



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

June 27, 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. Amy Vorachek (ND)
7. Katrina Ransom (OH)
8. Timothy Strickland (FL), Ex-Officio
9. Brenna Kojis (WI), Ex-Officio
10. Tom Travis, Legal Counsel, Ex-Officio

Members not in Attendance:

1. Robert Maccarone (NY)
2. Matt Reed (PA), Ex-Officio

Guests:

1. Kelly Palmateer (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. Seven voting members were present, a quorum was established.

Approval of Agenda and Minutes

Commissioner R. Cohen (NM) moved to approve the agenda as presented. Commissioner M. Danner (MD) seconded. Agenda approved without objection.

Commissioner A. Vorachek (ND) moved to approve the minutes from the March 20, 2023, meeting as drafted. Commissioner K. Ransom (OH) seconded. Minutes approved as drafted.

Discussion

Rule Proposal Comments: Chair S. Gagnon (ME) stated that the rules comments period ended on June 1. She was disappointed to receive so few comments. The committee reviewed the comments for a proposal to amend Rule 5.108 (f). In the comments, three commissioners and four DCAs expressed their support for the proposal and three commissioners and three DCA were against the proposal.

Proposal to Amend Rule 5.108 (f) -West Region

(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.

The committee carefully reviewed all opposing comments:

Nebraska - “Clarify who in the receiving state determines the "may". The Justification states that 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. Without providing clarification of who the "authority" refers to in the receiving state may leave it open to interpretation as to who makes this determination. Should it apply to those states whose laws are in conflict with the Rule?”

Idaho – “The language should not be changed as this gives way to community safety issues on the cases that we are requesting PC Hearings. Idaho only holds PC Hearings if the sending state requests or if the Idaho officer feels the probationer/parolee is a threat to the community and PC findings per Rule 5.108 (f) allow for holding until the sending state retakes.”

Ohio - “Concerns exist with giving discretion on whether violators should be held in-custody in the receiving state.

- What if the sending/receiving state disagrees on the location of the supervisee?
- Who will decide that the supervisee will be held in custody?
- If the receiving state releases someone that the sending state wants to extradite, will the receiving state be required to place the person in custody?
- How would it look if the receiving state is unable or unwilling to locate the person that needs to be in extradited? The change from shall to may will have an effect on extraditing people.
- The current language gives some teeth to the compact office staff on enforcing the custody of supervisees with local authorities that don't want to house people that should be held in custody. The change will open the flood gates for jails to refuse to house compact supervisees which will make it more difficult for compact staff.
- Allowing increased flexibility can lead to potential abuse of the rule as originally intended. The intent for an OVR as BRR is indicative that behavior rises to the level of revocation in your state. If you are unable/unwilling to house a violator in custody after PC is established, it calls into question the legitimacy of the public safety concerns surrounding the individual. Most states have a hard enough time holding offenders in

custody as it is and adding language that makes it easier for a jail to dispute holding someone in custody can lead to unintended consequences.”

North Dakota – “ND presented the Rule Proposal to our State Council and several issues were identified:

- Giving the option to not arrest and not hold clients after probable cause is found takes away the authority used to hold a client pending retaking.
- If a client is not brought into custody and we send our transport unit to complete the retaking, how will sending states be assured they will be able to retake? There is no mention in the proposal regarding the receiving state’s responsibility to ensure the person is available for retaking. A key component to the retaking process is knowing where to send our transport unit, with peace of mind they will be there. If they are not where they say they are, whose responsibility is it to “locate” the person to take them into custody at that time.
- With the increased cost of retaking, we can’t afford to send staff with the potential of not being able to retake and waste resources.
- Issues with “discretion” – how do you allow that type of discretion when each state/office/district is run so differently.”

West Virginia – “Although the proposal would give flexibility, it would open the floodgates for those jails or local authorities to resist not following the ICOTS Rules now by NOT holding the offender until the process has been completed. The current language gives the compact staff and DCA the necessary teeth to enforce the compact and the spirit of the compact regarding the number one thing that compact was meant or designed for which is public safety and the safety of the victims of the crimes in which they are being placed under supervision for.”

Commissioner K. Ransom (OH) noted that if there was a disagreement between states, who would make the final decision on the disagreement. She expressed her concerns with community safety if the supervised individual was not in custody.

Commissioner A. Vorachek (ND) asked the committee to take into consideration the rising cost of retaking especially if an officer travels to another state and unable to locate the supervised individual.

DCA T. Strickland (FL) supports West Virginia’s opinion adding that the proposal doesn’t bring clarity to the rule.

Commissioner C. Moore (GA) supported the proposal, noting that it applied to supervised individuals who most likely were not in custody already. In addition, the current rule states if probable cause is found, the individual is required to be taken into custody, therefore taking an option of being able to order those individuals to the sending state.

Commissioner M. Danner (MD) supported the proposal.

DCA K. Palmateer (NY) stated that NY also supports the proposal.

Commissioner M. Danner (MD) moved to continue support the proposal to amend Rule 5.108 (f). Commissioner C. Moore (GA) seconded. Motion passed by vote four (GA, HI, MD, and NM) to two (ND and OH).

Rule Proposal Guide: The committee reviewed the revised Rule Proposal Guide. The 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. In addition, the guide highlights the importance of a two-year rule proposal cycle for properly vetting the proposal and sets a deadline of February 1 in odd numbered years as the proposal deadline.

Chair S. Gagnon (ME) noted that per Commissioner Maccarone's request, the committee will schedule a regular face-to-face committee meeting to collaborate on discussing proposals and drafting new ones.

Commissioner R. Cohen (NM) moved to approve the revised Rule Proposal Guide. Commissioner C. Moore (GA) seconded. Motion passed.

ABM Training Prep: 2023 Rule Proposal Presentation: The committee reviewed an outline for the rule proposal presentation at the upcoming Annual Business Meeting. The session's objective is to introduce the rule proposal that will be considered by the Commission during the General Session. In addition, the committee will present on the rules committee's support or opposition to the proposal, as well as its practical implications. The session will also cover proposals that were withdrawn for further consideration and revisions. The session will be interactive.

Chair S. Gagnon (ME) will continue working with the national office to finalize the presentation's outline.

Old/New Business

There was no old/new business.

Adjourn

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

The meeting adjourned at 2:49 pm ET.