Kathie Winckler, chair of the committee, called the Rules Committee to order at 12:02 p.m. Following introductory remarks, Winckler called for a roll call of members. Eight of 11 members were present, establishing a quorum.
• Winckler briefly reviewed the draft minutes from the February 28, 2003 meeting and called for a motion to approve the minutes. A motion was brought by Cosby, seconded by Quander and the minutes were approved unanimously.

• Winckler proposed an amendment to the agenda, placing item III after item V. The proposal was adopted by unanimous consent and the meeting was conducted according to the amended agenda.

• Winckler called on Rick Masters to review a memo received by the committee from Kent Bishop, Policy Advisor, Utah Governor’s Office regarding the adoption of a rule on rules (see attached memo). Masters reviewed the memo, and recommended adoption of its contents. The committee took no action on the letter.

• Winckler proposed two changes to the Commission by-laws (see attached agenda):
  1) Article VI, Section 3 – makes clear that members may participate and vote in meetings electronically. A motion to adopt was brought by Geiger, seconded by Martinez and the by-law change was adopted and will be forwarded to the full Commission for consideration.
  2) Article VII, Section 3 – details the elected Commission positions of Regional Representatives. A motion to adopt was brought by Cosby, seconded by Steinman and the bylaw change was adopted and will be forwarded to the full Commission for consideration.

• Winckler reviewed the deadlines for subcommittee work and reports. Preliminary deadline of May 2, 2003 and a Final deadline of May 16, 2003.

• Winckler called for subcommittee reports of activity and progress.
  1) Offender registration and compliance; level of supervision to be provided by the receiving state (Quander, VandeWalle, Martinez). The group had no new developments to report. Quander will Chair the subcommittee and the group will report progress at the next meeting.
  2) Transfer procedures and forms; collection of restitution and fees (Hayes, Wall). Members not present. Winckler called on Dunfy and Porter (both sitting in for respective members) for a progress report. Work was reported to be in progress and the group will report at the next meeting.
3) Notice to victims and opportunity to be heard (Geiger, Tuthill). Members indicated that they had not received materials prior to the meeting. The group will make a report at the next meeting.

4) Mediation, arbitration, and dispute resolution; offender violations and returns to sending state (Gilliam, Steinman). Not all members present. The subcommittee requested that their report be tabled until the next meeting.

5) Date collection and reporting; eligibility for transfer (Winckler, Cosby). Members reported progress in specific areas and asked for discussion and comment from the full committee. Several items were assigned to staff and members for follow-up and drafting, specifically:

   a) Masters – draft rule on misdemeanants; research military issues, specifically Supremacy Clause and Uniform Code of Military Justice as it relates to the compact; and

   b) Cosby – draft rule on employment and visible means of support.

- Winckler called on John Mountjoy for an update of the secure document sharing and bulletin board pages for use by the committee.

- Winckler called for New Business. Masters raised the issue of republishing the PPCAA rules adopted by the Commission in November 2002 as Transition Rules. The proposal was adopted by unanimous consent and Masters will draft.

- Winckler reviewed the dates for the next meetings: April 25, May 9, May 23, and May 30, 2003. All meetings will begin at 12:00 p.m. (EDT).

- Hearing no more new business, Winckler called for a motion to adjourn. Motion brought by Cosby, seconded by Martinez and was unanimously adopted.
I. Welcome & roll call
   - Establishment of a quorum
     - 9 voting and 2 non-voting members

II. Approval of minutes of February 28, 2003 teleconference meeting
   - Request for changes
     - Motion: To approve minutes of February 28, 2003 teleconference, [as amended].

III. Report of subcommittees
   - Subcommittee reports
     1. Date collection and reporting; eligibility for transfer (Winckler, Cosby)
     2. Mediation, arbitration, and dispute resolution; offender violations and returns to sending state (Gilliam, Steinman)
     3. Offender registration and compliance; level of supervision to be provided by the receiving state (Quander, VandeWalle, Martinez)
     4. Transfer procedures and forms; collection of restitution and fees (Hayes, Wall)
     5. Notice to victims and opportunity to be heard (Geiger, Tuthill)
   - Subcommittee work deadlines:
     - Preliminary deadline: May 2, 2003 (materials to be given to drafting committee)
     - Absolutely final deadline: May 16, 2003 (all final materials to be given to drafting committee)

IV. Discussion: Rulemaking considerations
   - Letter from Kent Bishop regarding rulemaking considerations (see attached)

V. Discussion: By-law amendments (see attached by-laws)
   - To insert language that makes explicit that electronic and telephonic voting are authorized by the by-laws.
Motion: In article VI, sec. 3 of Interstate Commission by-laws, to insert the words “and vote” at line 3 following “participate,” and at line 3 to change the word “meeting” to “meetings” and to insert the words “of the Commission and duly authorized committees” following the word “meetings”.

To insert language regarding the manner of selection of the four regional representatives.

Motion: “In article VII, to add a new section, as follows:

“Section 3. Regional Representatives.
A regional representative from the Northeastern, Midwestern, Southern, and Western regions of the United States shall be elected every two years by a plurality vote of the commissioners of each region and shall serve for two years or until a successor is elected by the commissioners of each region. The states and territories comprising each region shall be determined by reference to the regional divisions used by The Council of State Governments.”

Are there any other by-laws changes needed, e.g., editorial changes?

VI. Staff update

VII. New business

VIII. Next meeting(s)

Discussion: Schedule a meeting of the rules committee every 2 weeks by telephone conference call. If one or more meetings is unnecessary, it may be cancelled. Meetings will be held at 12:00 p.m. (EDT) on the following dates: April 25, May 9, May 23, and May 30, 2003.

IX. Adjourn
## SUBCOMMITTEE ASSIGNMENTS

<table>
<thead>
<tr>
<th></th>
<th>Committee Members</th>
<th>Responsibilities</th>
</tr>
</thead>
</table>
| 1 | Kathie Winckler, Jim Cosby | • Data collection and reporting  
• Eligibility for transfer |
| 2 | Milt Gilliam, Bob Steinman | • Mediation, arbitration, and dispute resolution  
• Offender violations and returns to sending state |
| 3 | Paul Quander, Gerald VandeWalle, Ben Martinez | • Offender registration and compliance  
• Level of supervision to be provided by the receiving state |
| 4 | Tina Hayes, A.T. Wall | • Transfer procedures and forms  
• Collection of restitution and fees |
| 5 | Doreen Geiger, Pat Tuthill | • Notice to victims and opportunity to be heard |
TO: Rick Masters, Special Counsel  
CSG Support Group for the Adult Offender Supervision Compact  

FR: Kent Bishop, Utah Governor’s Office  
[Based on advice from Prof. Michael Asimow, Co-Chair  
of the ABA – Administrative Law’s State Committee  

RE: Working Preliminary Draft of Rulemaking Recommendations for AOS Compact  

Our advice: We contemplate sending a letter to the Commissioners, signed by  
the Chair of the Section, under the ABA's blanket authority provision, giving advice as to  
the implementation of the rulemaking provisions.  

Here is a working draft of a possible letter:  

To: Commissioners -- Adult Offender Supervision Compact  
Fr: Neil Eisner, Chair, Section on Administrative Law and Regulatory Practice,  
American Bar Association  
Re: Recommendations for Rulemaking  
under the Compact on Adult Offender Supervision (AOS)  

It is our understanding that the Commissioners area are currently considering the  
adoption of a bylaw relating to rulemaking under the AOS compact. We would like to  
offer the following suggestions for consideration by the Commissioners.  

This letter is send under the ABA's blanket authority procedure. The ABA's  
House of Delegates has taken no position on this matter and the letter does not represent  
official policy of the ABA. The letter represents the views of the Section on  
Administrative Law and Regulatory Practice.  

1. **Substantial conformity to the rulemaking provisions of the APA.** The  
Compact calls for rulemaking provisions that "substantially conform" to those in the  
federal APA. (For your convenience we include the text of the APA's rulemaking  
provision, 5 U.S.C. §553, as an appendix to this letter). The AOS compact specifically  
calls for publication of a proposed rule, submission of written comments, opportunity for  
an informal hearing, and promulgation of a final rule based on the rulemaking record.  
Except for the informal hearing (which is voluntary under federal law but is customarily  
provided), and the provision for emergency rules, this model fits comfortably within  
§553.  

We believe that rulemaking under AOS should be kept simple, along the lines of  
the original understanding of §553. We do not think the bylaw should lay down a maze
of precise procedures or time limits. If the rulemaking process is relatively streamlined and uncomplicated, the Commissioners are more likely to make use of it as opposed to using other methods of developing policies.

2. Publication: The manner in which rulemaking documents will be published is unclear in the AOS Compact’s language. It is our understanding that the documents can be published in the Federal Register or the Code of Federal Regulations if the AOS rulemaking procedures follow the basics of the federal APA and various conventions relating to the format of the rules. (See Speech by Michael L. White, Director of Legal Affairs and Policy Office of the Federal Register to Ntl. Assoc. of Secretaries of State, July 2001). Of course, the AOS Commissioners would have to pay the going rates for FR and CFR publication.

In addition to Federal Register and CFR publication, the Commissioners should develop a website where this material can be conveniently accessed. Ideally, it should appear as a free-standing website with a simple URL link which furnishes information about the AOS compact (rather than a secondary website embedded with a state entity site or the CSG site).

Serious consideration should be given to publishing the compact rules and related materials in hard copy, perhaps in some publication maintained by the Council on State Governments, so that it can be deposited in libraries for permanent reference.

Although AOS calls for publishing only proposed rules, the AOS Compact Commissioners should publish proposed rules, emergency rules, final rules, legislative veto information (including which states might have passed veto provisions), and guidance documents (discussed below). The website and hard copy should include documents that are incorporated by reference unless these are lengthy and are easily available in some other way (such as on the internet). The Commissioners should be required to codify all rules and guidance documents (so that they are organized in a logical manner) and maintain a current index.

The publication and record-keeping procedure will also need to be coordinated with the resources of the various compacting states, including placing notices on state rulemaking websites. We understand that Cornell Law Library’s Legal Information Institute may be able to offer long-range assistance with this function.

3. Statement of reasons: AOS requires that the Commissioners state the reason for a proposed rule. It does not, however, provide that the final rule should also contain a statement of reasons. The federal APA provides: "After consideration of the relevant matter presented [by commentators] the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose." APA §553(c). Court decisions require the "concise general statement" to include an explanation of why the agency failed to adopt material suggestions made by outside commentators. The statement of reasons is extremely useful in informing all affected persons and entities of the reasoning process of the Commissioners and it is also essential to facilitate judicial review.
We believe that final rules adopted under AOS should contain a summary statement of reasons for the rule and an explanation of how the agency dealt with particular comments.

4. Deferred effective date. Section 553(d) of the federal APA requires that rules become effective not earlier than 30 days after they are published, unless an emergency requires that they become effective in a shorter period. A deferred effective date provision seems like a good policy because it allows the affected states to find out about the new rule, modify their procedures accordingly, instruct staff, etc. The Commissioners clearly have power to adopt a deferred effective date since Art. VIII (b) provides that rules are effective as of the date stated in the rule.

5. Emergency rules: The AOS provision on emergency rules states that the usual rulemaking procedures shall be "retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule."

This provision is ambiguous. Does it mean that rulemaking procedures (notice and comment and hearing) must be initiated (but not completed) within 90 days after the adoption of the rule, or does it mean that rulemaking must be completed within 90 days after adoption of the rule?

Art. VIII (g) says that "the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule." This language only requires that "procedures shall be retroactively applied," not that the procedures must be completed, within a 90 day period. We believe that it is difficult to complete a complex rulemaking procedure within 90 days. Therefore, we believe that the Commissioners should interpret the ambiguous provision so that rulemaking must be initiated, but not completed, within 90 days.

It should be made clear that the Compact Commissioners will review the comments received during the post-adoption period, and will readopt the rule as a final rule, taking account of such comments, with a statement of reasons that meets the standards set forth in ¶3 above. Perhaps the final rule should be required to be adopted within 180 days of the adoption of the emergency rule; the Commissioners could grant a single 90 day extension of this deadline if it proves to be impossible to meet the 180 day deadline.

The AOS Compact states that rulemaking procedures shall be "retroactively applied" to an emergency rule. This language should be understood to mean that an emergency rule goes into effect before the notice and comment procedure occurs. However, AOS should not be interpreted to mean that the final rule that supplants the emergency rule must be retroactive to the time the emergency rule was first adopted.
Generally rules should be prospective, not retroactive, although retroactive rules can sometimes be justified if there is a compelling reason for retroactivity.

6. Guidance documents: Section 553(b)(A) of the federal APA permits the adoption of guidance documents (interpretive rules and policy statements) without providing for notice and comment procedure. Experience proves that this exception is very valuable since it allows and encourages the agency to furnish guidance quickly to the public and to its own staff.

The Commission's rulemaking bylaw should include a guidance document exception. In our view, such an exception would be consistent with the language of the AOS Compact because the compact defines the word "rule" as having "the force and effect of law in the compacting states." Art. II, §11. Guidance documents never have the force of law.

Guidance documents could consist either of i) interpretations of the meaning of language in the Compact or the rules or ii) policy statements declaring the Commissioners' tentative plans in implementing provisions of the Compact. Guidance documents should always be clearly labeled as such and should be published in the same manner as proposed and final rules. They should clearly state that they do not have the force and effect of law and are not "rules" as defined in the Compact, but are promulgated solely to furnish guidance about the Commissioner's views to the public, contracting states, and the staff.

7. Procedural rules: The federal APA contains a "procedural rule" exception from notice and comment procedure. APA §553(b)(B). Nevertheless, we suggest that the Commissioners adopt their procedural rules, including the bylaw that creates rulemaking procedures, by using the notice and comment process. Generally procedural rules will have the force of law, so they fall within the AOS definition of "rule." Moreover, it seems to us that the procedures to be followed in implementing AOS are of critical importance. In addition, federal courts have found it extremely difficult to distinguish procedural from substantive rules. By treating procedural and substantive rules alike, the Commissioners can avoid this difficulty.

8. Petitions. The federal APA allows any interested person to petition for the issuance, amendment, or repeal of a rule. APA §553(e). This is a desirable provision and should be incorporated into the bylaw. The bylaw should explain how petitions can be filed and whether they should be filed on a particular form. The bylaw should also impose a time limit for the Commissioners to respond to such petitions.

9. FACA. It is unclear what the AOS compact means by requiring that "rulemaking shall substantially conform to the principles of . . . the Federal Advisory Commission Act." We suggest that in the event the Commissioners utilize an advisory committee to assist them in promulgating proposed rules, they should follow the various provisions of FACA (relating to membership of advisory committees, publication of meetings and minutes, openness of meetings and documents, etc.). Because the
Commissioners might decide to use advisory committees for purposes other than rulemaking, they should adopt a separate procedural rule covering advisory committees.

We appreciate the opportunity to take part in the important process of formulating a rulemaking bylaw under AOS and we hope that our comments will prove helpful.

Sincerely,

Neil Eisner
Appendix: Section 553 of the Administrative Procedure Act, 5 U.S.C. §553

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved--
   (1) a military or foreign affairs function of the United States; or
   (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include--
   (1) a statement of the time, place, and nature of public rule making proceedings;
   (2) reference to the legal authority under which the rule is proposed; and
   (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply--
   (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
   (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except--
   (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
   (2) interpretative rules and statements of policy; or
   (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.
Article I
Commission Purpose, Function and By-laws

Section 1. Purpose.
Pursuant to the terms of the Interstate Compact for Adult Offender Supervision, (the “Compact”), the Interstate Commission for Adult Offender Supervision (the “Commission”) is established to fulfill the objectives of the Compact, through means of joint cooperative action among the Compacting States: to promote, develop and facilitate safe, orderly, efficient, cost effective and uniform transfer and supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this Compact to travel across state lines both to and from each compacting state, and when necessary, return offenders to the originating jurisdictions.

Section 2. Functions.
In pursuit of the fundamental objectives set forth in the Compact, the Commission shall, as necessary or required, exercise all of the powers and fulfill all of the duties delegated to it by the Compacting States. The Commission’s activities shall include, but are not limited to, the following: the promulgation of binding rules and operating procedures; oversight and coordination of offender transfer and supervision activities in Compacting States; provision of a framework for the promotion of public safety and protection of victims; provision for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; equitable distribution of the costs, benefits and obligations of the Compact among the Compacting States; enforcement of Commission Rules, Operating Procedures and By-laws; provision for dispute resolution; coordination of training and education regarding the regulation of interstate movement of offenders for officials involved in such activity; and the collection and dissemination of information concerning the activities of the Compact, as provided by the Compact, or as determined by the Commission to be warranted by, and consistent with, the objectives and provisions of the Compact.

Section 3. By-laws.
As required by the Compact, these By-laws shall govern the management and operations of the Commission. As adopted and subsequently amended, these By-laws shall remain at all times subject to, and limited by, the terms of the Compact.
Article II
Membership

The Commission Membership shall be comprised as provided by the Compact. Each Compacting State shall have and be limited to one Member. A Member shall be the Commissioner of the Compacting State. Each Compacting State shall forward the name of its Commissioner to the Commission chairperson. The Commission chairperson shall promptly advise the Governor and State Council for Interstate Adult Supervision of the Compacting State of the need to appoint a new Commissioner upon the expiration of a designated term or the occurrence of mid-term vacancies.

Article III
Officers

Section 1. Election and Succession.
The officers of the Commission shall include a chairperson, vice chairperson, secretary and treasurer. The officers shall be duly appointed Commission Members, except that if the Commission appoints an Executive Director, then the Executive Director shall serve as the secretary. Officers shall be elected bi-annually by the Commission at any meeting at which a quorum is present, and shall serve for two years or until their successors are elected by the Commission. The officers so elected shall serve without compensation or remuneration, except as provided by the Compact.

Section 2. Duties.
The officers shall perform all duties of their respective offices as provided by the Compact and these By-laws. Such duties shall include, but are not limited to, the following:

a. Chairperson. The chairperson shall call and preside at all meetings of the Commission and in conjunction with the Executive Committee shall prepare agendas for such meetings, shall make appointments to all committees of the Commission, and, in accordance with the Commission’s directions, or subject to ratification by the Commission, shall act on the Commission’s behalf during the interims between Commission meetings.

b. Vice Chairperson. The vice chairperson shall, in the absence or at the direction of the chairperson, perform any or all of the duties of the chairperson. In the event of a vacancy in the office of chairperson, the vice chairperson shall serve as acting chairperson until a new chairperson is elected by the Commission.

c. Secretary. The secretary shall keep minutes of all Commission meetings and shall act as the custodian of all documents and records pertaining to the status of the Compact and the business of the Commission.

d. Treasurer. The treasurer, with the assistance of the Commission’s executive director, shall act as custodian of all Commission funds and shall be responsible
for monitoring the administration of all fiscal policies and procedures set forth in the Compact or adopted by the Commission. Pursuant to the Compact, the treasurer shall execute such bond as may be required by the Commission covering the treasurer, the executive director and any other officers, Commission Members and Commission personnel, as determined by the Commission, who may be responsible for the receipt, disbursement, or management of Commission funds.

Section 3. Costs and Expense Reimbursement.
Subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by the officers in the performance of their duties and responsibilities as officers of the Commission.

Article IV
Commission Personnel

Section 1. Commission Staff and Offices.
The Commission may by a majority of its Members, or through its executive committee appoint or retain an executive director, who shall serve at its pleasure and who shall act as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission. The executive director shall establish and manage the Commission’s office or offices, which shall be located in one or more of the Compacting States as determined by the Commission.

Section 2. Duties of the Executive Director.
As the Commission’s principal administrator, the executive director shall also perform such other duties as may be delegated by the Commission or required by the Compact and these By-laws, including, but not limited to, the following:

a. Recommend general policies and program initiatives for the Commission’s consideration;

b. Recommend for the Commission’s consideration administrative personnel policies governing the recruitment, hiring, management, compensation and dismissal of Commission staff;

c. Implement and monitor administration of all policies programs, and initiatives adopted by Commission;

d. Prepare draft annual budgets for the Commission’s consideration;

e. Monitor all Commission expenditures for compliance with approved budgets, and maintain accurate records of account;

f. Assist Commission Members as directed in securing required assessments from the Compacting States;
g. Execute contracts on behalf of the Commission as directed;  

h. Receive service of process on behalf of the Commission;  
i. Prepare and disseminate all required reports and notices directed by the Commission; and  
j. Otherwise assist the Commission’s officers in the performance of their duties under Article III herein.

Article V  
Qualified Immunity, Defense, and Indemnification

Section 1. Immunity.  
The Commission, its Members, officers, executive director, and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability, or both, for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

Section 2. Defense  
Subject to the provisions of the Compact and rules promulgated there-under, the Commission shall defend the Commissioner of a Compacting State, the Commissioner’s representatives or employees, or the Commission, and its representatives or employees in any civil action seeking to impose liability against such person arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Section 3. Indemnification.  
The Commission shall indemnify and hold the Commissioner of a Compacting State, his or her representatives or employees, or the Commission, and its representatives or employees harmless in the amount of any settlement or judgment obtained against such person arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.
Article VI
Meetings of the Commission

Section 1. Meetings and Notice.
The Commission shall meet at least once each calendar year at a time and place to be determined by the Commission. Additional meetings may be scheduled at the discretion of the chairperson, and must be called upon the request of a majority of Commission Members, as provided by the Compact. All Commission Members shall be given written notice of Commission meetings at least thirty (30) days prior to their scheduled dates. Final agendas shall be provided to all Commission Members no later than ten (10) days prior to any meeting of the Commission. Thereafter, additional agenda items requiring Commission action may not be added to the final agenda, except by an affirmative vote of a majority of the Members. All Commission meetings shall be open to the public, except as set forth in Commission Rules or as otherwise provided by the Compact. Prior public notice shall be provided in a manner consistent with the federal Government in Sunshine Act, 5 U.S.C. § 552b, including, but not limited to, the following: publication of notice of the meeting at least ten (10) days prior to the meeting in a nationally distributed newspaper or an official newsletter regularly published by or on behalf of the Commission and distribution to interested parties who have requested in writing to receive such notices. A meeting may be closed to the public where the Commission determines by two-thirds (2/3rds) vote of its Members that there exists at least one of the conditions for closing a meeting, as provided by the Compact or Commission Rules.

Section 2. Quorum.
Commission Members representing a majority of the Compacting States shall constitute a quorum for the transaction of business, except as otherwise required in these By-laws. The participation of a Commission Member from a Compacting State in a meeting is sufficient to constitute the presence of that state for purposes of determining the existence of a quorum, provided the Member present is entitled to vote on behalf of the Compacting State represented. The presence of a quorum must be established before any vote of the Commission can be taken.

Section 3. Voting.
Each Compacting State represented at any meeting of the Commission by its Member is entitled to one vote. A Member shall vote himself or herself and shall not delegate his or her vote to another Member. Members may participate and vote in meetings of the Commission and duly authorized committees, by telephone or other means of telecommunication or electronic communication. Except as otherwise required by the Compact or these By-laws, any question submitted to a vote of the Commission shall be determined by a simple majority.

Section 4. Procedure.
Matters of parliamentary procedure not covered by these By-laws shall be governed by Robert’s Rules of Order.
Article VII

Committees

Section 1. Executive Committee.
The Commission may establish an executive committee, which shall be empowered to act on behalf of the Commission during the interim between Commission meetings, except for rulemaking or amendment of the Compact. The Committee shall be composed of all officers of the Interstate Commission, the chairpersons of each committee, and the regional representatives, and the ex-officio victims’ representative to the Interstate Commission. The procedures, duties, budget, and tenure of such an executive committee shall be determined by the Commission. The power of such an executive committee to act on behalf of the Commission shall at all times be subject to any limitations imposed by the Commission, the Compact or these By-laws.

Section 2. Other Committees.
The Commission may establish such other committees as it deems necessary to carry out its objectives, which shall include, but not be limited to Finance Committee; Rules Committee; Compliance Committee; Information Technology Committee; and Training, Education and Public Relations Committee. The composition, procedures, duties, budget and tenure of such committees shall be determined by the Commission.

Section 3. Regional Representatives.
A regional representative from the Northeastern, Midwestern, Southern, and Western regions of the United States shall be elected every two years by a plurality vote of the commissioners of each region and shall serve for two years or until a successor is elected by the commissioners of each region. The states and territories comprising each region shall be determined by reference to the regional divisions used by The Council of State Governments.

Article VIII

Finance

Section 1. Fiscal Year.
The Commission’s fiscal year shall begin on July 1 and end on June 30.

Section 2. Budget.
The Commission shall operate on an annual budget cycle and shall, in any given year, adopt budgets for the following fiscal year or years only after notice and comment as provided by the Compact.

Section 3. Accounting and Audit.
The Commission, with the assistance of the executive director, shall keep accurate and timely accounts of its internal receipts and disbursements of the Commission funds, other than receivership assets. The treasurer, through the executive director, shall cause the
Commission’s financial accounts and reports, including the Commission’s system of internal controls and procedures, to be audited annually by an independent certified or licensed public accountant, as required by the Compact, upon the determination of the Commission, but no less frequently than once each year. The report of such independent audit shall be made available to the public and shall be included in and become part of the annual report to the Governors, legislatures, and judiciary of the Compacting States. The Commission’s internal accounts, any workpapers related to any internal audit, and any workpapers related to the independent audit shall be confidential; provided, that such materials shall be made available (i) in compliance with the order of any court of competent jurisdiction; (ii) pursuant to such reasonable rules as the Commission shall promulgate; and (iii) to any Commissioner or of a Compacting State, or their duly authorized representatives.

Section 4. Public Participation in Meetings.
Upon prior written request to the Commission, any person who desires to present a statement on a matter that is on the agenda shall be afforded an opportunity to present an oral statement to the Commission at an open meeting. The chairperson may, depending on the circumstances, afford any person who desires to present a statement on a matter that is on the agenda an opportunity to be heard absent a prior written request to the Commission. The chairperson may limit the time and manner of any such statements at any open meeting.

Section 5. Debt Limitations.
The Commission shall monitor its own and its committees’ affairs for compliance with all provisions of the Compact, its rules and these By-laws governing the incurrence of debt and the pledging of credit.

Section 6. Travel Reimbursements.
Subject to the availability of budgeted funds and unless otherwise provided by the Commission, Commission Members shall be reimbursed for any actual and necessary expenses incurred pursuant to their attendance at all duly convened meetings of the Commission or its committees as provided by the Compact.

Article IX
Withdrawal, Default, and Termination

Compacting States may withdraw from the Compact only as provided by the Compact. The Commission may terminate a Compacting State as provided by the Compact.

Article X
Adoption and Amendment of By-laws

Any By-law may be adopted, amended or repealed by a majority vote of the Members, provided that written notice and the full text of the proposed action is provided to all Commission Members at least thirty (30) days prior to the meeting at which the action is
to be considered. Failing the required notice, a two-third (2/3rds) majority vote of the Members shall be required for such action.

**Article XI**

**Dissolution of the Compact**

The Compact shall dissolve effective upon the date of the withdrawal or the termination by default of a Compacting State which reduces Membership in the Compact to one Compacting State as provided by the Compact.

Upon dissolution of the Compact, the Compact becomes null and void and shall be of no further force and effect, and the business and affairs of the Commission shall be wound up. Each Compacting State in good standing at the time of the Compact’s dissolution shall receive a pro rata distribution of surplus funds based upon a ratio, the numerator of which shall be the amount of its last paid annual assessment, and the denominator of which shall be the sum of the last paid annual assessments of all Compacting States in good standing at the time of the Compact’s dissolution. A Compacting State is in good standing if it has paid its assessments timely.
### Eligibility for transfer (supervision)
PPCAA Rules 2-101, 2-102, 2-106, 2-107, 2-108, 2-109, 2-111

<table>
<thead>
<tr>
<th>Eligibility elements</th>
<th>Provisions of current rule</th>
<th>Issues faced</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Who is eligible?</strong> PPCAA §2-101</td>
<td>Probationer</td>
<td>New compact defines “offender” as “an adult placed under, or 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.” Art. II See 5, below..</td>
</tr>
<tr>
<td>Parolee</td>
<td>Same as above</td>
<td></td>
</tr>
<tr>
<td><strong>Resident of receiving state</strong></td>
<td></td>
<td>How long does it typically take to become a state resident? Any compelling reason to vary from those? Does it typically take six months to establish new state of residence? What evidence must be offered of such? How does offender show “visible means of support”? What about school? What about offender who had been enrolled in school at the time of offense and wants to continue? Does s/he likewise have to show employment or visible means of support?</td>
</tr>
<tr>
<td>- Actual inhabitant of receiving state continuously for more than one year prior to coming to sending state; <strong>AND</strong> Kathie Winckler Page 21 2/18/2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- has not resided within sending state for more than six continuous months immediately preceding the offense; <strong>AND</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- has an offer of employment; <strong>OR</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- visible means of support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family in receiving state</td>
<td>What should constitute family?</td>
<td>What about aunts and uncles?</td>
</tr>
<tr>
<td>---------------------------</td>
<td>--------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>• has family residing in receiving state; AND</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• has an offer of employment; OR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• visible means of support</td>
<td>Should there be minimum length of residency for family?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Does s/he have to reside with family in same domicile? In same town? In same county?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What about sex offenders living within prohibited distance of schools, etc.?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Receiving state consents</th>
<th>Should there be guidelines for this exercise of discretion? If so, what?</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Military personnel PPCAA §2-102</th>
<th>“…physical presence in another state for military service does not change residence for purposes of the [c]ompact.”</th>
<th>Does this conflict with any military justice provisions?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hypo 1: Under existing rule, if offender is in National Guard, placed under supervision in sending state (SS), activated and sent to Georgia, s/he is not subject to the interstate compact.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hypo 2: Offender in National Guard and is placed on supervision in SS. Offender’s unit is not activated. Offender requests transfer to receiving state (RS). Offender’s request is processed as in any other compact case.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Offender with extraordinary medical or psychological conditions PPCAA §2-111</th>
<th>Sending state must “fully disclose all relevant known information regarding an offender’s condition” AND</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Must obtain a signed waiver from offender allowing such disclosure.</td>
<td>What constitutes an “extraordinary medical or psychological condition”?</td>
</tr>
<tr>
<td></td>
<td>Heart disease? History of stroke? Amputation?</td>
</tr>
<tr>
<td></td>
<td>Depression? Bi-polar disorder?</td>
</tr>
<tr>
<td></td>
<td>Is there HIPPA rule that would pertain to this?</td>
</tr>
</tbody>
</table>

---

1 Family consists of parents, grandparents, adult children, adult siblings, legal spouse, legal guardian, or step-parent. PPCAA §1-100 (K)
| 3. | Supervision of misdemeanants. PPCAA §2-107 | Misdemeanants are eligible for supervision under the compact. | What about when the receiving state does not supervise its own misdemeanants? Can there be a threshold test, e.g., only more serious misdemeanors or misdemeanors involving bodily injury are eligible? What about state’s resource shortages? |
| 4. | Furlough, work release, or other pre-parole release PPCAA §2-108 | No offender released on furlough, work release or any other pre-parole release program is eligible. | Good rule. Is it necessary to state it? Maybe more so under the new compact b/c it encompasses all offenders under criminal justice supervision. |
| 5. | Non-convicted offenders PPCAA §2-109 | Where “reciprocal legislation or other law exists allowing transfer and supervision, states may [transfer and supervise non-convicted offenders].” | New compact clearly encompasses offenders who are subject to deferred adjudication and other non-residential diversion programs that place offender under supervision but, when successfully completed, do not result in conviction. How do we implement a rule on this? Does this class of offender have any special needs about which a rule must be devised? What about a state that lacks a program that is called for by the terms of the defendant’s release? |
## Offender Violations and Returns to the Sending State

PPCAA Rules-3-110, 4-110, 4-111, 5-101, 5-102, 5-103, 5-104, 5-105, 5-106, 5-107, 5-108, and 5-109

<table>
<thead>
<tr>
<th>Current Rule</th>
<th>Provisions of Current Rule</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-110</td>
<td>The sending state shall provide for returns of offenders in a reasonable and expeditious manner. Expenses shall be incurred by the sending state and fiscal reasons cannot be used as an excuse for not returning. The sending state should not be charged for normal incarceration or judicial/administrative process of the receiving state.</td>
<td>Parole returns are usually handled by the Parole Board or Department of Corrections and are not a problem. Probation returns are the responsibility of the sentencing court. Courts often are reluctant to return offenders due to budgetary constraints, lack of resources, lack of information, etc… What is the liability of a state that refuses to return an offender for legitimate violations? The sending state should not be charged with normal cost of housing offender awaiting return on a violation.</td>
</tr>
<tr>
<td>4-110</td>
<td>Receiving states are required to notify sending states of violations. The rule allows for the sending state and the receiving state to place detainers on offenders where allowed by law. Preliminary hearings should be held as soon as possible when requested and the results forwarded to the sending state so a return decision can be made. Bail should not be permitted during the time the sending state is in the process of returning an offender.</td>
<td>Reports—What should be included in violation reports? Should there be a standardized form for VR’s? What is an appropriate time frame to notify the sending state of violations? What documentation should be included with VR? (Certified court documents, case notes, UA result forms, notarized witness statements, etc…) Detainers—The sending state should send letter expressing their intentions to return. It should include contact information. Does a warrant have to be issued to initiate return? Some</td>
</tr>
</tbody>
</table>
| 4-111 | **Obligation to Retake a Violator**-
The seriousness of the violation should be considered. (Dirty UA as opposed to a new violent crime.) Should amount of time be a factor to determine whether or not to retake? Do we go on a case by case basis or do we try to develop a matrix?

**Alternatives to Retaking**-A specific rule on concurrent supervision is needed. What should happen to case if the offender is incarcerated in the receiving state?

**Continuation of Supervision if the Sending State Refuses to Retake**-
Should the commission set specific standards to consider when retaking? Should the sending state or the receiving state have the final say on who is returned? It is important that we remain consistent.

---

states have the ability to place a detainer on an offender they are supervising under the compact. Specific time frames should be addressed.

**Requests for Preliminary Hearings**-
All requests for hearings should be honored. Should there be standardized format for the hearing process and forms. Should determine appropriate time frames for hearings. Should offenders be allowed to waive their hearings and if so under what circumstances?

**Bail**-
Bail should not be allowed when an offender is being returned.

---

This rule sets out what factors should be considered when making a decision to retake an offender. Alternatives to retaking are discussed including concurrent supervision and incarceration in the receiving state. A sending state shall apply the same standards for retaking that they apply to their own offenders. The decision of the sending state to retake is conclusive and non-reviewable within the sending state.
<p>| 5-101 | An officer of the sending state may apprehend and retake a parolee or probationer after due process. | The heading of this rule is General Legal Aspects. The commentary of the rule talks about due process, waivers of extradition, and returns when offender has pending charges or is convicted of a new crime. This rule should address all areas discussed in the commentary. <strong>Due Process</strong>—We need to review Morrissey v. Brewer and Gagnon v. Scarpelli to determine what role it plays in this rule. A probable cause hearing is required. What format should it be in and what should the time frames be? <strong>Waiver of Extradition</strong>—We need to be very specific concerning the waiver of extradition. In the old compact the waiver is actually part of the written compact. Many states were concerned that it was not in the body of the new legislation. Some states added it to the legislation before passing it. This is discussed in 5-105. We may want to look at combining the rules. |
| 5-102 | Morrissey v. Brewer and Gagnon v. Scarpelli require due process be afforded interstate compact offenders by holding a probable cause hearing in the receiving state. | Do these court cases require the hearing before a return? Are probable cause hearings required on probation cases. Does a warrant have to be issued before a probable cause hearing is held? What format should be used for hearings and what are the appropriate time frames? |
| 5-103 | Waivers of probable cause hearings | Is waiving the probable cause hearing |
| <strong>5-104</strong> | On-site probable cause hearings shall be held in the receiving state when the offender was in that state at the initiation of the violation. Hearings shall be held in the appropriate jurisdiction and shall be governed by the procedures of the receiving state. All evidence should be able to transfer to the sending state for a final revocation hearing. | Refer back to Morrissey v. Brewer and Gagnon v. Scarpelli to determine guidelines for hearing. Should there be standardized procedures for hearings including forms and time frames? What evidence should be included in hearing results? Should we require certified court documents, notarized witness statements, and detailed case notes? |
| <strong>5-105</strong> | A waiver of extradition must be signed by the offender prior to transfer | Refer to comments in 5-101. Extradition is a very critical issue. Could be a huge financial issue is extradition hearings are required. Should research case law regarding extradition to ensure we are solid ground. Sever cites are noted in commentary section of rule. A critical need of this rule is training the judiciary around the country to ensure consistency. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Rule Description</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-106</td>
<td>An offender can be returned from any jurisdiction where there are found without the need for a formal extradition process.</td>
<td>Should research case law to determine if this is acceptable. Is there a difference between an offender who absconded to another state and one who was given permission illegally by the receiving state to relocate?</td>
</tr>
<tr>
<td>5-107</td>
<td>The offender shall not be denied the right to appeal to the court for protection of individual rights.</td>
<td>The commentary of this rule has a great deal of information and discussion on this matter. If it is relevant it should be in the rule and not in commentary. Case law should be reviewed to determine further issues.</td>
</tr>
<tr>
<td>5-108</td>
<td>Officers of the sending state are permitted to transport prisoners through any and all states party to the compact.</td>
<td>Many states use private vendors for transporting prisoners. We need to ensure this is covered in our rules. We should define duly accredited officers.</td>
</tr>
<tr>
<td>5-109</td>
<td>Duly accredited officers may assume custody of offenders from state and federal correctional facilities after certain criteria is met. There must be no detainers from the holding state, pending extradition by a 3rd state, or a requirement for an identity hearing.</td>
<td>Rule should be included.</td>
</tr>
</tbody>
</table>