Utah's Commissioner is the Director of Adult Probation & Parole, who is appointed by the Utah Interstate Compact Council.

## Liability and the Interstate Compact

Two types of liability are associated with the compact:

- \*Liability related to offender release or supervision.
- \*Liability of compact member states for violation of the compact and compact rules.

Neither judicial immunity nor qualified immunity generally afforded to prosecutors and other state officials can protect a state from liability to the other member states which arises from violations of the Compact or ICAOS rules.

The State of Utah has bound itself by legislative enactment to comply with the compact and rules which may be enforced by the other member states (*Alabama v. North Carolina*, 560 U.S. \_\_\_, 130 S. Ct. 2295, 176 L.Ed.2<sup>nd</sup> 1070 (June 2010), also *Texas v. New Mexico*, 462 U.S. 554, 564 (1983)).

Eleventh Amendment does not protect states in suits brought by other states (*Kansas v. Colorado*, 533 U.S. 1, 7 (2001)).

## **Compact structure in Utah**

### Utah Interstate Compact Council

This organization meets quarterly and is made up of representatives from the Legislature, CCJJ, Utah District Courts, Salt Lake Public Defenders, District Attorney's Office, County Sheriffs, AP&P, Division of Indian Affairs, UDC Victim Services, Utah Board of Pardons and Parole, and the Attorney General's Office. The Council provides guidance and direction to the Utah Compact Office regarding the operation of the compact in Utah.

### Utah Interstate Compact Office

An office of Adult Probation & Parole in Draper. Handles the day-to-day management of the compact (transferring offenders supervision to and from Utah). All compacts in the state flow through this office.

## WHO has to compact their supervision to another state?

- ▶ Offenders who relocate to another state for 45 consecutive days in any 12 month period. (Rules 1.101 definition of "Relocate" and 2.110 Transfer of offenders under this compact)
- ▶ All Felony cases are required to transfer their supervision to another state through the compact, even if placed on bench or private probation (please see compact definition of *Supervision Rule 1.101*. and Advisory Opinions 4-2010, 3-2005).
- ▶ Misdemeanor cases are only required to transfer their supervision to another state through the compact **if** sentence includes one year or more of supervision, **and** the offense is one of the following: (Rule 2.105)
  - ▶ *-An offense in which a person has incurred direct or threatened physical or psychological harm;*
  - *-An offense that involves the use or possession of a firearm;*
  - *-A second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;*
  - *-A sexual offense that requires the offender to register as a sex offender in the sending state*

## Who does **NOT** have to compact their supervision to another state?

- ▶ Felony or applicable misdemeanor cases do not trigger the compact if the ONLY condition of supervision is fines or restitution. Rule 1.101 definition of "Supervision"
- ▶ Applicable misdemeanor cases sentenced to less than one year of supervision do not trigger the compact. Rule 2.105
- ▶ Cases where there are no conditions of supervision which require reporting or monitoring do not trigger the compact. Rule 1.101 definition of "Supervision"

## Basic Definitions (Rule 1.101)

- ▶ **Offender** means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.
  
- ▶ **Supervision** means the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community.

## Basic Definitions (Rule 1.101)

- ▶ **Violent Offender** means an offender under supervision for a violent crime.
- ▶ **Violent Crime** means
  - any crime involving the unlawful exertion of physical force with the intent to cause injury or physical harm to a person;
  - or an offense in which a person has incurred direct or threatened physical or psychological harm as defined by the criminal code of the state in which the crime occurred;
  - or the use of a deadly weapon in the commission of a crime;
  - or any sex offense requiring registration.

## Basic Definitions (Rule 1.101)

- ▶ **Warrant** means a written order of the court or authorities of a sending or receiving state or other body of competent jurisdiction which is made on behalf of the state, or United States, issued pursuant to statute and/or rule and which commands law enforcement to arrest an offender. The warrant shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pickup radius.
- ▶ **Reporting Instructions** allow the offender to be in the receiving state during the transfer investigation. Rules 3.103, 3.101-3 and 3.101-1
- ▶ **Transfer Request** is the formal request to allow the offender to reside in the receiving state. The receiving state is allowed up to 45 calendar days to perform this investigation. Rule 3.104

## **8 Types of Reporting Instructions (RI's)**

- ▶ Offender living in the receiving state at the time of sentencing. Rule 3.103
- ▶ Sex Offender living in the receiving state at the time of sentencing. Rule 3.101-3
- ▶ Transferred offender returning to sending state. Rule 4.111
- ▶ Offender is a member of the military. Rule 3.101-1
- ▶ Offender lives with a family member who is a member of the military. Rule 3.101-1
- ▶ Offender lives with a family member whose full-time employment has been transferred to another state. Rule 3.101-1
- ▶ Offender's full-time employment has been transferred to another state. Rule 3.101-1
- ▶ Expedited (discretionary). Rule 3.106

## **7 Types of Transfer Requests**

- ▶ Resident of receiving state. Rule 3.101
- ▶ Has resident family in the receiving state. Rule 3.101
- ▶ Offender is a member of the military. Rule 3.101-1
- ▶ Offender lives with a family member who is a member of the military. Rule 3.101-1
- ▶ Offender lives with a family member whose full-time employment has been transferred to another state. Rule 3.101-1
- ▶ Offender's full-time employment has been transferred to another state. Rule 3.101-1
- ▶ Discretionary. Rule 3.101-2

## Warrants – when are they required?

- Absconding (supervising officer must attempt to locate the offender first through home visit, contact with family/collateral contacts, and employment). Rule 5.103-1
- Offender is convicted of a new felony offense in the receiving state. Rule 5.102
- Offender commits three (3) significant violations of their probation/parole while in the receiving state (the violations must be from separate incidents). Significant means something for which the receiving state would revoke supervision on one of its own offenders (under this scenario, the receiving state *may* simply request the offender be ordered to return rather than request a warrant). Rule 5.103
- **Any** offender convicted of a violent crime (misdemeanor or felony) while in the receiving state. Rule 5.103-2
- Violent offender commits a significant violation of their probation/parole while in the receiving state. Rule 5.103-2
- **All compact-related warrants must be no-bail and listed in NCIC with a nationwide pickup radius.** Rule 1.101 "Warrant" and Rule 5.111 Denial of bail or other release conditions to certain offenders.

**If the offender has pending charges, the receiving state (the supervising entity and the state of origin) must consent to the offender's return prior to the warrant being issued.** Rule 5.101(c)

## **Offenders in another state without a compact - Impacts**

▶ **Rule 2.110**

- (a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.
- (b) An offender who is not eligible for transfer under the Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision.
- (c) Upon violation of section (a), the sending state shall direct the offender's return to the sending state within 15 calendar days of receiving such notice. If the offender does not return to the sending state as ordered, the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographic area, no later than 10 calendar days following the offender's failure to appear in the sending state.

## **What happens if a state defaults its obligations under the compact?**

- ▶ Utah Code Annotated 77-28c, Article XII “Withdrawal, Default, Termination and Judicial Enforcement” delegates to the Interstate Commission the authority to levy fines and fees, require remedial training and technical assistance against defaulting states.
- ▶ Two defaulting states (Texas and Pennsylvania) were the subject of enforcement actions from the Interstate Commission in 2007 for allowing offenders to relocate to other states outside of the compact.

## **What do I do if an offender wants to reside in another state?**

- ▶ Please contact the Utah Interstate Compact Office at 801-495-7700 for guidance. Deputy Compact Administrator Jim Ingle 801-495-7706 [jingle@utah.gov](mailto:jingle@utah.gov)
- ▶ Have the offender go through the compact application process so that his/her supervision can be properly transferred to the receiving state.
- ▶ Review rules and other training materials at [www.interstatecompact.org](http://www.interstatecompact.org)

## **Thank you for your participation in this training!**

- ▶ For further information regarding the compact and its applicability in Utah, please visit:
  - 77-28c Utah Code Annotated
  - [www.interstatecompact.org](http://www.interstatecompact.org)
    - Training resources on this site include the Compact Bench Book, Rules, Advisory Opinions, and state contacts.
- ▶ or contact the Utah Interstate Compact Office at 801-495-7700.

**MINUTES**  
**UTAH**  
**PRIVATE PROBATION PROVIDER LICENSING BOARD**  
**MEETING**

**December 15, 2011**

**Room 475 – 4<sup>th</sup> Floor – 10:00 a.m.**  
**Heber Wells Building**  
**Salt Lake City, UT 84111**

**CONVENED: 10:02 a.m.**

**ADJOURNED: 11:35 a.m.**

**Bureau Manager:**

Clyde Ormond

**Board Secretary:**

Yvonne King

**Board Members Present:**

Larry Chatterton, Chairperson  
Ann Taylor,  
Richard Packham  
Ruth Potkins

**Board Members Absent:**

Sylvester Daniels

**Guests:**

Wendy Colton, Probationer  
John Washington, Probationer  
Janiel Wirth, Application Review

**DOPL Staff Present:**

Debra Troxel, Compliance

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**

Approval of the June 16, 2011 Board Meeting Minutes

Mr. Packham seconded by Ms. Taylor made a motion to approved the June 16, 2011 Board Meeting Minutes. The motion carried unanimously.

**APPOINTMENTS:**

10:15 Compliance

Debra Troxel from compliance reviewed the status of the probationers as follows:

**John Washington:**

Mr. Washington was current regarding employer, therapy, and supervision reports. Mr. Washington was also current on drug testing, however the Board suggested Mr. Washington continue to complete his three year probation.

**Wendy Colton:**

The Compliance Unit suggested an early release from probation for Ms. Colton however after the Board reviewed her drug screens, they had a concern on some of the abnormal and diluted results. Ms. Taylor suggested a hair follicle test may be more accurate. The Board also felt it was too early to consider Ms. Colton for an early release of her probation.

10:30 John Washington

Mr. Washington appeared before the Board for his scheduled appointment. Ms. Taylor performed the interview. It was noted that Mr. Washington was current on employer, therapist and peer reports and was current on all outside counseling. Mr. Washington submitted the required 40 hours of training and his license was renewed. Mr. Washington was also attending a Twelve Step program and stated he was working on steps five, six and seven. Mr. Washington stated that he contacts his sponsor every day, is currently working with the same employer, and all current prescriptions are on file.

Ms. Taylor seconded by Mr. Packham made a motion to not require Mr. Washington to meet before this Board due to Mr. Washington being monitored by the Professional Counselor Board contingent Mr. Washington remains compliant. The motion carried unanimously.

10:45 Wendy Colton

Ms. Colton appeared before the Board for her scheduled appointment. Mr. Chatterton performed the interview.

Ms. Colton stated that she was doing well and had a great support group with the counselors she worked with.

Mr. Chatterton expressed a concern on drug testing results. Ms. Colton stated that she did not realize that some of the tests were abnormal or diluted and had contacted Connie Call about the issue.

Mr. Chatterton suggested monitoring Ms. Colton's probation for another six months and increasing the number of drug tests during that time before making a determination for early release of her probation. The Board also determined that Ms. Colton would not be required to turn in an employer report provided the drug tests were negative.

The Board considers Ms. Colton compliant with her probation.

11:00 Janiel Wirth

Ms. Wirth appeared before the Board for her scheduled appointment. Mr. Ormond reviewed her application. There was a concern on whether Ms. Wirth's education and experience fell under the qualifications for licensure. Ms. Wirth provided documentation of a bachelor's degree with a major in family, consumer, and human development and a minor in sociology. Ms. Wirth also stated she had extensive training in community service and investigative work. The Board felt that her education and experience met the qualifications for licensure.

The Board recommended approving licensure for Ms. Wirth as a Private Probation Provider contingent on Ms. Wirth providing proof of a business license.

## **DISCUSSION ITEMS:**

Legislation

Ms. Taylor stated that legislation is being looked at with respect to the Division of Treatment and Probation. Ms. Taylor stated that the courts are appointing treatment facilities to conduct the probation which includes drug testing however the treatment facilities are not required to adhere to the same guidelines as the private probation provider.

Mr. Ormond stated that the same issue was raised some years ago due to unpopulated areas having limited resources.

Mr. Ormond also raised an issue on locking devices for vehicles with respect to DUI's. Mr. Ormond stated that he spoke to an individual who was inquiring information on the issue. Ms. Taylor noted that this was overseen by the Drivers License Division.

**ADJOURN:**

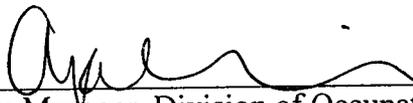
11:35 a.m.

*Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.*

6-27-13  
Date Approved

(ss)   
Chairperson, Private Probation Provider Licensing  
Board

6/27/2013  
Date Approved

(ss)   
Bureau Manager, Division of Occupational &  
Professional Licensing