INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION
Rules Committee

May 5, 2006
12:00 pm EST

Web Conference
1-650-429-3300  Room 562 606 655

Committee Members in Attendance

1. Milt Gilliam
2. Dori Ege
3. Mike DePietro
4. Henry Lowery
5. Judge John D’Amico
6. Ed Ligtenberg
7. Doreen Geiger
8. Gerald Vandewalle (ex-officio)
10. Gregg Smith (ex-officio)
11. Pat Tuthill (ex officio)
12. Kevin Dunphy (ex-officio)

Committee Members Not in Attendance

1. Karen Stoll

Staff

1. Don Blackburn
2. Stephanie Scott
3. Mindy Spring
4. Whitney Hall
5. Rick Masters (legal counsel)

Call to Order

- The meeting was called to order by M. Gilliam at 12:04 pm EST. D. Blackburn called roll, finding 7 of 8 members were present establishing a quorum.

- M. Gilliam explained a point that had been discussed at the recent Executive Committee meeting. It was discussed that other committees, regions, or commissioners need to recommend draft language for any rules to be proposed for change to the Rules Committee.

- Milt asked that Committee members send him recommendations for justifications of revised rules.

Approval of Minutes

- Motion to approve the February 28, 2006 minutes made by D. Ege, seconded by M. DePietro.

  H. Lowery suggested revisions for these minutes. In Discussion of 3.108 and 4.111 sentence reading “reason for referral as to make” should read “was to make.” And, in Rule 5.106(b) should read “in placement” should be changed to “or placement.” In subparagraph 3 says “bearing” where it should be “hearing.”

  D. Ege discussed a change of language when M. Gilliam was discussing WebEx as a disciplinary function in the Chair Update.

  Motion as amended passed.

Rules Revisions

- Discussion of Rule 3.101-1, regarding transferring employment of family member or offender.

**RULE 3.101-1  Mandatory Transfers of Military, Families of Military, and Family Members Employed;**

(a) *Transfer of Military members*- An offender who is a member of the military and has been deployed by the military to another state, shall be immediately eligible for reporting instructions and transfer of supervision.

(b) *Transfer of Offenders who live with family who are members of the military*- An offender who meets the other criteria specified in Rules 3.101 (a), (b), & (c) and 3.101 (e)(2) and who lives with a family member who has been deployed to
another state, shall be immediately eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state.

(c) Employment transfer of family member to another state—An offender who meets the other criteria specified in Rules 3.101(a), (b), & (c) and 3.101(e)(2), and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, shall be immediately eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state.

- M. DePietro proposed using language as an exception to 3.101(e)(1)

- J. D’Amico moved and H. Lowery seconded a motion to adding to rule 3.101-1 (b) “as specified by Rule 3.101(a), (b), and (c)” and leave 3.101(e)(2) in the rule.

- Motion passes

- M. DePietro moved and H. Lowery seconded a motion to adding to rule 3.101-1 (b) “as specified by Rule 3.101(a), (b), and (c)” and leave (e)(2) in the rule.

- Motion passed.

- Discussion of Rule 4.109

**RULE 4.109 Violation reports**

(a) A receiving state shall notify a sending state of significant violations of conditions of supervision by an offender within 30 calendar days of discovery of the violation.

(b) A violation report shall contain—
   1. offender’s name and location;
   2. offender’s state-issued identifying numbers;
   3. date of the offense or infraction that forms the basis of the violation;
   4. description of the offense or infraction;
   5. status and disposition, if any, of offense or infraction;
   6. dates and descriptions of any previous violations;
   7. receiving state’s recommendation of actions sending state may take;
   8. name and title of the officer making the report; and
   9. if the offender has absconded, the offender’s last known address and telephone number, name and address of the offender’s employer, and the date of the offender’s last personal contact with the supervising officer.

(c)(1) The sending state shall respond to a report of a violation made by the receiving state no later than ten business days following receipt by the
M. Gilliam recommended moving on from 4.109 because it as been dealt with in Chapter 5.

M. Gilliam began discussion on Rule 5.105. He said based on comments by R. Masters and M. Buenger regarding a retaking hearing.

**RULE 5.105  Time allowed for retaking an offender**

A sending state shall retake an offender within 30 calendar days after the decision to retake has been made or upon release of the offender from incarceration in the receiving state.

- R. Masters asked what happens if after 30 days an offender is not retaken by the sending state.
- D. Ege brought up that Rules 5.102 and 5.103 already discuss timeframes in place. The problem is that no one is following these time limits.
- R. Masters recommended adding sanctions to rules so that states will be more compliant with timeframes.
- M. Gilliam noted that there are no further recommendations for Rule 5.105 at this time.
- Discussion began on Rule 5.106

**RULE 5.106  Cost of incarceration in receiving state**

(a) A receiving state shall be responsible for the cost of detaining the offender in the receiving state pending the offender’s retaking by the sending state.

(b) A sending state shall be responsible for the cost of detaining the offender in the receiving state pending the offender’s retaking by the sending state if the time allowed for retaking of an offender under Rule 5.105 has expired and, the sending state has not retaken the offender within fifteen days of the following:
Motion J. D’Amico moved and M. DePietro to strike language after “expired” in the proposed Rule 5.106 (b).

Motion passed.

J. D’Amico began discussion on new proposed amendments that he brought to the table, beginning with revisions of Rule 3.103.

Changing wording in 3.103(b)(1)(F) from “to” to “Offenders paroled from prison”.

**RULE 3.103 Acceptance of the offender by receiving state; probation exception**

**Reporting Instructions: Probation Exception**

(a) A sending state shall not allow an offender under supervision in the sending state to relocate to a receiving state without the receiving state’s acceptance of the transfer of supervision.

(b) Exception—

(1)(A) A sending state may grant a travel permit to an offender who was living in the receiving state at the time of sentencing.

(1)(A) Reporting instructions requested for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within seven calendar days of the sentencing date or release from incarceration to probation supervision. The sending state may request reporting instructions from a receiving state through the electronic approved information system and may grant a seven day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

(B) This exception is not applicable to offenders released to supervision from prison.
(B) The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(C) The sending state shall ensure that the offender sign all forms requiring the offender’s signature under Rule 3.107 (a) prior to granting a travel permit to the offender. Signed forms shall be maintained in the sending state until termination of compact supervision. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(D) The sending state shall transmit a departure notice to the receiving state per Rule 4.105 (a).

(E) This exception is applicable to offenders incarcerated as a condition of probation and released to probation supervision from a jail facility.

(F) This exception is not applicable to paroling offenders released to supervision from prison.

(2) The sending state retains supervisory responsibility until the offender’s arrival in the receiving state.

(3) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender’s plan of supervision upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(4) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 calendar days following the granting to the offender of the reporting instructions.

(5)(A) If the receiving state rejects the transfer request for an offender granted a travel permit reporting instructions, or if the sending state fails to send a completed transfer request by the 15th calendar day following the granting of a travel permit reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request from the receiving state, direct the offender to return to the sending state by a date specified by the sending state within 30 calendar days immediately and the supervision responsibility shall revert to the sending state after the receipt of notification of the rejection of the transfer request.

(B) If the offender does not return to the sending state, as directed, the sending state shall initiate the retaking of the offender by issuing a
warrant or an order to return no later than 10 calendar days following the offender’s failure to appear in the sending state.

(C) The receiving state shall continue to supervise the offender until a warrant is issued or notice is given by the sending state as required under Rule 4.105.

- J. D’Amico began discussion over Rule 5.111. He suggested that “territory” or “commonwealth” be added beyond “state” in this rule.

- R. Masters explained that this was delineated in the definition of “state” in Rule 1.101.

- J. D’Amico began discussion on proposed revisions to Rule 5.108 as below.

RULE 5.108 Opportunity for Probable cause hearing in receiving state

(a) An offender subject to retaking for violation of conditions of supervision that may result in a revocation shall be afforded the opportunity for a probable cause hearing in the receiving state consistent with due process requirements.

(b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to one or more significant violations of the terms or conditions of supervision.

(c) A certified copy of a judgment of conviction regarding the conviction of a new felony offense by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for further proceedings.

(d) The offender shall be entitled to the following rights at the probable cause hearing:

1. Written notice of the alleged violation(s);
2. Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);
3. The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);
(4) The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

(d) The receiving state shall prepare and submit to the sending state a written report within 30 days of the hearing that identifies the time, date and location of the hearing; lists the parties present at the hearing; and includes a clear and concise summary of the testimony taken and the evidence relied upon in rendering the decision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

(e) If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of conditions of supervision the receiving state shall hold the offender in custody, and the sending state shall notify the receiving state of the decision to retake or other action to be taken within 30 calendar days of receipt of the hearing officer’s report and determination.

(f) If probable cause is not established, the receiving state shall:

1. Continue supervision if the offender is not in custody

2. [Notify the sending state to vacate the warrant.] Release the offender and continue supervision upon release if the offender is in custody. [on the sending state’s warrant.]

• G. Smith said that he appreciated the concern, but did not see cause to add this to a rule.

• D. Blackburn mentioned that he has had requests for a Probable Cause hearing guideline to follow because they are not familiar with Gagnon. He suggested doing something from the National Office to give direction on this issue.

• The Committee agreed to bring this up at the meeting in June with the Compliance Committee on this issue.
M. DePietro asked if there is a way to get comments from commissioners on this issue before the June Meeting.

D. Blackburn offered for the National Office to send out a survey for comments from commissioners on this issue.

D. Blackburn asked committee members to email him with questions that each member wants on the survey.

D. Ege opened discussion of definition of “relocate” change 90 to 45 and we don’t address the change of “cumulative” to “consecutive”. She suggested adding the word “consecutive” after “45.”

D. Ege moved and M. DePietro seconded a motion to add “consecutive” after “45” to the definition of “relocate” in Rule 1.101.

Motion passed.

K. Tucker asked for clarification on Rule 3.105.

D. Ege explained that this was discussed in Rule 3.104-1 at the last meeting.

M. Gilliam reminded committee members to get travel information in to the National Office for the June meeting.

Adjourn

Motion to adjourn made by K. Stoll, seconded by D. Ege. Meeting adjourned at 2:04 pm EST.