Call to Order
Chair W. Rankin called the meeting to order at 9:01 a.m. MT. Seven voting members were present; a quorum was established.

Chair W. Rankin explained to the Committee members the goals and objectives of the meeting. He welcomed new member - Commissioner J. Seigel (IN).

Approval of Minutes
Commissioner G. Tullock (TN) made a motion to approve the minutes from November 18, 2010. Commissioner W. Theriault (ME) seconded. The minutes were approved as written.

Discussion
The Committee reviewed a proposal to create Rule 3.101-4 Complete Transfer of Resident submitted by the East Region.

Legal Counselor R. Masters expressed his concerns about constitutionality of the proposal as he outlined in his legal memorandum. The Committee decided to include the main points from the memorandum to the Rules Committee justification and attached the memorandum itself to the rule proposal.

**Rule 3.101-4 Complete Transfer of Resident**

(a) Upon acceptance by a receiving state of a resident who is permitted to transfer by the sending state and meets the criteria for transfer specified under Rule 3.101 (a), (b), (c), and (d), there shall be a complete transfer, except where the sending state retains jurisdiction. The receiving state shall assume all powers and duties of the sending state, including supervision and sole jurisdiction.

(b) Within 10 business days of acceptance, the sending state shall transmit a copy of the entire case record, including court documents, to the receiving state.

(c) The receiving state shall send a case closing notice following acceptance and receipt of the entire case record. The sending state shall validate the closing which will archive the file into the case history.

(d) This section is applicable to offenders released to probation supervision.

**Justification:**

Improves community safety and recognizes certain efficiencies realized by states and their localities in the complete interstate transfer of probationers to their resident (receiving) states. “Complete Transfer” proposes to empower supervising authorities with full legal jurisdiction to enforce orders and conditions of supervision and respond swiftly to probationer violative behavior, increasing offender accountability. It empowers courts in receiving states to enforce restitution orders, impose graduated and other sanctions, including incarceration, and assist the offender in changing inappropriate behavior. All continued reporting requirements imposed on the receiving state are curtailed upon the complete transfer of the resident offender and the case is effectively closed in ICOTS. This will dramatically reduce the volume of ICOTS transmissions and increase system response, speed and efficiency. Complete Transfer recognizes that the probationer seeking transfer to his/her resident state voluntarily submits to the complete jurisdiction of the receiving state, including all supervisory and court imposed sanctions. Transfer of resident probationers to receiving states is complete, except where the sending state retains jurisdiction.

**Rules Committee Analysis:**
Pursuant to Rule 2.109(b), the Rules Committee is posting this proposal for review and comment by all Commissioners. The Rules Committee reviewed the legal memorandum (attached) from General Counsel and relies upon the legal opinion expressed. Based on that opinion the Rules Committee has concluded that the Commission lacks the authority to promulgate this rule because it exceeds the scope of the authority granted to the Commission by the member state legislatures under the compact statute and by Congress under the federal consent statute. Such a rule would be invalid and subject to judicial challenge because it violates a fundamental principle of administrative law that a rule or regulation cannot exceed the scope of authority delegated by the legislative body to the agency which promulgates the rule or regulation. It also would raise potential constitutional due process and equal protection issues which could be the basis for
claims by offenders transferred under this rule. Adopting this rule could subject Commissioners to individual liability.

Moreover, there are practical issues not addressed in this proposal that include but are not limited to:

- “Complete Transfer” is not defined in the proposal
- The proposal does not specify which entity will make the decision to retain or transfer jurisdiction
- The proposal does not specify to which court in the receiving state the case will be transferred and by whom
- The proposal does not specify what constitutes the “entire case record”
- The proposal raises potential due process claims by offenders
- Unforeseen ICOTS issues

The Committee reviewed a proposal to Rule 3.107 from the South Region.

**Rule 3.107 Transfer Request**

(a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—

1. transfer request form; information entered into electronic information system;
2. A narrative description of the instant offense in sufficient detail to describe the circumstances, type and severity of offense, who committed the offense, where and when the offense was committed, how the offense was committed, and whether the charge has been reduced at the time of imposition of sentence;
3. specific offense at conviction and sending state statute number;
4. photograph of offender;
5. order of supervision with standard and special conditions of supervision within thirty (30) calendar days of the offender’s arrival in the receiving state, if not available at the time the transfer request is submitted;
6. conditions of supervision;
7. any orders restricting the offender’s contact with victims or any other person;
8. any known orders protecting the offender from contact with any other person;
9. information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
10. information as to whether the offender has a known gang affiliation, and the gang with which the offender is known to be affiliated;
11. pre-sentence investigation report unless distribution is prohibited by law or it does not exist.
12. supervision history: unless it does not exist, if the offender has been on supervision for more than thirty (30) calendar days at the time the transfer request is submitted;
13. information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.

(b) The original signed Offender Application for Interstate Compact Transfer shall be maintained in the sending state. A copy of the signed Offender Application for Interstate Compact Transfer shall be attached to the transfer request.

(c) Additional documents necessary for supervision in the receiving state, such as the Judgment and Commitment, and any other information may be requested from the sending state following
acceptance of the offender. The sending state shall provide the documents within no more than 30 calendar days from the date of the request, unless distribution is prohibited by law or a document does not exist.

**Justification:**

(a) (1): The electronic information system does not utilize forms. The word “form” should be deleted to avoid confusion.

(a) (2): This language is very specific as to what information should be included in the narrative description of the offense.

(a) (3): The statute under which the offender was sentenced in the sending state will assist the officer in the receiving state in determining the comparable receiving state statute and classification of the offender in the receiving state. Currently, the rule only requires that the sending state indicate whether the charge was reduced at the time of imposition of sentence. There is no field in ICOTS that requires or captures the specific offense at conviction, only broad NCIC categories of offenses.

(a) (5): The order of supervision specifying both standard and special conditions of supervision is needed to indicate the offense for which the offender was ultimately convicted, as opposed to what the offender was charged with at the time of arrest. There is also no field in ICOTS that requires or captures standard conditions of supervision. Inclusion of the order of supervision will serve as back up documentation of the special conditions imposed by the sending state. The rule will allow for transmission of the supervision order within thirty (30) days of acceptance if it is not available at the time the transfer request is submitted.

(a) (9): Information related to offenders’ known gang affiliations provides useful information to probation officers and other law enforcement agencies tracking the interstate movement of gang members. This information will also enhance the safety of the investigating officer in the receiving state.

(a) (11): Setting a specific time frame to require supervision history provides clear guidance as to when this information is required.

(c): There is no need to give an example of additional documents that might be requested.

**Rules Committee Analysis**

The proposal does not appear to be in conflict with any existing rules or advisory opinions. The proposal will require additional information to be provided by sending states. While the proposal may be implemented without modification to ICOTS, it is likely the information would not be transmitted consistently without significant changes to ICOTS.

Since each of the individual changes is independent of the others, each will require a separate vote.

The Committee discussed a proposal to Rule 4.112 submitted by the South Region.

**Rule 4.112 Closing of supervision by the receiving state**

(a) The receiving state may close its supervision of an offender and cease supervision upon-

- (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
- (2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;
- (3) Notification to the sending state that the offender has been sentenced to
incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender’s location; 
(4) Notification of death; or 
(5) Return to sending state.

(b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender under Rule 5.101.

(c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment.

(d) The sending state shall submit the case closure notice reply to the receiving state within ten (10) business days of receipt.

Justification: With the implementation of ICOTS, states are now required to submit a case closure notice indicating validation or invalidation of a case closure by the receiving state to ensure that all parties are aware of and in agreement with closure of a case. There is not currently any provision in the Compact rules for this process or a time frame for submission of the reply. Timely closure of cases is essential to removing inactive cases from the public ICOTS portal.

Rules Committee Analysis
The proposal does not appear in conflict with any current rules or advisory opinions. This would require modification to ICOTS to implement the tracking of the time frame.

The Committee reviewed a proposal to create/amend Rule 1.101 prepared by the Rules Committee. The issue was raised by a member of the East Region.

Rule 1.101 Definitions...

“Resident” means a person who—
(1) has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision; and
(2) intends that such state shall be the person's principal place of residence; and
(3) has not, unless incarcerated or on active military deployment, remained in another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.

Justification
Military personnel are frequently deployed away from their home states. In these cases, location is not a voluntary decision. When these personnel are convicted of crimes in the states where they are deployed, and become subject to supervision by civil authorities, they may be discharged by the military service. However, if an offender has been away from his or her home state more than six months, the offender may no longer meet the criteria for “resident” of that state. This modification establishes that presence in a state while on military deployment will not be considered “remain[ing] in another state” under section (3) and will not, in itself, disqualify an offender from claiming residence in his or her home state.

Rules Committee Analysis
The proposal does not appear to create a conflict with any other rules or advisory opinions. No revisions to ICOTS are necessary.

Commissioner W. Theriault (ME) moved to adopt Rule 1.101 as amended and move forward for Commission comments. Commissioner J. Rubitschun (MI) seconded. Motion passed.
The Committee reviewed a proposal to Rule 3.105 prepared by the Rules Committee.

**Rule 3.105 Pre-release transfer request for transfer of a paroling offender**

(a) A sending state shall may submit a completed request for transfer of supervision no earlier than 120 days prior to an offender’s planned release from a correctional facility, a paroling offender to a receiving state no earlier than 120 days prior to the offender’s planned prison release date.  
(b) If a pre-release transfer request has been submitted, a sending state shall notify a receiving state:  
   (1) if the planned release date changes; or the offender’s date of release from prison; or  
   (2) if recommendation for release parole of the offender has been withdrawn or denied.  
(c)  
   (1) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender’s intended date of departure from the sending state.  
   (2) A receiving state that withdraws its acceptance under Rule 3.105 (c) (1) shall immediately notify the sending state.  
   (3) Following withdrawal of the receiving state’s acceptance, a sending state must resubmit a request for transfer of supervision of a paroling offender in the same manner as required in Rule 3.105 (a).  

**Justification**

The proposed revision clarifies the intent and scope of the rule, consistent with ICAOS Advisory Opinion 1-2009. A state may submit a request to transfer an offender incarcerated in a correctional facility, whether it be a prison, jail, halfway house, workhouse, or some other custodial facility, prior to the offender’s planned release. Public safety is served best when a transfer investigation can be completed prior to an offender’s release to supervision. Further, the compact language addresses “supervision” without exclusive reference to “parole”, which is not defined in the rules. While that term might once have included anyone subject to supervision following a period of incarceration, it is no longer the case.

Section (c) is repealed as it is unnecessary.

**Rules Committee Analysis**

The proposal does not appear to be in conflict with any existing rules or advisory opinions. No revisions to ICOTS are necessary.

Commissioner D. Ege (AZ) moved to adopt Rule 3.105 as amended and move forward for Commission comments. Commissioner J. Seigel (IN) seconded. Motion passed.

The Committee reviewed a proposal to amend ICAOS Bylaws, Article VII, Committees prepared by the Rules Committee. The request for this proposal came from the Executive Committee.

After discussion whether it needs to be an administrative policy or a bylaw change, the Rules Committee agreed to proceed with the bylaw change for the purpose of clarity.

**Section 4. Ad hoc Committees**

The Commission may establish ad hoc committees to perform special purposes or functions. An ad hoc committee may be formed at the direction of the chairperson of the Commission or upon a majority vote of the Commission, or by a majority vote of the Executive Committee acting on behalf of the Commission.
The ad hoc committee members shall be appointed by the chairperson of the Commission and may include any commissioner or ex officio member of the Commission. In addition, the chairperson of the Commission may appoint such non-members as the chair determines to be appropriate, however, the majority of committee members shall be commissioners.

Upon creation of an ad hoc committee, the chairperson of the Commission shall issue a charge to the committee, describing the committee’s duties and responsibilities. The charge shall specify the date by which the ad hoc committee shall complete its business and shall specify the means by which the ad hoc committee shall report its activities to the Commission.

**Justification:**

The new section will clarify the authority and procedural requirements for creating ad hoc committees, and require a defined purpose and time frame for the ad hoc committee to perform its duties. Without these requirements, ad hoc committees may be unable to identify exactly what they are expected to accomplish or when it has occurred.

**Rules Committee Analysis:**

The proposal does not appear to be in conflict with any existing rules or advisory opinions. No revisions to ICOTS are necessary.

Commissioner G. Tullock (TN) moved to adopt the amendment to Bylaw, Section 4 and move forward for Commission comments. Commissioner J. Seigel (IN) seconded. Motion passed.

The Committee reviewed a proposal to Rule 1.101 submitted by the Rules Committee.

**Rule 1.101 Definitions...**

"Violent Offender" means an offender under supervision for a violent crime committed in the sending state.

**Justification:**

The addition of "committed in the sending state" helps to clarify that the sending state statute determines whether an offender seeking transfer under the compact is under supervision for a violent crime.

**Rules Committee Analysis**

The proposal does not appear to be in conflict with any existing rules or advisory opinions. No modifications to ICOTS are necessary.

Commissioner D. Ege (AZ) moved to adopt the amendment to Rule 1.101 and move forward for Commission comments. Commissioner J. Blonien (WA) seconded. Motion passed.

The Committee reviewed a proposal to Rule 1.101 and 2.110 prepared by the Rules Committee.

**Rule 1.101 Definitions**

...  
“Reside” means
(a) to be physically present in a state, with the intent to remain in that state for a period of time greater than 45 days.
(b) A rebuttable presumption that an offender has “intent to remain in that state for a period of time greater than 45 days” exists if indicia of residence are present. Indicia of residence include, but are not limited to:

1. the offender receives mail at an address in the state;
2. the offender or the offender’s spouse is a named occupant on a lease;
3. the offender or the offender’s spouse is named on telephone or other public utility bills at an address in the state;
4. the offender is participating in a residential treatment program of more than 45 days duration;
5. the offender is enrolled in an educational institution and the educational institution has a mailing address in the state for the offender;
6. the offender has full- or part-time employment in a state and the employer has a mailing address in the state for the offender;
7. the offender or the offender’s spouse has applied for or is receiving social services benefits and the social services agency has a mailing address in the state for the offender or the offender’s spouse;
8. the offender has a current driver’s license issued in the state; or
9. the offender has registered to vote in the state.

(c) “Intent to remain” To reside in a state does not require that an offender be continuously present in a state for 45 consecutive days when continuous indicia of residence are present.

Rule 2.110 Transfer of offenders under this compact

(a) No state shall permit an offender who is eligible for transfer under this compact to reside in another state except as provided by the Compact and these rules.

Justification

Defining what it means to “reside” in a state, will clarify the threshold at which an offender’s presence in a state implicates the compact. Existing Rule 2.110 says offenders may not “relocate” without going through the compact. “Relocate” is defined as “to remain in another state for more than 45 consecutive days in any 12 month period.” As currently constructed, Rule 2.110 may be understood by a court or supervising officer to mean that a person residing in another state is not covered by this rule, if the offender periodically returns to the sending state, for any period of time, at intervals not greater than 45 days.

The change makes clear that no offender may avoid the requirements of the compact by periodically returning to the sending state. The compact is implicated if the offender is “physically present” in a state “with the intent to remain for a period of time greater than 45 days,” regardless of the number of consecutive days the offender may have been in the state.

The rule creates a rebuttable presumption that an offender has “intent to remain in that state for a period of time greater than 45 days” if indicia of residence are present. This places the burden of proof on a sending state, but also allows that state the opportunity to show why an offender who is in a receiving state is not in violation of Rule 2.110, e.g., offender is participating in a 30-day treatment program and will reside in the sending state upon completion.

Under the current rule, a receiving state has no grounds to demand an offender be transferred or removed unless and until that offender has exceeded the 45 consecutive day limit, regardless of evidence of the offender’s intention to remain in that state. During this time the offender is unsupervised in the receiving state. Amending Rule 2.110 provides states with grounds to demand transfer or return of offenders whose presence in that state meets the intent, but may not meet the letter, of the existing rule.
After the discussion, the Rules Committee decided to postpone the discussion until later and for right now withdraw the proposals.

The Committee had discussion on States’ Obligation in Rule 5.103-1(c) initiated by D. Ege. The Committee did not reach the consensus and decided to move on for the moment and possible consider requesting an advisory opinion on this topic.

The Committee discussed requirements under Rule 4.111(c). D. Ege stated that Rule 4.111(c) was in conflict with Rule 3.108-1. The Rules Committee made the following clarification to the Rule:

**Rule 4.111 Return to the sending state**

(a) Upon an offender's request to return to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions.

(b) Except as provided in subsection (c), the sending state shall grant the request and provide reporting instructions no later than two business days following receipt of the request for reporting instructions from the receiving state.

(c) In a victim sensitive case, the sending state shall not provide reporting instructions until the provisions of Rule 3.108-1(b)(1)(c) have been followed.

(d) A receiving state shall notify the sending state as required in Rule 4.105 (a).

**Justification:**
The purpose of this proposal is to distinguish between the victim’s right to be heard under Rule 3.108-1 (a) and victim notification required under Rule 3.108 during the process of an offender returning to the sending state where the victim resides. The proposal leaves intact the victim’s right to be heard. Reporting instructions shall not be provided until the victim has been notified.

**Rules Committee Analysis**
The proposal does not appear to be in conflict with any existing rules or advisory opinions. No changes to ICOTS are necessary.

Commissioner D. Ege (AZ) moved to adopt an amendment to Rule 4.111 and move forward for Commission comments. Commissioner J. Seigel (IN) seconded. Motion passed unanimously.

The Committee reviewed the Advisory Opinion 1-2011 and its correlation with definition of Violent Crime and the Supervision of Misdemeanor. The Committee decided to make the following change to the Rule 1.101:

**Rule 1.101 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 against a person; or any sex offense requiring registration.
**Justification:**
This proposal clarifies the intent of the violent crime definition that the use of a deadly weapon must be in the commission of a crime against a person and makes it internally consistent.

**Rules Committee Analysis**
The proposal does not appear to create a conflict with any other rules or advisory opinions. No revisions to ICOTS are necessary.

Commissioner D. Ege (AZ) moved to adopt the amendment to Rule 1.101 and move forward for Commission comments. Commissioner S. Blonien (WA) seconded. Motion passed unanimously.

The Committee reviewed Rule 2.105 Misdemeanants to see whether it required any changes to be consistent with changes to Rule 1.101. B. Rankin called for a motion to place the Discussion of Rule 2.105 on the agenda. Due to lack of motion, the Committee proceeded with its next agenda item.

The Committee reviewed Violation Reports and Reply Formats in ICOTS. The Committee decided to table the issue until its next meeting.

The Committee discussed Probable Cause Hearing Guide and the waiver. W. Rankin pointed out that some wording in the waiver was unnecessary and confusing and needed to be modified. The Committee agreed and decided to refer the issue to the Executive Committee to form an ad hoc committee. It will consist of Rules and Training Committee members and Legal Counselor.

The proposals will be posted on the Commission website on March 1, 2011 and be available until July 1, 2011 to give the regions an opportunity to meet and discuss the proposals. The Committee will meet in July to discuss the received comments from the Commission.

The Committee will meet again by WebEx on April 21, 2011 at 2 pm EDT.

**Adjourn**
Commissioner W. Theriault (ME) made a motion to adjourn. Commissioner J. Blonien (WA) seconded. Motion passed. The meeting adjourned at 4:45pm MT.