

2023 Rule Proposal Presentation

Presented by ICAOS Rules
Committee Members



Rule Making Process

2025 Deadline February 1, 2025

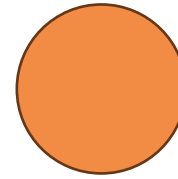
Rule Proposal Guide



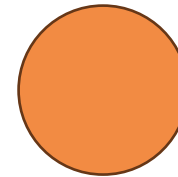
This guide is intended to assist individuals in preparing initial rule proposal drafts, committee and region chairs in referring proposals, and the Rules Committee in preparing final proposals for vote.



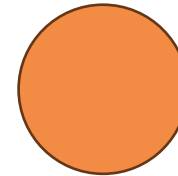
Rule 2.109



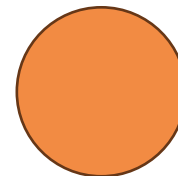
Two-year vetting process for Rule proposals and amendments



Year 1: Vet through DCAs to address practical implications



Year 2: Present to prospective region/committee for approval before February 1st in an ODD numbered year



Vetting process for 2025 proposals should start NOW!

ARS: Do you plan to bring an amendment or new rule proposal to your region or a committee in the next rule cycle? Y/N

Rule 5.108 (f)-West Region Probable Cause Hearing in the Receiving 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.

West Region (CO) Justification

'Shall' requirement is not part of US Supreme Court decisions which 5.108 is based

Current language requires the receiving state to take the offender in custody upon a finding of probable cause. This can pose challenges when:

- the sending state may order the offender's return in lieu of issuing a warrant to retake;
- the sending state may need probable cause established in order to obtain a warrant to retake; and
- receiving states do not have warrantless arrest powers.

By changing the wording from "shall" to "may," states will still be able to hold an offender in custody

Rule 5.108 (f)

Probable Cause Hearing in the Receiving State

Comments For

- Provides flexibility to states without warrantless powers when the sending state has not issued a warrant pending PC or when the decision to retake versus order return for behavior requiring retaking has not been made.
- The change still permits the receiving jurisdiction to issue a warrant for public safety concerns.

Comments Against

- If a receiving state is unable/unwilling to hold a violator, it calls into question the legitimacy and the public safety concerns of the 'behavior requiring retaking.'
- The rule is not clear as to 'who' in a receiving state determines whether the offender should be held in custody.
- Potential unintended consequences from jails refusing to hold an offender pending retaking.
- Compact offices rely on the 'shall' in this rule to ensure the retaking process is not disrupted.

Withdrawn Proposals

Midwest Region

- Rule 1.101 '*Supervision*'
- Rule 5.105
- Rule 5.108

South Region

- Rule 4.101-1
- Rule 5.101-2



Rule 1.101 'Supervision' Midwest Region

Not Recommended for Adoption

- Will decrease number of individuals eligible for transfer
- Potential for authorities to use the new language as a 'loophole' enabling clients to relocate, circumventing the compact.

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.

ARS

1. Does your state have difficulty applying this definition? Y/N

ARS

2. Should eligibility be limited to those who are subject to a reporting requirement? Y/N

FOLLOW UP/OPEN QUESTION Are there any additional factors the Commission should consider regarding this rule?

Rule 5.105 Midwest Region Time Allowed for Retaking an Offender

Not Recommended for Adoption

- Although in support of the intent, it requires significant clarification.
- ‘What constitutes the ‘notification’ triggering this rule? Could have different meanings in different jurisdictions as retaking situations involve multiple agencies in each state
- The proposed language regarding probable cause is not necessary as the current language covers the cases in which probable cause has been established.

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.

ARS

1. When does the 30-days begin? Upon apprehension/release of other holds or when the sending state is notified

ARS

2. What specific action or event triggers the 30-day requirement? [RVR transmission date, Warrant executed date, other]

ARS

3. Is 30-days enough time to coordinate retaking? Y/N

ARS

4. Does your state commonly release when sending states fail to retake within 30 days? Y/N

FOLLOW UP QUESTION What stakeholders are involved in these decisions to release?

Rule 5.108 (f) Midwest Region Probable Cause Hearing in the Receiving State

Not Recommended for Adoption

- Although in support of the intent, it is unclear what the 'applicable rules' are.
- Other timeframes in the 'retaking process' should be reviewed, notifications defined, then consider changing this rule.

(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.

ARS

- 1. Is the 15-business days applicable to determine decision to retake or to order the return in lieu of retaking? Y/N**

ARS

- 2. What stakeholder(s) in your state make this decision? [Court, Parole Board, Field officer, compact office]**

FOLLOW UP/OPEN QUESTION

- 3. How are states tracking compliance with this timeframe?**

ARS

- 4. Would this change fit better fit under 5.103 to provide an opportunity for probable cause (confirming PC is established and that the violation is revocable) before the sending state is required to obtain a warrant or order the return? Y/N (Follow up: Ask audience why or why not?)**

Rule 4.101-1 South Region Offender Electronic Monitoring in Receiving or Sending State

Not Recommended for Adoption

- The issue of receiving states refusing to return EM equipment does not appear to be a widespread issue warranting a rule.
- Compact already requires cooperation between states and could be better stated as a best practice as it is distinct from DNA collection.
- Language could result in unnecessary rejections due to inability to satisfy the requirements of this rule.
- May be contrary to the 'single standard of supervision' expectations and could be problematic for receiving states to timely address violations when monitored by the sending state's equipment.
- Sending states are not obligated to request transfer when receiving states are unable to meet the condition to return the equipment.

A receiving state shall require that an offender transferred under the interstate compact comply with any electronic monitoring requirements in accordance with the laws or policies of the receiving state and shall assist the sending state in retrieval of electronic monitoring equipment worn by the offender from the sending state by removal of the equipment from the offender upon arrival and shipping the equipment back to the sending state. The sending state shall be responsible for the cost of shipping.

ARS

- 1. When requested by the sending state, does your state always retrieve and return electronic monitoring equipment? Y/N**

FOLLOW-UP/OPEN QUESTION: If no, why not?

ARS

- 1. As a sending state, does your state encounter receiving states refusing to return electronic monitoring equipment? Y/N**

ARS

- 3. If yes, how often? [Daily, Weekly, Monthly, Quarterly, Annually, Rarely]**

ARS

- 4. What would prevent your state from returning electronic monitoring equipment? (officer decision, receiving state's ability to enforce electronic monitoring condition, perceived liability concern)**

FOLLOW-UP/OPEN QUESTION

- 5. How are states elevating or resolving the issue when a receiving state refuses to assist with the return of electronic equipment?**

Rule 5.101-2 South Region

Discretionary Process for Disposition of Violation in the Sending State for a New Crime

Notwithstanding any other rule, a sentence imposing a period of incarceration and/or supervision on an offender convicted of a new crime which occurred outside the sending state during the compact period may satisfy or partially satisfy the sentence imposed by the sending state for the violation committed. This requires the approval of the sentencing or releasing authority in the sending state and consent of the offender.

- a) Unless waived by the offender, the sending state shall conduct, at its own expense, an electronic or in-person violation hearing. The offender does not have to be incarcerated for this hearing.
- b) The sending state shall send the violation hearing results to the receiving state within 10 business days.
- c) If the offender's sentence ~~to incarceration~~ for the new crime fully satisfies the incarceration sentence for the violation imposed by the sending state for the new crime, the sending state is no longer required to retake if Rules 5.102 and 5.103 apply.
- d) If the offender's sentence to incarceration for the new crime only partially satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is required to retake if Rules 5.102 and 5.103 apply.
- e) If the offender's sentence to supervision for the new crime only partially satisfies the supervision sentence for the violation imposed by the sending state for the new crime, the sending state is no longer required to retake if Rules 5.102 and 5.103 apply and the offender will remain on supervision in the receiving state.
- f) The receiving state may close the case under Rule 4.112 (a)(3).

Not Recommended for Adoption

- Due to the increase in remote hearings and sentences, other rules may require review as it is unclear whether this proposal would affect other rules.
- Concerns raised regarding the receiving state's ability to supervise during the hearing process identified in the rule.
- South Region DCAs are currently circulating new draft proposals for this concept to be proposed in 2025.

ARS:

- 1. How often does your state utilize the discretionary process to dispose of a violation when the new crime conviction results in incarceration? [Daily, Weekly, Monthly, Quarterly, Few occasions/Year, Rarely, Never, I don't know]**

ARS

- 2. With the increase in remote hearings due to COVID, how often are remote violation hearings generally occurring for interstate cases? [Daily, Weekly, Monthly, Quarterly, Few occasions/Year, Rarely, Never, I don't know]**

ARS

- 3. Should ICAOS rules require retaking knowing the outcomes of the violation hearings will likely result in the transferee returning to the receiving state? Y/N**

ARS

- 4. When violation hearings are conducted remotely, what are the most common outcomes? [Discharge of supervision, Additional conditions imposed, extended supervision term, Retake to formally revoke/reincarcerate in the sending state, Retake to be immediately retransferred to satisfy the ICAOS retaking rules, other] FOLLOW-UP/OPEN on what are 'OTHER outcomes' if time allows**