INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

RULES COMMITTEE MEETING MINUTES

April 22, 2009
9:00 a.m. EDT
WebEx

Members in Attendance:
1. William Rankin  Chair, WI
2. John Rubitschun  MI
3. Wayne Theriault  ME
4. Robert Ambroselli  CA
5. Dori Ege  AZ
6. Patricia Malone  Ex-officio, MA
7. Denise Sitler  Ex-officio, OR

Guest:
1. Ken Merz  MN
2. Warren Emmer  ND
3. Milt Gilliam  OK
4. Michael Lynn  KY
5. Angela Tolley  KY
6. Janet M. Wheatley  KY
7. Steve Turner  KY
8. Debbie Nutepass  KY
9. Connie Westmouland  KY
10. Kathie Winckler  TX

Members not in Attendance:
1. Yolette Ross  NJ
2. Ed Ligtenberg  SD
3. Gerald VandeWalle  Ex-officio, ND
4. Nick Alexander  Ex-officio, VA

Staff:

Approved on 09/22/09. B.S. 1
Call to Order
Chair W. Rankin (WI) called the meeting to order at 9.00 a.m. EDT. Five out of seven members were present. Quorum was established.

Commissioner W. Theriault (ME) moved to approve the agenda. Commissioner D. Ege (AZ) seconded. The agenda was approved as drafted.

Commissioner W. Theriault (ME) made a motion to approve the minutes from January 23, 2009. Commissioner J. Rubitschun (MI) seconded. The minutes were approved as drafted.

Commissioner W. Rankin (WI) informed the Committee about Commissioner Y. Ross (NJ) recent appointment to serve on the Rules Committee. Commissioner D. Morrison’s appointment is expected to take effect starting April 23, 2009.

The Committee reviewed Rule proposals submitted by standing committees, regions and Rules Committee members.

Rule 1.101 Definitions

“Business day” means a day other than a Saturday, Sunday or legal holiday, during the hours when an office is open to the public and may receive mail or parcels from public and private mail or parcel delivery services. When a state is required, by rule, to act within a number of “business days,” only the business days recognized in that state are counted.

Justification
Several ICAOS rules impose an obligation on a compact state to perform an act within a specified number of “business days”. Agencies sponsoring compact offices may have widely differing operating schedules; some states have unique holidays; electronic correspondence across time zones may not be received on the same “business” day it was sent. In the same calendar period, a state requesting action may experience a different number of business days than are recognized in the state required to act. This definition is intended to provide guidance in counting business days.

The Committee approved moving the proposal forward for Commission comments.

The Committee reviewed an amendment to Rule 1.101 submitted by the West Region.

Rule 1.101 Definitions

“Supervision” means the authority or oversight exercised by supervising 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 includes any condition, qualification, special condition or requirement and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.

Justification
The current definition of supervision has been interpreted to require transfer of certain offenders whom the sentencing courts have clearly not intended to be subject to “supervision” as it has been traditionally understood. These include offenders placed on probation as a means to preserve jurisdiction while the offenders pay court-ordered fees, fines, court costs and restitution.

Since the monitoring and collection of outstanding monies is the sending state’s responsibility under Rule 4.108, regardless of the offender’s location, there is no benefit in requiring transfer of cases, when the only conditions to be satisfied are monetary.

This amendment will eliminate confusion and inconsistencies among states in applying compact rules.

The Committee approved moving the amendment to Rule 1.101 forward for Commission comments.

The Committee reviewed an amendment to Rule 2.106 proposed by the South Region.

Rule 2.106 Offenders subject to deferred sentences
Offenders subject to deferred sentences are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this compact.

Persons subject to supervision pursuant to a pre-trial release intervention program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

Justification
The intent of this rule as currently written is to eliminate any case where the offender was in a bond-like status and focus on those offenders where courts/parole boards have made a final determination that the offender should be supervised for a period of time.

Many states operate deferred prosecution programs and call them pre-trial intervention programs. These programs provide offenders with an opportunity to have their charges dismissed upon successful completion of a period of supervision and fulfillment of certain conditions such as payment of restitution to the victim, participation in a substance abuse or mental health treatment program, completion of community service, etc. Advisory Opinion 6-2005 states that under certain circumstances deferred prosecution may be equivalent to deferred sentences and those offenders may be eligible for transfer under the Compact Rules. Persons subject to deferred prosecution and offenders subject to deferred sentences are being governed by the Compact rules. Many states also operate a pre-trial release program which diverts criminal defendants from pretrial incarceration. Such a program would be similar to bail.

By amendment of this rule, offenders in pre-trial intervention (deferred prosecution) programs will not specifically be excluded from transfer under the Compact; however, with this minor change, offenders in pre-trial release programs will specifically be excluded.

The Committee approved moving Rule 2.106 and its justification forward for Commission comments as amended.

The Committee discussed an amendment to Rule 2.110 submitted by Rules Committee member P. Malone (MA).

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 relocate to another state except as provided by the Compact and these rules.

(b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender’s supervision.

(c) Upon notice that a sending state has permitted an offender who is eligible for transfer under this compact to relocate to another state in violation of (a) or notice of rejection of a transfer request for such an offender, the sending state shall direct the offender to return to the sending state within 15 calendar days of receiving such notice. If the offender does not return to the sending state as ordered, the sending state shall issue a warrant that is effective in all compact member states, without limitation.
as to specific geographic area, no later than 10 calendar days following the offender’s failure to appear in the sending state. An offender who absconds from the sending state is not subject to this rule.

**Justification**

Under the current rules, there is no explicit process requiring a sending state to take specific action when it or a receiving state learns that an offender who is eligible for transfer under the Compact has relocated to the receiving state in violation of Compact rules. This poses a significant public safety risk because the offender is residing in the receiving state but not under supervision there. This new rule would clarify a sending state’s responsibilities in this situation to remove the offender from the receiving state. Paragraph (c) of this rule would require the sending state to notify the receiving state that the offender has indeed been removed from the receiving state; otherwise a receiving state might assume this had been done when in fact it hadn’t. Paragraph (d) would require the sending state to keep the receiving state apprised if the sending state’s response is to terminate supervision.

The Committee decided to modify Rule 2.110 by adding the proposed amendment as Section (c).

Commissioner W. Theriault (ME) moved to adopt Rule 2.110 as amended and move forward for Commission comments. Commissioner R. Ambroselli (CA) seconded. Motion passed.

The Committee reviewed a Rule proposal submitted by Rules Committee member P. Malone (MA).

**RULE**

_Mandatory retaking upon withdrawal of assistance by resident family_

Upon a request from a receiving state, a sending state shall retake or order the return of an offender, transferred pursuant to the criteria in Rule 3.101 (e) and who is not a resident of the receiving state, from the receiving state or a subsequent receiving state, if (a) the resident family has notified the receiving state that it is no longer willing and able to assist the offender as specified in the plan of supervision, (b) the offender has no other means of support in the receiving state, and (c) the offender has been in the receiving state for less than one year.

**Justification**

This rule would require the mandatory retaking of an offender upon the withdrawal of assistance by the resident family. Cases arise whereby an offender, accepted by the receiving state as a mandatory case because of resident family, no longer has a valid plan of supervision because the resident family has withdrawn its support. It is intended to apply in situations where the resident family is the only connection the offender has to the receiving state. It would not apply to an offender who is a resident of the receiving state or who has another means of support in the receiving state, or who has been in the receiving state for more than one year.

The Committee decided not to adopt proposed changes.

The Committee reviewed an amendment to Rule 3.101 submitted by the West Region.

**Rule 3.101 Mandatory transfer of supervision**

(f) Upon 3 returns for violations and closures within five years of a specific offender to the sending state under the terms of this rule, any future applications for transfer shall be considered under 3.101-2 “Discretionary transfer to the same receiving state of supervision”.

**Justification**

Many offenders apply multiple times for transfer to a specific state, after multiple failures of supervision. A reasonable case can be made that after three case failures in the same receiving state, that any future applications for transfer should be considered discretionary and not mandatory. After a certain point, the offender is simply not having a successful experience with supervision in the receiving state where multiple failures have occurred (3-Strikes Rule on Mandatory Cases).
The Committee approved moving this proposal forward for Commission comments.

The Committee reviewed an amendment to Rule 3.101-1 proposed by the West Region.

Rule 3.101-1  Mandatory transfers of military, families of military, and family members employed, and employment transfer.
(a) Transfers of military members- An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(b) Transfer of offenders who live with family who are members of the military- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who has been deployed to another state, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(c) Employment transfer of family member to another state- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is involuntarily transferred to another state by their full-time employer, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(d) Employment transfer of the offender to another state – An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is involuntarily transferred to another state by his/her full-time employer shall be eligible for reporting instructions and transfer of supervision.

Justification
(c) For purpose of consistency
(d) An offender’s ability to support themselves plays a major part in:
  1) rehabilitation,
  2) the ability to be a productive member of society and
  3) the ability to pay legal financial obligations, including victim’s compensation.

Offenders should not be put in a position to lose viable employment and become unemployed because they are transferred by their company to a state that will not accept discretionary cases. If moving to the receiving state allows the offender to maintain employment, it should be a requirement to accept the offender.

The Committee approved moving the proposal forward for Commission comments.

The Committee reviewed a proposal to amend Rule 3.101-3(c) submitted by the Midwest Region.

Rule 3.101-3 (c):
(c) Reporting instructions for sex offenders living in the receiving state at the time of sentencing- Rule 3.103 applies to the transfer of sex offenders who have been placed on probation for a sex offense requiring registration in the sending or receiving states except for the following:
  1) The receiving state shall have five business days to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instructions. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.
2) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state.

**Justification**

Current rule requires all sex offenders requesting reporting instructions under 3.103 to remain in the sending state until reporting instructions are received. Early experience with the new rule has shown that a significant proportion of affected offenders are individuals who are not on probation for a sex offense. Rather, they have previous convictions or adjudications, and are already registered as sex offenders in the receiving states.

Recent examples of affected offenders already registered and residing in the receiving state at the time of sentencing include:

- Offender placed on probation for DUI – 2nd Offense; previously convicted and currently registered in receiving state;
- Offender placed on probation for Harassing Behavior; previously convicted and currently registered in receiving state;
- Offender placed on probation for Issue Worthless Checks, Possession of Marijuana; currently registered in receiving state;
- Offender placed on probation for Fraudulent Use of Credit Card; previously convicted and currently registered in receiving state;
- Offender placed on probation for Failure to Register Vehicle Information; currently registered in receiving state.

To require all sex offenders to remain in the sending state places unnecessary financial burdens on the offenders and/or the sending state. Preventing these individuals from returning to their residences also may create new public safety risks, by displacing the offenders and requiring them to find temporary housing. These registered sex offenders already reside in the receiving state, presumably in compliance with the state’s residence and registration requirements. This proposal limits the scope of Rule 3.101-3 (c) to those offenders newly convicted of offenses requiring registration. In these cases, a receiving state is more likely to serve a public protection function by conducting a prior investigation to confirm the residence does not conflict with existing state law or policy.

The Committee approved moving the proposal forward for Commission consideration.

The Committee reviewed an amendment to Rule 3.101-3 (d) proposed by Rules Committee member P. Malone (MA).

**Rule 3.101-3 Transfer of supervision of sex offenders**

(d) *Mandatory retaking for violations of conditions of supervision.* Upon a request by the receiving state and a showing that the sex offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake the sex offender from the receiving state or subsequent receiving state.

**Justification**

This proposed rule change would add a new paragraph to the existing sex offender rule to require a sending state, if requested by the receiving state, to retake a sex offender who has committed three or more significant violations of the offender’s supervision conditions. The amendment would preclude a sending state from merely ordering the return of such an offender, unless the receiving state agrees. Ordering a sex offender to leave the receiving state on the offender’s own accord and travel unsupervised for what may be a significant distance does not promote community safety or protect the rights of crime victims, the two tenets underlying the purposes and intent of ICAOS. To allow a sending state to order the return of sex offenders instead of retaking them, defeats the overriding goals for which the states agreed to enter into the Compact.

The Committee decided not to adopt proposed changes.

Approved on 09/22/09. B.S. 6
The Committee reviewed an amendment to Rule 3.102 submitted by Rules Committee member, Commissioner W. Rankin (WI).

**Rule 3.102 Submission of transfer request to a receiving state**

(a) Except as provided in section (c), and subject to the exceptions in Rule 3.103 and 3.106, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.

(b) Except as provided in section (c), and subject to the exceptions in Rule 3.103 and 3.106, the sending state shall not allow the offender to travel to the receiving state until the receiving state has replied to the transfer request.

(c) An offender who is employed in the receiving state at the time the transfer request is submitted and has been permitted to travel to the receiving state for the employment may be permitted to continue to travel to the receiving state for the employment while the transfer request is being investigated, provided that the following conditions are met:

1) Travel is limited to what is necessary to report to work, perform the duties of the job and return to the receiving state.

2) The offender must return to the sending state during non-working hours, and

3) The Transfer Request shall include notice that the offender has permission to travel to and from the receiving state, pursuant to this rule, while the transfer request is investigated.

**Justification**

This amendment allows an offender to maintain existing employment in a receiving state, without interruption, while a transfer request is investigated. Under existing rules, an offender who has not requested transfer to another state may travel to and from that state, as long as the offender does not relocate. However, once a sending state submits a request to transfer supervision, Rule 3.102 bars the offender from any further travel to that state. Exceptions are possible for offenders who already reside in or who, due to emergency circumstances, need to relocate to the receiving state. No exception is currently provided for an offender who has employment in that state, but does not intend to relocate prior to completion of the investigation.

The Committee approved moving the proposal forward for Commission comments.

The Committee reviewed a proposed amendment to Rule 3.104-1 submitted by Rules Committee member, Commissioner D. Ege (AZ).

**Rule 3.104-1 Acceptance of offender; issuance of reporting instructions**

(a) If a receiving state accepts transfer of the offender, the receiving state’s acceptance shall include reporting instructions.

(b) Upon notice of acceptance of transfer by the receiving state, the sending state shall issue a travel permit to the offender and notify the receiving state of the offender’s departure as required under Rule 4.105.

(c) A receiving state shall assume responsibility for supervision of an offender upon the offender’s arrival in the receiving state and submit a Notice of Arrival as required under Rule 4.105.

(d) An acceptance by the receiving state shall be valid for 120 calendar days. If the sending state has not sent a Departure Notice to the receiving state in that time frame, the receiving state may withdraw its acceptance and close interest in the case.

**Justification**

Rules 3.103 and 3.106 include this verbiage. This language should be a part of Rule 3.104-1 as well because not all offenders arrive in a receiving state via reporting instructions. Adding this language to this
rule also makes it clear when the receiving state’s responsibility for supervision begins and also makes mention of the mandated arrival notice which was also missing from this rule.

The Committee approved moving the proposal forward for Commission comments.

The Committee reviewed a Rules Committee proposal to amend Rule 3.107(a) (11), submitted by Commissioner W. Rankin (WI) on behalf of Commissioner D. Morrison (GA).

**Rule 3.107 Transfer Request**

(a) …

(11) criminal history

**Justification**

Georgia recommends that the criminal history be included as a required document in all transfer requests. Without the criminal history, the receiving state cannot fully investigate a plan and may overlook important victim or sex offender issues. Appropriate/additional special conditions cannot be considered without a full understanding of the offender’s past.

Currently, if the sending state does not provide this information, the burden of obtaining the criminal history is placed on the receiving state. In my opinion, this is not fair to the receiving state. Additionally, most, if not all states will already have the complete criminal history in their files. Simply adding one additional attachment to the transfer request in ICOTS will reduce redundancy and increase public safety.

The Committee decided not to adopt proposed changes.

The Committee reviewed proposed changes to Rule 3.107 submitted by Rules Committee member, Commissioner D. Ege (AZ).

**Rule 3.107 Transfer Request**

(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.

**Justification**

We are discovering that in cases when states do not include the Offender Application with their packets as a discretionary attachment, it is difficult to obtain one from the sending state after the fact. We spend time we don’t have in trying to obtain a signed copy of this application for violating offenders. In addition, we are becoming aware that because it is not mandatory in the rule that officer’s are forgetting to even have the offender sign one – that can cause a lot of problems should that state want to return their offender or when they have to return their offender under the mandatory retaking rules.

The Committee approved moving the amended proposal forward for Commission comments.

The Committee discussed a proposed amendment to Rule 4.106 submitted by the South Region.

**Rule 4.106 Progress reports**

(a) A receiving state shall provide to the sending state a progress report annually, or more frequently, upon the request of the sending state, for good cause shown. The receiving state shall provide the progress report within thirty (30) calendar days of receiving the request.

(b) A progress report shall include-

(1) offender’s name;

(2) offender’s residence address;

(3) offender’s telephone number and electronic mail address;
(4) name and address of offender’s employer;
(5) supervising officer’s summary of offender’s conduct, progress and attitude, and compliance with conditions of supervision;
(6) programs of treatment attempted and completed by the offender;
(7) information about any sanctions that have been imposed on the offender since the previous progress report;
(8) supervising officer’s recommendation;
(9) any other information requested by the sending state that is available in the receiving state.

**Justification**

Progress reports are frequently needed for the sending state to complete regularly scheduled supervision reviews or final termination audits and must be received timely so that violations can be addressed prior to termination of supervision. All other compact processes have timeframes for response.

The Committee approved moving the proposal forward for Commission comments as amended.

The Committee reviewed an amendment to Rule 4.109-1 submitted by Commissioner W. Rankin (WI) on behalf of Commissioner D. Morrison (GA).

**Rule 4.109-1 Authority to arrest and detain**

(a) An offender in violation of the terms and conditions of supervision may be taken into custody and or continued in custody by the receiving state.

(b) When an offender is arrested in the receiving state for a violent felony charge, the sending state shall issue a warrant to hold this offender once probable cause is established and requested by the receiving state.

**Justification**

Georgia has recently dealt with several cases, which prompted the forthcoming rule proposal. We have experienced instances where an offender is arrested for a violent offense (Aggravated Assault, Possession of a Firearm, and/or Terroristic Threats), probable cause has been established, bond was posted, and the sending state refused to issue a warrant.

Georgia's OS warrants are only valid for thirty days; therefore, we have been forced to continue the offender under supervision, jeopardizing public safety in our state until a disposition is received.

To prevent a sending state from continuing an offender in the receiving state (often times in the same environment/near the victim) while violent, felony charges are pending, Georgia recommends a rule proposal, mandating that the sending state issue a warrant, once probable cause is established, if requested by the receiving state. The issuance of a warrant does not require the sending state to return an offender; therefore, we see no reason not to issue a warrant.

The Committee decided not to adopt proposed changes.

The Committee had discussion on ICOTS related Rules: the relationship between compact requirements and ICOTS requirements and the ICOTS correlation with the Training, Compliance and Technology Committees.

The Committee reviewed:
- ICOTS-Rules Concurrence, sort by Rule (prepared by W. Rankin)
- ICOTS-Rules Concurrence, sort by activities (prepared by W. Rankin)
- Rules and ICOTS (prepared by D. Ege)

Approved on 09/22/09. B.S. 9
ICOTS amendments (prepared by D. Sitler)
Rules Amendments related to ICOTS passed at the Annual Business Meeting 2005

Rule 3.104 Time allowed for investigation by receiving state

(a) A receiving state shall complete investigation and respond to a sending state’s request for an offender’s transfer of supervision no later than the 45th calendar day following receipt of a completed transfer request in the receiving state’s compact office.

(b) If a receiving state determines that an offender transfer request is incomplete the receiving state shall notify the sending state by rejecting the transfer request with the specific reason(s) for the rejection. If the offender is in the receiving state with reporting instructions, those instructions shall remain in effect for 15 calendar days from the date of rejection. The sending state must, within this time frame, order the offender to return or submit a complete Transfer Request.

Commissioner D. Ege (AZ) moved to adopt Rule 3.104 as amended. Commissioner R. Ambroselli (CA) seconded. Motion passed.

Rule 2.104 Forms

(a) States shall use the forms or electronic information system authorized by the commission for all communication regarding offenders between or among states.

(b) The sending state shall retain the original forms containing the offender’s signature until the termination of the offender’s term of compact supervision.

(c) This rule shall not be construed to prohibit written, electronic or oral communication between compact offices.

Commissioner W. Theriault (ME) moved to adopt Rule 2.104 as amended. Commissioner R. Ambroselli (CA) seconded. Motion passed.

The Committee discussed ICOTS compliance with Rule 4.105.

Rule 4.105 Arrival and departure notifications; withdrawal of reporting instructions

(a) Departure notifications

At the time of an offender’s departure from any state pursuant to a transfer of supervision or the granting of reporting instructions, the state from which the offender departs shall notify the intended receiving state, and, if applicable, the sending state, through the electronic information system of the date and time of the offender’s intended departure and the date by which the offender has been instructed to arrive.

(b) Arrival notifications

At the time of an offender’s arrival in any state pursuant to a transfer of supervision or the granting of reporting instructions, or upon the failure of an offender to arrive as instructed, the intended receiving state shall immediately notify the state from which the offender departed, and, if applicable, the sending state, through the electronic information system of the offender’s arrival or failure to arrive.

(c) A receiving state may withdraw its reporting instructions or submit a case closure notice if the offender does not report to the receiving state as directed.

Commissioner D. Ege (AZ) made a motion to submit Rule 4.105 (c) for Commission comments as amended. Commissioner W. Theriault (ME) seconded. Motion passed.
To be consistent with Rules, the Committee discussed changing verbiage on some of ICOTS’ screens.

Mississippi –Louisiana: The Committee discussed an administrative order of MS Governor that authorized a MS inmate’s furlough release to Louisiana and its compliance with Rule 2.107. The Committee authorized Legal Counsel R. Masters to write MS Governor a letter explaining the situation.

Advisory Opinions: The Committee discussed advisory opinions and their consistency with Rules.

The Committee agreed that no Rule changes were necessary for AO 4-2007 to be consistent with Rules – it is a training issue.

Calendar: The Committee decided to meet again before May 15 to review the adopted Rule proposals and justifications.

After this meeting, the National Office will send the approved proposals for comments to Commissioners, DCAs, Compact Administrators and the Ex-Officios for comments. The proposals will not be available for public view. The proposals will be closed for comments on August 31, 2009.

The Committee decided to have another face-to-face meeting in September 2009 to review Commission comments on Rule proposals and adopt any necessary changes.

Adjourn
Commissioner D. Ege (AZ) made a motion to adjourn. Commissioner W. Theriault (ME) seconded. Motion passed.

The meeting was adjourned at 5:13 pm EDT.