



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

**March 20, 2023 - 2:00 pm ET
Video Conference**

Members in Attendance:

1. Susan Gagnon (ME), chair
2. Chris Moore (GA), vice-chair
3. Brook Mamizuka (HI)
4. Martha Danner (MD)
5. Roberta Cohen (NM)
6. Robert Maccarone (NY)
7. Amy Vorachek (ND)
8. Katrina Ransom (OH)
9. Timothy Strickland (FL), Ex-Officio
10. Matt Reed (PA), Ex-Officio
11. Brenna Kojis (WI), Ex-Officio
12. Tom Travis, Legal Counsel, Ex-Officio

Members not in Attendance:

None

Guests:

1. Kelly Palmateer (NY)
2. Matt Charton (NY)

Staff:

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Director of Operations & Policy
3. Barno Saturday, Logistics and Administrative Coordinator
4. Mindy Spring, Administrative and Training Coordinator
5. Xavier Donnelly, ICOTS Project Manager
6. Drake Greeott, Web Development Manager

Call to Order

Chair S. Gagnon (ME) called the meeting to order at 2:00 pm ET. Executive Director A. Lippert called the roll. All members were present, a quorum was established.

Chair S. Gagnon (ME) welcomed new Rules Committee members – Commissioner M. Danner (MD) and Commissioner K. Ransom (OH).

Approval of Agenda and Minutes

Commissioner R. Cohen (NM) moved to approve the agenda as presented. Commissioner C. Moore (GA) seconded. Agenda approved without objection.

Commissioner R. Maccarone (NY) moved to approve the minutes from the June 8, 2022, meeting as drafted. Commissioner C. Moore (GA) seconded. Minutes approved as drafted.

Discussion

Rule Proposals: The committee reviewed a proposal to amend Rule 5.108 Probable Cause Hearing in Receiving State proposed by the West Region.

RULE 5.108-PROBABLE CAUSE HEARING IN RECEIVING STATE

(a) An offender subject to retaking that may result in a revocation shall be afforded the opportunity for a probable cause hearing before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.

(b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to 1 or more violations of the conditions of supervision that would result in the pursuance of revocation of supervision in the receiving state and require retaking.

(c) A copy of a judgment of conviction regarding the conviction of a new criminal offense by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for further proceedings.

(d) The offender shall be entitled to the following rights at the probable cause hearing:

1. Written notice of the alleged violation(s);
2. Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);
3. The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);
4. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

(e) The receiving state shall prepare and submit to the sending state a written report within 10 business days of the hearing that identifies the time, date and location of the hearing; lists the parties present at the hearing; and includes a clear and concise summary of the testimony taken and the evidence relied upon in rendering the decision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

(f) If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of conditions of supervision that would result in the pursuance of revocation of supervision, the receiving state ~~shall~~ may hold the offender in custody, and the sending state shall, within 15 business days of receipt of the hearing officer's report, notify the receiving state of the decision to retake or other action to be taken.-

(g) If probable cause is not established, the receiving state shall:

1. Continue supervision if the offender is not in custody.
2. Notify the sending state to vacate the warrant, and continue supervision upon release if the offender is in custody on the sending state's warrant.
3. Vacate the receiving state's warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

Justification:

The “shall” requirement in subsection f. of Rule 5.108 is not a requirement of the Supreme Court decision that Rule 5.108 is based upon and it puts some compact member states in violation of the requirement because they have no statutory authority to hold a person in custody pending the decision from the sending state. Holding an offender in custody following the outcome of a probable cause hearing or signed waiver should be at the discretion of the hearing officer or authority in the receiving state in accordance with local procedures. Revising the verbiage from “shall” to “may” will still allow states the option to hold an offender in custody.

The committee was in support of the proposal.

Commissioner C. Moore (GA) moved to recommend the proposal to amend Rule 5.108 for adoption at the 2023 Annual Business Meeting. Commissioner A. Vorachek (ND) seconded. Motion carried unanimously.

The committee reviewed a proposal to amend Rule 1.101 Supervision proposed by the Midwest Region.

Rule 1.101- Definitions

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.

Justification:

There have been several advisory opinions regarding how this definition is used since its adoption, and there is still some confusion today. The requirement to revisit this definition on a regular basis suggests that it is prudent to revise the definition and provide additional clarification. The proposal clarifies that supervision means an offender is required to report to supervising authorities. This will eliminate confusion over cases meeting the definition if there is no order to report to a supervising authority because of the “or” implying even if the case is non-reporting it must be transferred because of other conditions included on the order. “Or be monitored by” is not defined or outlined in the rules as stated in the 3-2010 Advisory Opinion and is subject to wide interpretation. This definition supports the sentencing decision of the courts and the intent of the courts who do not order regular reporting of offenders. This is supported by the legal analysis provided in 4-2010 that states even a minimum amount of reporting required meets the definition but shows that some level of reporting was required to meet the supervision definition.

The proposed amendment would then more fully align with current bench book language which states:

The Commission does not consider provisions such as “bench” probation to be eligible for transfer under the ICAOS since these provisions are more in line with “go and commit no further offenses.” The supervision intended by the Commission is more formal, with elements similar to traditional notions of regular reporting and supervision requirements. A sentence that essentially states, “go and commit no other offense” and that does not include supervision and reporting

requirements does not create a “supervision” relationship between the offender and the court sufficient to trigger the ICAOS.

The committee was concerned about the proposed language and its effect on individuals who will no longer meet the eligibility criteria for transfer. Committee members were also concerned the defense attorneys would use the new language as a loophole to enable clients to move without going through the Compact.

Commissioner R. Cohen (NM) moved against recommending the proposal to amend Rule 1.101 Supervision for consideration at the 2023 Annual Business Meeting. Commissioner M. Danner (MD) seconded. Motion passed unanimously.

The committee discussed a proposal to amend Rule 5.105 proposed by the Midwest Region.

Rule 5.105 – Time Allowed for Retaking an Offender.

A sending state shall retake an offender within 30 calendar days after notification that the offender has been taken into custody on the sending state’s warrant and the offender is being held solely on the sending state’s warrant. If probable cause is requested, retaking shall occur within 30 calendar days of satisfying Rule 5.108, as applicable.

Justification:

There is often confusion as to when the 30 days allowed for retaking actually begins. Per the rule as it is currently written, it would indicate that the 30 days begins upon apprehension or release of other holds, regardless of when the sending state was actually notified of the availability. It would be more logical to start the 30-day timeframe when the sending state is actually notified, which can sometimes be days after availability as the sending state cannot start to make arrangements for transport until they are aware that they need to. Whether contracting with transport companies or making arrangements within the state, the full 30 days is needed in some cases and just a couple of days could make a big difference in maintaining compliance to the 30-day timeframe if states consider the 30 days to begin upon apprehension/availability rather than notification.

Additionally, many jail/sheriff staff are not aware that Probable Cause Proceedings are occurring and are not aware that a client may not be available even though the only hold is the sending state warrant. Adding language regarding PC proceedings would make entities aware that other circumstances could affect availability. This would alleviate the issues of attorneys/judges/sheriff staff incorrectly interpreting this rule and potentially releasing a client because the client wasn’t picked up within the 30-day window as they believed it to be.

The committee was in support of the intent of the proposal and that the rule required clarification. The committee agreed that more discussion should occur before proceeding with the proposal. The committee noted concerns with the term *notification* as it was not readily defined and could have different meaning in different states. Retaking situations involve multiple agencies and occasionally, multiple states and it would be difficult to identify a single action what a notification is. Additionally, the proposed language was not necessary as the current language covers the cases in which the probable cause have been established.

Commissioner C. Moore (GA) moved against recommending the proposal to amend Rule 5.105 for consideration at the 2023 Annual Business Meeting. Commissioner M. Danner (MD). Motion passed unanimously.

The committee reviewed a proposal to amend Rule 5.108 proposed by the Midwest Region. The committee agreed with the intent of the proposal but decided that it was not ready for the vote at the upcoming Annual Business Meeting. Particularly, if a probable cause is requested, there is no timeframe built in the *applicable rules*. In addition, the Commission needs to consider all *applicable rules* that include a complex web of different timeframes of the Compact operations.

Commissioner R. Maccarone (NY) suggested taking a close look at the timeframes and notifications, and then changing the rule.

Executive Director A. Lippert noted that the national office had not heard of any issues or concerns with this rule that triggered the change.

The committee recommends refining the proposed language.

Rule 5.108 – Probable Cause Hearing in Receiving State

(a) An offender subject to retaking that may result in a revocation shall be afforded the opportunity for a probable cause hearing before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.

(b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to 1 or more violations of the conditions of supervision that would result in the pursuance of revocation of supervision in the receiving state and require retaking.

(c) A copy of a judgment of conviction regarding the conviction of a new criminal offense by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for further proceedings.

(d) The offender shall be entitled to the following rights at the probable cause hearing:

5. Written notice of the alleged violation(s);
6. Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);
7. The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);
8. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

(e) The receiving state shall prepare and submit to the sending state a written report within 10 business days of the hearing that identifies the time, date and location of the hearing; lists the parties present at the hearing; and includes a clear and concise summary of the testimony taken and the evidence relied upon in rendering the decision.

Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

(f) If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of conditions of supervision that would result in the pursuance of revocation of supervision, the receiving state shall hold the offender in custody, and the sending state shall, ~~within 15 business days of receipt of the hearing officer's report, notify the receiving state of the decision to retake or other action to be taken.~~ initiate retaking or return in accordance with applicable rules.

(g) If probable cause is not established, the receiving state shall:

4. Continue supervision if the offender is not in custody.
5. Notify the sending state to vacate the warrant, and continue supervision upon release if the offender is in custody on the sending state's warrant.
6. Vacate the receiving state's warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

Justification:

The language in (f) appears vague as to how the sending state will proceed after receiving the probable cause hearing results. Additionally, that language may have been appropriate prior to the changes to the violation requiring retaking when states were not required to retake until the 3rd violation. Since the changes to the violation requiring retaking rules, this current language no longer seems appropriate. The timeframe of 15 business days now seems excessive in which to respond or act on a case, causing jails to question how long a client can be held until retaking occurs. Additionally, based on the type of violation or under 5.105, the timeframes to act are already established in rules.

Commissioner R. Cohen (NM) moved against recommending the proposal to amend Rule 5.108 for consideration at the 2023 Annual Business Meeting. Commissioner B. Mamizuka (HI) seconded. Motion passed unanimously.

Old Business

South Region Proposal to Amend Rule 5.101-2: Executive Director A. Lippert informed the committee that at the last meeting the committee reviewed and recommended against adoption of two South Region proposals to amend Rule 4.101-1 and 5.101-2. Consequently, the region withdrew both proposals.

DCA T. Strickland (FL) added that the South Region DCAs were charged to vet and bring clarity to the proposal to amend Rule 5.101-2.

Tolling Issue Follow up: Executive Director A. Lippert reminded the committee that last year, the committee created a workgroup to review tolling cases in ICOTS. There was a concern that this feature was not used and regulated properly creating a liability issue. The Commission also discussed tolling at the 2022 Annual Business Meeting.

Commissioner A. Vorachek (ND) noted that it was still a big issue in North Dakota.

DCA M. Reed (PA) noted that Pennsylvania had one of the highest numbers of tolling cases. The Annual Business Meeting's session was very informative and useful, which led to changes in how Pennsylvania using tolling.

The committee agreed that it was training and education issue.

DCA T. Strickland (FL) suggested adding a required *statutory authority* field on a tolling case page in ICOTS.

New Business

Commissioner R. Maccarone (NY) presented a proposal to amend Rule 3.103.

He stated that in recent months, New York State has identified a concerning practice relating to the application of Rule 3.103 - Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding. This has occurred on two occasions between New York and neighboring states. In both instances, New York State granted reporting instructions in the interest of community safety.

Commissioner R. Maccarone (NY) expressed his concern that mandatory reporting instructions were being afforded to individuals who had absconded from supervision and relocated to another state outside of the compact. New York believes it was a misinterpretation of the language in the Rule 3.103 "...after disposition of a violation or revocation proceeding".

Rule 3.103 - Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding.

(a)

1. A request for reporting instructions for an offender who was living in the receiving state at the time of initial sentencing, or for an offender who was legally transferred to the receiving state, was subject to mandatory or discretionary retaking by the sending state and was continued on supervision as a after disposition of the violation or revocation proceeding, shall be submitted by the sending state within 7 business days of the initial sentencing date, disposition of violation, revocation proceeding or release from incarceration to probation supervision. The sending state may grant a 7 business day travel permit to an offender who was living in the receiving state at the time of initial sentencing or disposition of violation or revocation proceeding. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.
2. The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
3. The sending state shall ensure that the offender signs all forms requiring the offender's signature under [Rule 3.107](#) prior to granting a travel permit to the offender. Upon request from the receiving state, the sending state shall transmit all signed forms within 5 business days.
4. The sending state shall transmit a departure notice to the receiving state per [Rule 4.105](#).

5. This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.

(b) The sending state retains supervisory responsibility until the offender's arrival in the receiving state.

(c) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender's arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per [Rule 4.105](#).

(d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.

(e) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender's return to the sending state under the requirements of [Rule 4.111](#).

(f) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state may initiate the offender's return to the sending state under the requirements of [Rule 4.111](#).

Justification

It was clear in 2015, when the Commission voted and approved the addition of the following language, "or after disposition of a violation or revocation proceeding" in Rule 3.103, that the intent was to allow individuals who had lawfully transferred their supervision to a receiving state under the ICAOS rules, to be eligible for MANDATORY reporting instructions after being retaken by the sending state to face revocation proceedings and who were then continued on supervision as the disposition of the violation/revocation proceeding in the sending state. The addition of this language was NOT intended to apply to compact eligible individuals who absconded to other states.

The addition of the proposed language, "[or for an offender who was legally transferred to the receiving state, was subject to mandatory or discretionary retaking by the sending state and was continued on supervision as a](#) disposition of [the](#) violation or revocation proceeding" will clarify and limit the population eligible for the issuance of MANDATORY reporting instructions. This will reinforce the original intent of the language approved by the Commission in 2015, consistent with goals of the Interstate Compact.

Allowing individuals who have relocated to another state outside of the ICAOS rules to qualify for MANDATORY reporting instructions is contradictory to the purposes of the compact – the lawful and orderly transfer of individuals between states. Such a practice places victims at risk and diminishes offender accountability. The proposed language promotes the purposes of the compact and the lawful transfer of individuals from one state to another while enhancing victim and public safety. Importantly, this proposal

would not preclude the sending state from submitting a request for expedited reporting instructions for individuals who relocated to the receiving state outside of the ICAOS Rules. However, expedited reporting instructions would provide the receiving state with the DISCRETION to issue reporting instructions based on the justification provided by the sending state for the individual's immediate relocation to the receiving state.

Lastly, language concerning the travel permit is proposed to read, "7 business days", consistent with other provisions in ICOAS rules with timeframes fewer than 30 days.

Chair S. Gagnon (ME) stated that the Executive Committee had discussion on this matter. The committee recommends giving the proposal the attention it deserves and postponing the vote on the proposal until the Rules Committee had enough time to review and vet it.

Commissioner R. Maccarone (NY) brought up the importance of regular face-to-face committee meetings to collaborate on discussing proposals and drafting new ones as well as considering other committee business.

Executive Director A. Lippert stated that the Rules Committee has funds for in-person meetings in the Commission's budget. She suggested the committee meet after the February 1 deadline to submit rule proposals.

Adjourn

Commissioner C. Moore (GA) moved to adjourn. Chair S. Gagnon (ME) seconded.

The meeting adjourned at 3:27 pm ET.