INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION
Rules Committee

Teleconference
1-888-387-8686 Room: 7389593

Meeting Minutes
12:00 PM EST
June 3, 2005

Committee Members in Attendance

1. Milt Gilliam
2. Dori Ege
3. Amy Wright
4. Mike DePietro
5. Henry Lowery
6. Doreen Geiger
7. John D’Amico
8. Karen Tucker (ex-officio)
9. Pat Tuthill (ex officio)
10. Gregg Smith (ex officio)
11. Kevin Dunphy (ex officio)

Committee Members not in Attendance

1. Ed Ligtenberg
2. Gerald VandeWalle (ex officio)

Guest

1. Mike Buenger
Staff

1. Don Blackburn
2. Kelli Price
3. Mindy Spring
4. Sheila Perry
5. Xavier Donnelly
6. Rick Masters

I. Call to order and roll call
   • The meeting was called to order at 12:04 p.m. EST by Milt Gilliam. D. Blackburn called roll; 7 out of 8 Committee Members were present establishing a quorum.
   • M. Gilliam announced that Sherry Pilkington had resigned from the Rules Committee and to remove her name from the roll.

II. Approval of the Minutes
   • Motion to approve the May 20, 2005 minutes made by M. DePietro, seconded by D. Ege. Motion passed unanimously.

III. Chair update
   • M. Gilliam noted that this teleconference will be the last one before the face-to-face Rules Committee meeting scheduled for June 28th and the purpose for the teleconference is for the Committee to approve drafts to be sent out for comments to Commissioners prior to the June 28th meeting.

III. Staff update
   • R. Masters stated that he will be testifying at the Massachusetts legislative hearing on June 14th. Newspaper articles regarding Massachusetts are posted on the ICAOS website.

IV. NACIS update
   • M. Gilliam announced that the National Office is working with SoftScape to get a visual of the system for the June 28th meeting.

V. Old business

Rule 1.101 Definitions

(ii) “Relocate” means to travel to or remain in another state for more than 90 days in any calendar year.

Justification: This additional definition is proposed to clear up confusion in Rule 2.110 and 3.103.
Motion to forward proposed rule to Commissioners for comment and feedback made by J. D’Amico, seconded by D. Ege. Motion passed

D. Geiger noted she has concerns with 90 days in regards to college students. D. Ege stated that the 90 days keeps the rule consistent.

H. Lowery called to question. Y-5, N-2; passed

**RULE 2.109 Adoption of rules; amendment**

Proposed new rules or amendments to the rules shall be adopted by majority vote of the members of the Interstate Commission in the following manner:

(a) Proposed new rules and amendments to existing rules shall be submitted to the Interstate Commission office for presentation to the Rules Committee in the following manner:

(1.) Any Commissioner may submit a proposed rule or rule amendment for referral to the Rules Committee during the annual Commission meeting. This proposal would be made in the form of a motion and would have to be approved by a majority vote of a quorum of the Commission members present at the meeting.

(2.) Standing ICAOS committees may propose rules or rule amendments by a majority vote of that committee.

(3.) ICAOS Regions may propose rules or rule amendments by a majority vote of members of that region.

(b.) The Rules Committee shall prepare a draft of all proposed rules and provide the draft to all Commissioners for review and comments. Based on the comments made by the Commissioners the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments.

(c) Prior to the Commission voting on any proposed rule or amendment, the text of the proposed rule or amendment shall be published by the Rules Committee not later than 30 days prior to the meeting at which vote on the rule is scheduled, on the official web site of the Interstate Commission and in any other official publication that may be designated by the Interstate Commission for the publication of its rules. In addition to the text of the proposed rule or amendment, the reason for the proposed rule shall be provided.

(d) Each proposed rule or amendment shall state——

(1) The place, time, and date of the scheduled public hearing;
(2) The manner in which interested persons may submit notice to the Interstate Commission of their intention to attend the public hearing and any written comments; and
(3) The name, position, physical and electronic mail address, telephone, and telefax number of the person to whom interested persons may respond with notice of their attendance and written comments.
(e) Every hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Interstate Commission from making a transcript or recording of the hearing if it so chooses.

(f) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Interstate Commission at hearings required by this section.

(g) Following the scheduled hearing date, the Interstate Commission shall consider all written and oral comments received.

(h) The Interstate Commission shall, by majority vote of a quorum of the commissioners, take final action on the proposed rule by a vote of yes/no or by referring the rule back to the Rules Committee for further action. The Commission shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(i) Not later than sixty days after a rule is adopted, any interested person may file a petition for judicial review of the rule in the United States District Court of the District of Columbia or in the federal district court where the Interstate Commission’s principal office is located. If the court finds that the Interstate Commission’s action is not supported by substantial evidence, as defined in the federal Administrative Procedures Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. In the event that a petition for judicial review of a rule is filed against the Interstate Commission by a state, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

(j) Upon determination that an emergency exists, the Interstate Commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. An emergency rule is one that must be made effective immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of federal or state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect human health and the environment.
Justification: The changes to this rule establish a specific method to bring rules to the rules committee and sets out a detailed system to review, prepare and vote on new rules or rules amendments by the Commission.

- Motion to forward proposed rule amendment to all Commissioners for comment and feedback made by J. D’Amico, seconded by H. Lowery. Motion passed.
- Discussion of when proposed rules/amendments can be submitted at the Annual meeting. D. Ege noted that the Chair could add to the agenda.

**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 Interstate Compact for Adult Offender Supervision and these rules.

(b) An offender who is not eligible for transfer under this Compact is not subject to these rules and may travel to other states to the extent permitted by the state responsible for the offender’s supervision.

Justification: The proposed changes in this rule are to help clarify what should happen to an offender who does not meet eligibility requirements under the compact.

- Motion to forward proposed rule amendment to all Commissioners for comment and feedback made by J. D’Amico, seconded by D. Ege. Motion passed.

**RULE 3.101  Mandatory transfer of supervision**

At the discretion of the sending state, an offender who has three months or more or an indefinite period of supervision remaining shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender, pursuant to a verified plan of supervision—

1. is in substantial compliance with the terms of supervision in the sending state; and
2. is a resident of the receiving state; or
3. (A) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
   (B) can obtain employment in the receiving state or has a visible means of support.

Justification: See justification for 3.1011 and 3.1012 below. There are no substantive changes made to 3.101 other than separating it into three rules.

- Motion to forward proposed rule amendment to all Commissioners for comment and feedback made by J. D’Amico, seconded by M. DePietro. Motion passed.
RULE 3.1012 Transfers of Military, Families of Military, and Family Members Employed;

a) Military members An offender who is a member of the military and has been deployed by the military to another state, and who meets the other criteria specified in Rules 3.101 (1) and 3.101 (3)(B), shall be immediately eligible for transfer of supervision.

b) Offenders who live with family who are members of the military An offender who meets the other criteria specified in Rules 3.101(1) and 3.101(3)(B) and who lives with a family member who has been deployed to another state, shall be immediately eligible for transfer, provided that the offender will live with the military member in the receiving state.

c) Employment of family member in another state An offender who meets the other criteria specified in Rules 3.101(1) and 3.101(3)(B), and whose family member, with whom he or she resides, is transferred to another state and obtains full-time employment, shall be immediately eligible for transfer, unless the receiving state can show good cause for rejecting the transfer request provided that the offender will live with the family member in the receiving state.

- Motion to forward proposed rule amendment to all Commissioners for comment and feedback made by M. DePietro, seconded by A. Wright. Motion passed.

- D. Geiger questioned the Committee not reviewing Rule 2.104. M. Gilliam stated that all rules related to NACIS were approved by the Rules Committee at the last teleconference to be sent out to all Commissioners for feedback and comments. The Rules Committee will work on the final drafts of those at the June 28th and 29th meeting.

- The minutes were reviewed from the last teleconference May 20, 2005 page 3.
  “Motion made to send rules related to NACIS implementation (Rule 2.104, 3.104, 3.107, 4.105) be sent out to Commissioners for review after the next Rules Committee teleconference on June 3rd made by J. D’Amico, seconded by E. Ligtenberg. Motion passed unanimously.” Chair M. Gilliam ruled the meeting was Out of Order and discussion ended.

RULE 3.103 Acceptance of the offender by receiving state; exception

(a) A sending state shall not allow an offender 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 request reporting instructions from a receiving state through the electronic 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) 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.

(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 sentenced to jail as a condition of probation and released to probation supervision from a jail facility.

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

The sending state retains supervisory responsibility during this period. If the receiving state rejects the transfer request or the travel permit’s expiration date is reached, rules 3.103 (b)(5)(A) & (B) shall apply.

(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.

(3) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions 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 reporting instructions, or if the sending state fails to send a completed transfer request by the 15th day following the granting of 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 within 30 calendar days 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.

Justification: These proposed changes streamline this rule and puts the paragraphs in an order that is easier to follow for training purposes.

“Granted a travel permit” language was replaced with “granted reporting instructions” to remain consistent with that language used throughout the rule and in NACIS.

(b)(5)(A) and also in Rule 3.106 (d)(1) Recommended adding a time frame in which the sending state must order the return of an offender whose transfer request has been denied. As currently stated, states can interpret any time frame they choose to direct the offender’s return. This lack of time frame is not consistent with the goal of continued supervision and tracking of offender movement.

• Motion to forward proposed rule amendment (with typo fixed) to all Commissioners for comment and feedback made by D. Ege, seconded by J. D’Amico. Motion passed.

SEC. 3.106 Request for expedited reporting instructions

(a)(1) A sending state may request that a receiving state agree to expedited reporting instructions of an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination. If the receiving state does not agree with that determination, the offender shall not proceed to the receiving state until an acceptance is received under Rule 3.1041.

(2) (A) A receiving state that agrees to expedited reporting instructions of an offender shall immediately issue reporting instructions for the offender, and a sending state shall immediately issue a departure notice.

(B) The sending state shall ensure that the offender signs all forms requiring the offender’s signature under sec. 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.
(b) 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.

(c) A sending state shall transmit a completed transfer request for an offender granted a travel permit no later than the seventh calendar day following the granting to the offender of the travel permit.

(d)(1) If the receiving state rejects the transfer request for an offender granted a travel permit, or if the sending state fails to send a completed transfer request by the 7th calendar day following the granting of a travel permit, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 30 calendar days after receipt of notification of the rejection of the transfer request.

(2) If the offender does not return to the sending state, the sending state shall initiate the retaking of the offender no later than 10 calendar days following the offender’s failure to appear in the sending state.

(3) 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 sec. 4.105.

Justification: These proposed changes will assist in the transition to the electronic information system and will change the terminology from expedited transfer to expedited request for reporting instructions which more clearly defines the role.

“Travel permit” changed to “reporting instructions.” This change in the language makes it clear that agents cannot provide a travel permit unless reporting instructions are approved and received. The receiving state does not provide a travel permit, but rather reporting instructions.

Added language that prohibits sending states from allowing their offenders to proceed to prospective reporting instructions when reporting instructions are denied. Currently, there is no provision from prohibiting sending states to send offenders to receiving states after a receiving state denies a request for reporting instructions under this rule. Therefore, several offenders travel without notification or supervision to prospective receiving states and it is not determined until the investigation phase of the process.

Recommended adding a time frame, as in proposed change to 3.103 (within 30 calendar days) in which the sending state must order the return of an offender whose transfer request has been denied. As currently stated, states can interpret any time frame they choose to direct the offender’s return. This lack of time frame is not consistent with the goal of continued supervision and tracking of offender movement.

- Motion to forward proposed rule amendment to all Commissioners for comment and feedback made by D. Ege, seconded by J. D’Amico. Y-6, N-1. Motion passed.
- D. Blackburn noted that there will be a “dummy system” before the Annual meeting for all states to experiment with.
M. Buenger and R. Masters presented their proposed changes to Chapter 1, Chapter 4, & Chapter 5 of the Rules in regards to “Retaking.” **see attachment 1.

Motion to review the proposed changes from R. Masters and M. Buenger at the June 28th & 29th meeting made by M. DePietro, seconded by J. D'Amico. Motion passed.

**SEC. 4.103 Special conditions**

(a) At the time of acceptance or during the term of supervision, the compact administrator or supervising authority in the receiving state may impose a special condition on an offender transferred under the interstate compact if that special condition would have been imposed on the offender if sentence had been imposed in the receiving state.

(b) A receiving state shall notify a sending state that it intends to impose or has imposed a special condition on the offender, the nature of the special condition, and the purpose.

(c) A sending state shall inform the receiving state of any special conditions to which the offender is subject at the time the request for transfer is made or at any time thereafter.

(d) A receiving state that is unable to enforce a special condition imposed in the sending state shall notify the sending state of its inability to enforce a special condition at the time of request for transfer of supervision is made.

Justification: The proposed change in this rule is to clear up confusion on when special conditions can be imposed.

Discussion on presenting 2 different versions of Rule 4.103 (1 by drafting committee & 1 from R. Masters and M. Buenger.)

Motion made to table the proposed amendments until the June 28th & 29th meeting made by M. DePietro, seconded by D. Ege. Motion passed.

**SEC. 4.110 Transfer to a subsequent receiving state**

(a) At the request of an offender for transfer to a subsequent receiving state, and with the approval of the sending state, the sending state shall prepare and transmit a request for transfer to the subsequent state in the same manner as an initial request for transfer is made.

(b) The receiving state shall assist the sending state in acquiring the offender’s signature on the “Application for Interstate Compact Transfer and any other forms that may be required under sec. 3.107 (a), and shall forward these forms to the sending state.
(c) The receiving state shall submit a statement to the sending state summarizing the offender’s progress under supervision.

(d) The receiving state shall issue a travel permit to the offender when the sending state informs the receiving state that the offender’s transfer to the subsequent receiving state has been approved.

(e) Notification of offender’s departure and arrival shall be made as required under sec. 4.105.

(f) Acceptance of the offender’s transfer of supervision by a subsequent state and issuance of reporting instructions to the offender terminate the receiving state’s supervisory obligations for the offender.

Motion made to forward the proposed rule changes to all Commissioners for feedback and comment made by J. D’Amico, seconded by D. Ege. Motion passed.

**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 insufficient, the receiving state shall notify the sending state by rejecting the transfer request.

Justification: The recommended changes in this rule are to assist with the transition to the electronic information system.

Motion made to forward the proposed rule change to all Commissioners for feedback and comment made by J. D’Amico, seconded by M. DePietro. Motion passed.

- Motion made to add “except in cases where the offense is a violation of Federal, state or local hunting or fish and game” to Rule 2.105 (a)(2) made by D. Geiger. Motion dies for lack of a second.
- J. D’Amico suggested the committee discuss the survey regarding Compact office areas of concern at the June 28th & 29th meeting.
- Discussion of Joe Kuebler’s (GA) proposals for Rule 2.106 Deferred Sentences and Rule 4.102 Addition. G. Smith noted that the proposals appear to be specific to Georgia. No motion was made.
Discussion of Jim Camache’s (VA) proposals from May 10, 2005 for Rule 1.101-to add definition of “temporary relocation,” Rule 3.1031 Temporary relocation in another jurisdiction, Rule 2.1091 Variances, Rule 4.102 Duration of supervision in the receiving state, and Rule 4.112 Closing of supervision by the receiving state.

- Motion to refer the proposal back to South Region made by H. Lowery, seconded by M. DePietro. J. D’Amico opposes motion and suggest reviewing proposal at next meeting. M. DePietro withdraws second. Motion dies for a lack of a second.
- Motion to consider proposals from Jim Camache as input regarding the rules for the next Rules Committee meeting made by J. D’Amico, seconded by M. DePietro. Motion failed.
- Motion to not review the proposed rules/amendments from Jim Camache made by J. D’Amico. Motion dies for lack of a second.
- Motion to remove the proposed rules/amendments from the agenda made by M. DePietro, seconded by H. Lowery. Motion passed.

**New Business**

- Next meeting will be held in Lexington, KY at the national office June 28-29, 2005.

- Motion to adjourn made by J. D’Amico, seconded by M. DePietro. Meeting adjourned at 1:46 pm EST.