Call to Order
Chair J. Seigel (IN) called the meeting to order at 8:35 a.m. ET. Seven voting members were present, quorum was established.

Approval of Agenda
Agenda approved by acclamation.

Approval of Minutes

Approved on 2/19/2014. B.S.
Commissioner J Nimer (FL) moved to approve the minutes from November 1, 2012 as drafted. Commissioner D. Ege (AZ) seconded. Minutes approved as drafted.

**Discussion**
The Committee reviewed rule proposals and Commission’s forum comments.

The Committee reviewed an amendment to Rule 1.101 – Abscond proposed by the West Region.

*West Region Rule 1.101*

"**Abscond**" means to be absent from the offender’s approved place of residence or employment with the intent of and avoiding supervision.

**Justification:**
Proposal to delete the language clarifies the definition of abscond as used in Rule 4.109-2 which still requires action on the part of the receiving state to determine if the absence is to avoid supervision.

The Committee reviewed forum comments to the rule amendment 1.101 – Abscond.

1. **Texas:** By removing the words “with the intent of,” it appears that it is only necessary that an offender not be found at either work or home, without any exceptions for his absence because of, e.g., hospitalization, incarceration, or simply being missed repeatedly when the PO makes a home or work visit. An offender who works alone, with no staff, could be absent from his office or place of work repeatedly with no one there to explain his absence. That is why his intent to not be found is a vital part of the definition. In legal terms, deleting intent from this definition changes this from an intentional violation to a strict liability violation, and I don’t think that has been what we mean to do.

2. **Indiana:** Kathie, they would have to have both elements (absence) and (avoiding supervision). So merely being absent from employment wouldn't constitute absconding. It's the combined actions that would lead an officer to believe the offender has absconded. If you leave an offender a message to return a phone call or a note having them to report, what's stopping them from checking in? I think collectively, the changes are good considering it has to have "both" elements.

3. **Texas:** Nita, I disagree that an offender in the situations I cited, i.e., hospitalized or incarcerated, would be able to receive a note from a PO or return a phone call. An offender must have some knowledge that he is being sought and missed by a supervising officer to be able to respond and cannot have the necessary intent to not be supervised if he doesn’t know that he is being sought.

4. **NYS** Supports as removal “intent” language should lead to timelier absconder notification and successful violations to hold absconders accountable.

5. **District of Columbia:** For Abscond definition that is listed is acceptable.

Commissioner D. Ege (AZ) moved to recommend the adoption of rule proposal 1.101 - Abscond. Commissioner D. Eberhard (AR) seconded. Motion passed.
The Committee reviewed an amendment to Rule 1.101-Warrant proposed by the West Region.

**West Region Rule 1.101**

“Warrant” means a written order of the court or authorities of a sending or receiving state or other body of competent jurisdiction which is made on behalf of the state, or United States, issued pursuant to statute and/or rule and which commands law enforcement to arrest an offender. The warrant shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pick-up radius with no bond amount set.

The Committee reviewed forum comment to the rule amendment 1.101 – Warrant.

**District of Columbia:** The warrant statute does have continued concerns, for us and many others, as most Misdemeanor warrants are not entered into NCIC and thus not extraditable.

**Commissioner D. Ege (AZ) moved to recommend the adoption of rule proposal 1.101-Warrant. Commissioner J. Nimer (FL) seconded. Motion passed.**

The Committee reviewed the rule proposal 2.105 proposed by the Rules Committee. The Committee modified proposal’s language for clarification as suggested by Indiana State Council.

**Rule 2.105 Misdemeanants**

(a) Only those A misdemeanor offenders who are initially charged with a felony and whose sentence includes 1 year or more of supervision shall, be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes 1 or more of the following—

(1) an offense in which a person has incurred direct or threatened physical or psychological harm;
(2) an offense that involves the use or possession of a firearm;
(3) a 2nd or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;
(4) a sexual offense that requires the offender to register as a sex offender in the sending state.

(b) A misdemeanor offender who is not initially charged with a felony and whose sentence includes 1 year or more of supervision and is convicted of 1 of the above offenses may, at the discretion of the sending state, be eligible for discretionary transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied.

**Justification:**
The Rules Committee received a request from the West Region to make misdemeanor offenses ineligible for transfer under the Compact, or in the alternative, to focus on more serious misdemeanor offenses to be eligible for transfer. The Rules Committee decided that it was time to review the misdemeanor rule since it has been in use for 8 years. The Committee engaged in a lengthy discussion, trying to strike a balance between public safety concerns and the reality that a number of states do not supervise misdemeanor offenders. The Committee members were

Approved on 2/19/2014. B.S.  3
concerned that the rule could put the entire Commission at risk of liability for non-supervision and that the Commission cannot “promise more than it can deliver”. Therefore, the Committee proposes amending the rule to include only serious misdemeanors that were originally charged as felonies and resulted in misdemeanor convictions, with the four categories of serious offenses remaining as eligibility criteria. A sending state may still seek discretionary transfer of a misdemeanor offender not originally charged as a felon if the offense falls into one of the four categories and all other requirements for transfer are satisfied.

The Committee reviewed forum comments to the rule amendment 2.105.

1. **Texas:** Upon adoption of the Interstate Compact, each compacting state agreed that it would adhere to and enforce the rules of the Interstate Compact. The Compact does not limit supervision of offenders to only those who have committed felonies nor otherwise specify which offenders may or may not be transferred. Therefore, states that do not supervise misdemeanors had foreknowledge that they might have to take steps to enforce the Compact’s rules even though they may not fit closely to the state’s practices. Note further that the decision of type and degree of supervision is left to the discretion of the receiving state. The RS may process the transfer of the misdemeanor offender, note the presence of the offender in their state, but place the offender on minimal supervision, such as mail-in reporting.

The Commission is actively participating with APPA to enable information about offenders’ presence in receiving states available to local law enforcement in those states. The method by which we will do that is the offender’s inclusion in ICOTS. If transfer of misdemeanor offenders is limited to only those who were initially charged with a felony, and then only a violent felony, we cannot claim that our transferred offender information is complete. Conviction of a misdemeanor offense does not ensure that an offender will not commit further bad or worse acts. For instance, in Texas, an offender was placed under supervision for misdemeanor unauthorized use of a motor vehicle and was allowed to travel to a receiving state without a transfer. In that state he raped and murdered a well-known and -liked young woman. This misdemeanant was not under supervision.

How much additional effort will it entail to determine whether an offender was initially charged with a felony and pled down?

2. **Pennsylvania:** This rule proposal appears to create a new class of offender who was charged with a felony and ultimately convicted of a misdemeanor—a “theoretical felon”, for lack of a better term. Identification of theoretical felons would be problematic, and could be further seen as second-guessing the role of the police, prosecution, defense, and judiciary who have already gone through plea-bargaining and findings of fact.

3. **NYS:** These amendments significantly compromise public safety and victims, and unfairly will lead to countless offenders being unsupervised across the nation. This proposal which would reduce mandatory misdemeanor eligibility to those who are initially charged with a felony and meet existing criteria and make all others discretionary which meet the existing criteria will seriously undermine the integrity of the Compact and some of the underlying purposes behind its enactment (i.e. to provide the framework
for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of these offenders by the sending and receiving states. It fails to recognize that the distinction between a felony/misdemeanor crime is often minimal, and that prosecution charges levied take into consideration numerous factors (i.e. evidence readily available, mens rea, views of the victim, witness concerns). To empower the Sending State with discretion to transfer misdemeanants otherwise meeting existing criteria, who no longer will be mandatory eligible cases will jeopardize public/victim safety as numerous states will no longer transfer these offenders via the Compact. Numerous sex offenders, DWI offenders, and domestic violence offenders could conceivably be allowed to relocate to another jurisdiction without the knowledge or ability of a Receiving State to investigate, determine suitability of residence, weigh in and/or register objection, and monitor the terms and conditions of supervision. The Interstate Commission ought not to acquiesce to States who choose not to monitor many of their misdemeanors and expect to approve their living in another State without the other State’s consent. This revision was sought by the West Region which includes Colorado and a recent incident led to New York State discovering and reporting to the national office that misdemeanants convicted in municipal courts were not being subject to the Interstate Compact in contravention of the Compact and its governing rules. While Colorado Compact authorities had indicated that they would be addressing this matter, this proposal would appear to allow them to continue bypassing the Compact. This proposed rule change is highly objectionable and ignores that in recent years there has been more concerted effort to more effectively sanction these offenders. For example, in NYS misdemeanor sexual assault crimes face longer probation terms, nationwide there has been stronger criminal penalties enacted with DWI related crimes (i.e. ignition interlock conditions), and domestic violence crimes (orders of protection). Monitoring conditions of these offenders are paramount and therefore attempts to relax the Compact rules in this area flies in the face of justice, promoting public/victim safety, and the importance of holding offenders accountable. We foresee that the proposed regulatory changes if adopted would lead to negative media publicity, law enforcement and victim concerns, and public outcry. Finally, as a Receiving State determines the level of supervision of an accepted transfer case, there appears no necessity to change the existing regulatory rule in this area.

4. **Indiana**: The Indiana State Council supports the proposed change to Rule 2.105 and suggests revising the beginning of paragraph (a) to “Only those misdemeanor offenders who are...” The Indiana State Council also suggests adding “discretionary” to the phrase “be eligible for transfer” in paragraph (b).

5. **Nebraska Compact** does not support changing the Misdemeanor rule. We do not support basing the rule on an initial charge and not the charge an offender is convicted of. We also believe that the convicted Misdemeanors in the rule include high risk offenders focused on violence and continued substance abuse. We believe the one year requirement
is already included to ensure the high level Misdemeanors are the focus and changing this to only Misdemeanors charged as felons is not in the best interest of public safety and the true conviction of the offender.

6. District of Columbia: Rule 2.105 Misdemeanants Misdemeanor justification is stating that if it is a transferable misdemeanor by offense it would have had to initially been a felony by charge code. I am opposed as are some of my colleagues as this may be exclusionary to some DV Simple Assault cases. I am sure the Victims Advocate is also going to protest passing of this recommendation.

Commissioner D. Eberhard (AR) moved to recommend the adoption of rule proposal 2.105. Commissioner C. Moore (GA) seconded. Motion passed.

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

The Committee reviewed forum comments to the rule amendment 3.10-1.

1. The Indiana State Council supports the addition of paragraph (e) to the Mandatory Transfer rule with regard to veterans seeking treatment at regional VA hospitals.

2. NYS- This will better ensure that offenders who are veterans undergoing treatment are not unnecessarily hindered in transferring to another jurisdiction to receive treatment.

The Committee modified proposed language and title, and reformatted the proposal.

Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, and employment transfer, and veterans for medical or mental health services

(a) At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer for:

(1) 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 2 business days following receipt of such a request from the sending state.

(2) 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 2 business days following receipt of such a request from the sending state.

(3) 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 transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, 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 2 business days following receipt of such a request from the sending state.

(4) Employment transfer of the offender to another state – An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of supervision. The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(5) Transfers of veterans for medical or mental health services - An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:

(A) the sending state provides documentation to the receiving state of the medical and/or mental health referral; and
(B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.

(b) The receiving state shall issue reporting instructions no later than 2 business day following receipt of such a request from the sending state.

Justification:
Creates a new mandatory reason for transfer and reporting instructions for veterans, in light of the regional nature of VA facilities used to help and treat veterans on community supervision and the increasing use of “Veterans Treatment Courts.”

Commissioner T. Hudrlik (WI) moved to recommend the adoption of rule proposal 3.101-1 as amended. Commissioner J. Nimer (FL) seconded. Motion passed.

The Committee reviewed rule proposal 3._ submitted by the Rules Committee.

Rule 3. Reporting Instructions; Offenders Released on a Parole Detainer

This rule does not apply to sex offenders as defined by the compact. If a sex offender is released in another state as a result of a detainer, the sending state shall ensure the offender is returned to the sending state within 2 business days following the notification of the offender’s release.

(a) When a sending state verifies an offender has been paroled to a detainer is extradited to another state and subsequently released on that detainer, the sending state shall verify that the offender meets eligibility criteria in Rule 3.101 and verify that the offender has requested to relocate. The sending state shall then request reporting instructions for the offender within 1 business day of the notification of the offender’s release.

(b) The receiving state shall issue reporting instructions no later than 2 business days following receipt such a request from the sending state.

(c) The receiving state shall assist the sending state in completion of the Offender Application and mail the original to the sending state. The receiving state shall submit the signed application electronically within 7 business days.
(d) The sending state shall transmit a complete transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of reporting instructions.

(e) 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 business day following the granting of reporting instructions:

1. 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 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.
2. If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant no later than 10 business days following the offender’s failure to appear in the sending state.

Justification:
Alternate language jointly drafted by the Rules Committee and the Midwest Region for a new rule to address offenders released in a receiving state on a parole detainer.

The Committee reviewed forum comments to the rule proposal 3._ submitted by Rules Committee and comments to alternative rule proposal 3._ withdrawn by the Midwest Region.

2013-RULES-3._
1. Texas: This substitute version of the rule proposed by the Midwest Region is likewise very confusing in Sec. (a). It would be helpful if, in the justification, the Rules Committee could explain more thoroughly the circumstances under which this applies and they there is a need for it.

2013-MIDWEST-3._
1. Texas: There is an awful lot going on in sec. (a), which makes it difficult to figure out under what circumstances this rule applies. If the offender is paroled to a detainer, why is he extradited to another state? Is that the state that lodged the detainer? Is the sending state verifying that the offender has been released to a detainer or that he has been extradited to another state or released on the detainer in the other state or all of the above. This may well be a good idea for a problem that needs solving, but it is very unclear how and when to apply it.

2. Georgia: This rule is necessary because the paroling offender was transported to the receiving state by the receiving state to satisfy the receiving state’s detainer. If the offender has resident family or is a resident of the receiving state and requests to remain in that state, the ‘Best Practice’ solution is for the receiving state to provide reporting instructions.

Excluding sex offenders from this rule may be a recipe for disaster. Instead, the 5 day rule should be applied as it is in Rule 3.103. A sex offender should immediately be placed
on supervision and instructed to register, if this applies. Instructing a sex offender to cross several states to return to the sending state solely for the purpose of completing paperwork is not in the best interest of public safety. This is especially the case when it can be determined that the offender has resident family and a suitable residence in the receiving state.

In GA, sex offenders are not released on parole without an approved residence. Reporting Instructions are received via TREQ Reply while the offender is in prison. This can be, at times, problematic when the offender is not released from the detainer prior to the expiration of 120 days as stated in Rule 3.104-1. However, this process works best with this population, in our opinion, because it ensures that the sex offender can be placed on supervision immediately upon release from the detainer.

3. **NYS**- The regulatory language with respect to sex offenders appears contradictory. It is unclear what sex offenders would be actually covered by this rule. Further, see similar reasons noted in the comments with respect to the earlier proposed rule in this area. Of additional concern, this proposed rule would afford and additional week for a parolee to return to a Sending State. Such language is not consistent with public/victim safety or efforts to hold an offender accountable.

4. **District of Columbia**: Good addition

Commissioner D. Ege (AZ) moved not to adopt the rule proposal 3._ - Midwest alternate proposal regarding reporting instructions for offenders released on a detainer. Commissioner C. Moore (GA) seconded. Motion passed.

Legal Counsel R. Masters expressed concern noting this Rule would not apply to offenders released by federal institutions and that there could be conflicts with the Interstate agreement on detainers.

After lengthy discussion, the Committee decided to offer a new proposal to amend Rule 3.102 and have both proposals be offered. Unlike the proposal for a new rule requiring a new reason for reporting instructions, the Rules committee proposal to amend Rule 3.102 would not require a modification to ICOTS.

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

(a) Except as provided in sections (c) & (d), 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 sections (c) & (d), 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 sending state.
(2) The offender shall return to the sending state daily 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.

(d) When a sending state verifies an offender is released from incarceration in a receiving state and the offender requests to relocate there and the offender meets the eligibility requirements of Rule 3.101 (a), (b) & (c), the sending state shall request expedited reporting instructions within 2 business days of the notification of the offender’s release. The receiving state shall issue the reporting instructions no later than 2 business days. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.

(1) 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 Rule 3.107, and shall transmit these forms to the sending state within 7 business days and mail the original to the sending state.
(2) The provisions of Rule 3.106 (b), (c) & (d) apply.

Justification:
This provides alternate language drafted by the Rules Committee in response to the Midwest Proposal for an exception for offenders released in a receiving state on a parole detainer. Upon subsequent review and lengthy discussion, the rules committee decided to offer a proposal to amend Rule 3.102. By referring to the provisions of Rule 3.106, this eliminates the need for an ICOTS enhancement. Based on comments received this is a simpler approach to address this issue.

To be clear, the rules committee would note that if the offender is released from a federal facility exclusively for a federal crime this rule would not apply.

Commissioner T. Hudrlik (WI) moved to recommend adoption of the rule proposal 3.102. Commissioner J. Nimer (FL) seconded. Motion passed.

The Committee reviewed an amendment to Rule 3.103 proposed by the Rules Committee.

2013-RULES-3.103
Proposal to create/amend rules:

Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing

(a) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 calendar business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a 7 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.
(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(3) The sending state shall ensure that the offender sign all forms requiring the offender’s signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

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

(5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.

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

(c) 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.

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

(e)  
   (1) 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 calendar business 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, direct the offender to return to the sending state within 15 calendar business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.
   
   (2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 calendar business days following the offender’s failure to appear in the sending state.

**Justification:**
The proposed stricken language is no longer needed because warrant is now defined under Chapter 1 of the interstate compact rules. Calendar days 15 or less changed to business days.

The Committee reviewed forum comment to the rule amendment 3.103.

**District of Columbia:** RI best to be consistent with the use of business days and or calendar days, my preference is actually calendar days as some are on mandated closures thus changing business days, however no major issues as long as there is consistency.

**Commissioner D. Ege (AZ) moved to withdraw the Rules Committee proposal 3.103 and include its elements into the Technology Committee version. Commissioner J. Nimer (FL) seconded. Motion passed.**

The Committee reviewed an amendment to Rule 3.103 proposed by the Technology Committee.
Proposal to create/amend rules:

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing**

(f) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 calendar business days of the sentencing date or release from incarceration to probation supervision. The sending state 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.

(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(3) The sending state shall ensure that the offender sign all forms requiring the offender’s signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

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

(5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.

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

(h) 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.

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

(j) If the receiving state rejects Upon rejection of the transfer request for an offender granted reporting instructions, or if sending state fails to send a completed transfer request by the 15th calendar business day following the granting of reporting instructions, the receiving state shall request reporting instructions for the offender to return, 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 15 calendar days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(k) Except as provided in subsection (g), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.

(l) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.
(m) The offender shall remain in the receiving state until the directed departure date. The receiving state retains authority to supervise the offender until the offender’s directed departure date or issuance of the sending state’s warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 and submit a case closure as required by 4.112.

(n) If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 calendar business days following the offender’s failure to appear in the sending state.

Justification:

Since the receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant, the receiving states should have a more uniform and controlled procedure to complete the return process. A request for returning reporting instructions would uniformly coordinate all member states with a consistent manner for obtaining, documenting, issuing and monitoring the offender with a “directed departure date” almost immediately since reporting instructions have a 2-day turnaround. If it is necessary to coordinate and monitor the movement of offenders when their cases originate to the receiving state, it is within reason to expect the same concern for public safety, by uniformly coordinating and monitoring their return.

Currently, the process for directing an offender to return varies, and is as random as issuing directions by word of mouth between the sending and the offender, to random courtesies of receiving states requesting return reporting instructions via ICOTS. The goal of the compact has always been a more structured and smooth process for monitoring the movement of offenders while under supervision and that goal should not be compromised just because a case is rejected for supervision. The use of reporting instructions and notices of departure and arrival back to the sending state provide necessary structure especially when accountability and liability are the essence of why the compact exists in the first place.

The Committee reviewed forum comments to the rule amendment 3.103.

1. The Minnesota State Councils feels that for consistency all timelines throughout the rules should be in calendar days.

2. NYS- Where an offender is living in the Receiving State and reporting instructions requested and provided, it appears that a Sending State ought not to have an additional week to provide the completed application due to the responsibility which the Receiving State undertakes upon the offender’s arrival (assuming supervision). Consequently, at a minimum the orders and conditions of release ought to be provided immediately or promptly upon arrival a three weeks is far too long for a Receiving State no to have at its disposal this critical information. Further, if the application is not complete, the expanded timeframe subjects the Receiving State to a longer supervisory responsibility, yet there is no requirement upon the Sending State to provide the Orders and Conditions in which to effectively supervise the offender during this interim period. Further, there should be no relaxation as to the timeframe to secure a warrant in this instance- this proposed change could conceivably result in a warrant not being issued until the end of...
the 5th week the offender was ordered to return which is not consistent with public/victim safety and holding an offender accountable.

**Tennessee:** Another option would be to retain the current verbiage of the rule in (e) and change “shall” to “may”, upon receiving notice of rejection....etc

Commissioner J. Seigel (IN) noted she met with Technology Committee Chair K. Winckler and Training Committee Chair D. Ege to discuss concerns with their proposals. An agreement was reached and elements from the Rules committee version regarding changing calendar days 15 days or less would be business days and unnecessary language regarding warrants were added to the proposal as well as language from original proposal was slightly modified.

Comment from Nebraska was reviewed which suggested adding language regarding the sending state and receiving state reaching an agreement to allow an offender granted RI’s remain after rejection if both states agree. The Committee decided this is a new concept and a training issue not related to the current proposal.

**Commissioner D. Ege (AZ) moved to recommend the adoption of rule proposal 3.103. Commissioner D. Eberhard (AR) seconded. Motion passed.**

The Committee reviewed an amendment to Rule 3.104 proposed by the Rules Committee.

2013-RULES-3.104
Proposal to create/amend rules:

**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 provided that the sending state submits a completed transfer request within 15 calendar business days following the rejection.

**Justification:**
Extend timeframe for submission of a subsequent transfer request after a rejection based on the original transfer request being incomplete from 15 calendar days to 15 business days.

**Commissioner D. Eberhard (AR) moved to recommend the adoption of rule proposal 3.104. Commissioner J. Nimer (FL) seconded. Motion passed.**

The Committee reviewed an amendment to Rule 3.104-1 proposed by the Rules Committee.

2013-RULES-3.104-1
Proposal to create/amend rules:
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 shall submit notification 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.

(e) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the 5th business day following transmission of notice of departure and shall provide immediate notice of such withdrawal to the sending state.

Justification:
This language appears in Rule 3.105 (c) which allows receiving states to withdraw acceptances when a pre-release transfer is accepted but the offender fails to report following the submission of an NOD. However, Rule 3.104-1 does not include this language which suggests that states cannot withdraw their acceptances when offenders fail to report following the submission of an NOD. The current language of 3.104-1 only provides for the withdrawal of an acceptance if the sending state fails to submit an NOD within the 120 day time frame.

The Committee reviewed forum comments to the rule amendment 3.104-1.

1. The Minnesota State Council feels the notification to the sending state that the acceptance is being withdrawn should include the reason for the withdrawal. The council also feels that instead of using the word “immediately” it would be clearer to use the term, “same day.”

2. District of Columbia: Business/Calendar days usage – no changes as long as there is consistency throughout ICAOS. Withdraw of RI for NOD –it may be significant enough to change

Commissioner D. Ege (AZ) moved to recommend the adoption of rule proposal 3.104-1. Commissioner D. Eberhard (AR) seconded. Motion passed.

Commissioner T. Hand (CO) returned from being out of the room and requested if there is time at the end of the meeting he would like to review the proposal to Rule 2.105 and provide his vote for recommendation.

The Committee reviewed an amendment to Rule 3.106 proposed by the Rules Committee.
2013-RULES-3.106
Proposal to create/amend rules:

Rule 3.106 Request for expedited reporting instructions

(a) A sending state may request that a receiving state agree to expedited reporting instructions for 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 3.104-1.

(2) A receiving state shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender’s departure.

(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. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(c) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the 7th calendar business day following the granting to the offender of the reporting instructions.

(d) 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 7th calendar business 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, direct the offender to return to the sending state within 15 calendar business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

1. NYS Opposes as it appears that there are similar issues as to offender being allowed to remain in Receiving State after rejection.

Justification:
The proposed stricken language is no longer needed because warrant is now defined under Chapter 1 of the interstate compact rules.
2. District of Columbia: RI best to be consistent with the use of business days and or calendar days, my preference is actually calendar days as some are on mandated closures thus changing business days, however no major issues as long as there is consistency.

Commissioner J. Nimer (FL) moved to withdraw rule proposal 3.106 and include the elements of this proposal into the Technology Committee version. Commissioner D. Ege (AZ) seconded. Motion passed.

The Committee reviewed an amendment to Rule 3.106 submitted by the Technology Committee.

2013-TECH-3.106

Proposal to create/amend rules:

Rule 3.106 Request for expedited reporting instructions

(c) 

(1) A sending state may request that a receiving state agree to expedited reporting instructions for 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 3.104-1.

(2) 

(A) A receiving state shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender’s departure.

(B) The sending state shall ensure that the offender signs all forms requiring the offender’s signature under Rule 3.107 prior to granting reporting instructions to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(f) 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.

(g) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the 7th calendar business day following the granting to the offender of the reporting instructions.

(o) If the receiving state rejects Upon rejection of the transfer request for an offender granted reporting instructions, or if sending state fails to send a completed transfer request by the 7th calendar day following the granting of reporting instructions, the receiving state shall request reporting instructions for the offender to return. 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 15 calendar days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.
(e) **Except as provided in subsection (f), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.**

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

(g) **If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 calendar business days following the offender’s failure to appear in the sending state.**

**Justification:**

Since the receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant, the receiving states should have a more uniform and controlled procedure to complete the return process. A request for returning reporting instructions would uniformly coordinate all member states with a consistent manner for obtaining, documenting, issuing and monitoring the offender with a “directed departure date” almost immediately since reporting instructions have a 2-day turnaround. If it is necessary to coordinate and monitor the movement of offenders when their cases originate to the receiving state, it is within reason to expect the same concern for public safety, by uniformly coordinating and monitoring their return.

Currently, the process for directing an offender to return varies, and is as random as issuing directions by word of mouth between the sending and the offender, to random courtesies of receiving states requesting return reporting instructions via ICOTS. The goal of the compact has always been a more structured and smooth process for monitoring the movement of offenders while under supervision and that goal should not be compromised just because a case is rejected for supervision. The use of reporting instructions and notices of departure and arrival back to the sending state provide necessary structure especially when accountability and liability are the essence of why the compact exists in the first place.

The Committee reviewed forum comments to the rule amendment 3.106.

1. **District of Columbia:** Expedited RI seems a bit more cumbersome but no issues

   **Commissioner D. Ege (AZ) moved to adopt the same language from proposal 3.103 for the proposal 3.106. Commissioner J. Nimer (FL) seconded. Motion passed.**

The Committee reviewed an amendment to Rule 3.107 (a) (12) submitted by the South Region and comments on the forum.

1. **The Minnesota State Council does agree the additional information would be helpful however, felt it would be helpful to indicate if an institution includes county jails etc or just prisons. Also, they suggested that instead of the term, “if available” the language from number 8 should be used, “unless distribution is prohibit by law or it does not exist”**

2. **NYS- appears to be useful if available.**
3. **District of Columbia**: Historical/institutional information inclusion is important

Commissioner J. Nimer (FL) noted at the last South Region meeting, the members decided to proceed with their proposal to Rule 3.107 and she was assigned to draft a modified version to ensure “if available” was addressed.

Commissioner T. Hand (CO) requested the Committee look at Rule 3.107 (a) (3) in the next rule making cycle.

**2013-SOUTH-3.107a12**

**Proposal to create/amend rules:**

**Rule 3.107 Transfer request**

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

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

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

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

**Justification:**
Institutional history provides additional information regarding incarcerated offenders when requesting transfer. PSI’s typically include only offender information prior to incarceration.

**Commissioner C. Moore (GA) moved to recommend the adoption of rule proposal 3.107(a)(12). Commissioner J. Nimer (FL) seconded. Motion passed.**

The Committee reviewed an amendment to Rule 4.109 drafted by the Rules Committee.

**2013-RULES-4.109**

**Proposal to create/amend rules:**

**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 and details regarding how the supervising officer determined the offender to be an absconder.
- (10) Supporting documentation regarding the violation including but not limited to police reports, toxicology reports, and preliminary findings.

(c) The sending state shall respond to a report of a violation made by the receiving state no later than 10 business days following transmission receipt by the sending state.

Justification:

With the advent of ICOTS there is no need for this language which has been construed to add 5 business days to the time limit for responses and is inconsistent with other rules which have already had this type of language removed after ICOTS. “Transmission” is the language used by ICOTS.

**Commissioner D. Ege (AZ) moved not to recommend the adoption of rule proposal 4.109. Commissioner T. Hudrlik (WI) seconded. Motion passed.**

Commissioner J. Seigel (IN) noted the Technology committee agreed to withdraw their proposal.
Proposal to create/amend rules:

**Rule 4.111 Return to the sending state**

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

(b) Except as provided in subsection (c), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.

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

(d) The receiving state retains authority to supervise the offender until the offender’s directed departure date or issuance of the sending state’s warrant. The receiving state shall notify the sending state as required in Rule 4.105 and submit a case closure as required by 4.112.

(e) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than 10 calendar days following the offender’s failure to appear in the sending state.

**Justification:**
Currently the procedures exist in ICOTS to request reporting instructions for offenders being returned to the sending state under Rules 3.103, 3.106, and 5.103. However, the rules of the Interstate Commission do not include an explicit direction that the receiving state request reporting instructions, issue departure notices or that the sending state issue an arrival notice. This leaves the states in the position of following the procedures without any basis in the rules, a practice that is inconsistent with our expressed position that the technology should be driven by the rules and not vice-versa. Some states may fail to follow the ICOTS procedures, creating a patchwork of practices and uncertainty about the right course to follow.

The Technology Committee proposes that these rules be amended to require that states request reporting instructions for these classes of offenders in the same manner as is required under Rule 4.111 for offenders returning to the sending state. Doing so would make Rules 3.103, 3.106, and 5.103 consistent with the practices we use when offenders cross state borders to transfer their supervision under approved reporting instructions.

The Committee reviewed an amendment to Rule 4.112 drafted by the East Region and the forum’s comments:

1. **The Minnesota State Council** feels the language in (a) should be left otherwise it opens it up to too many circumstances. The Council did like the addition of (d) and (e).
2. **District of Columbia:** Return to the sending state time frame - if an offender does not report within 10 days of being advised to, that a warrant would be issued is not practical and could not be enforced by us or most jurisdictions

The Committee members agreed there is no authority to supervise an offender after the supervision end date and noted that the audit process already provides a 10 day extension to transmit a case closure notice.

### 2013-EAST-4.112

**Proposal to create/amend rules:**

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

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

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

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

(c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment. The receiving state shall transmit a case closure notice within 10 business days after the maximum expiration date.

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

**Justification:**

There should be a timeframe for submitting the case closure notice as there is for replying to one. If an offender is on supervision until the end of the last day of supervision, it is unreasonable to expect that the CCN would be provided that same day. Not all agents are in the office every day to review cases for closure.

**Commissioner D. Eberhard (AR) moved not to adopt the rule proposal 4.112. Commissioner D. Ege (AZ) seconded. Motion passed.**

The Committee reviewed an amendment to Rule 4.112 drafted by the Rules Committee.

The Committee reviewed forum comments to this rule amendment.
1. **Texas:** Adding (a)(6) is a good idea. The revision to (b) is also helpful, making clear that the RS has the duty to supervise the offender as long as it is known that he is in the RS. As far as it goes, the addition of (e) is also warranted. However, it does not take the place of the proposed changes to 3.103, 3.106 and 5.103, which would require the RS to request reporting instructions and the SS to issue them. These are the changes proposed by the Technology Committee. We will, however, continue to work toward compromise language.

2. **NYS** Supports Concept, however modifications are suggested. As written, it sends a mixed message as to closing an absconder case yet continuing to supervise until the individual has been retaken or returned. Further, the revised paragraph (b) ought to be clearer that it applies where the offender is in the Receiving State and available for supervision.

3. **District of Columbia:** no objections to time frames, only to Part 1/ Part 2 of 4.112 - Seems too difficult to actually confirm departure, and cumbersome on the receiving state

The members agreed that the modification sections (a) and (b) were not clear and needed further review. The Committee decided to modify their proposal to only include a deletion of the reference to Rule 5.101 in section (b). The committee will address issues regarding the return of offenders with approved reporting instructions after rejection in the next rules making cycle.

### 2013-RULES-4.112

**Proposal to create/amend rules:**

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

(a) The receiving state may close its supervision of an offender upon:

(1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;

(2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;

(3) Notification to the sending state that the offender has been sentenced to incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender’s location;

(4) Notification of death; or

(5) Return to sending state.

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

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

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

Strike “Under Rule 5.101” in section (b) to eliminate confusion regarding when a case closure notice can be submitted following retaking.

Commissioner D. Ege (AZ) moved to recommend the adoption of rule proposal 5.101. Commissioner J. Nimer (FL) seconded. Motion passed.

The Committee reviewed an amendment to Rule 5.101 drafted by the Rules Committee.

2013-RULES-5.101

Proposal to create/amend rules:

Rule 5.101 Discretionary retaking by the sending state

(a) Except as required in Rules 5.102, 5.101-1, 5.103, 5.103-1 and 5.103-2 at its sole discretion, a sending state may retake or order the return of an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.

(b) Upon its determination to retake the offender, the sending state shall issue a warrant and file a detainer with the holding facility when the offender is in custody.

(b) If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant no later than 10 business days following the offender’s failure to appear in the sending state.

(c) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.

Justification:

Rule 5.101 as it is currently written is confusing because it combines the absolute authority of the sending state to retake an offender with the obligation of the receiving state to resolve all pending charges for a subsequent criminal offense prior to retaking by the sending state. The rewrite of Rule 5.101 and the creation of Rule 5.101-1 separate these two issues into two separate rules which clarifies how states resolve retaking issues while protecting the public and victims.

Rule 5.101 outlines the absolute authority of the sending state to retake an offender at the state’s sole discretion.

Rule 5.101-1 outlines the process the receiving state must follow to allow the sending state to retake an offender who has committed a subsequent felony or violent crime in the receiving state.

The Committee reviewed forum comments to this rule amendment.

1. NYS questions the rationale of striking paragraph (c) as it will likely lead to challenges if there are pending criminal charges in the Receiving State.

District of Columbia: Good justification but again the mandated warrant issuance within 10 days is not always feasible.
The Committee discussed the issue of a sending state requesting an offender to report for an administrative hearing and if that situation would be considered “return” or “retaking” of an offender per this rule. It was noted that those situations could be handled via a travel permit from the receiving state so long as the hearing was not for revocation purposes.

Commissioner D. Ege (AZ) moved to recommend the adoption of rule proposal 5.101. Commissioner T. Hudrlik (WI) seconded. Motion passed.

The Committee reviewed an amendment to Rule 5.101-1 drafted by the Rules Committee.

2013-RULES-5.101_1

Proposal to create/amend rules:

Rule 5.101-1 Pending felony or violent crime charges

Notwithstanding any other rule, if an offender is charged with a subsequent felony or violent crime, the offender shall not be retaken or ordered to return until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense, unless the sending and receiving states mutually agree to the retaking or return.

Justification:

Rule 5.101 as it is currently written is confusing because it combines the absolute authority of the sending state to retake an offender with the obligation of the receiving state to resolve all pending charges for a subsequent criminal offense prior to retaking by the sending state. The rewrite of Rule 5.101 and the creation of Rule 5.101-1 separate these two issues into two separate rules which clarifies how states resolve retaking issues while protecting the public and victims. Rule 5.101 outlines the absolute authority of the sending state to retake an offender at the state’s sole discretion. Rule 5.101-1 outlines the process the receiving state must follow to allow the sending state to retake an offender who has committed a subsequent felony or violent crime in the receiving state.

The Committee reviewed forum comments to this rule amendment.

1. NYS Opposes as requiring mutual agreement will have a chilling impact upon holding offenders accountable and is not in the interests of the Receiving State.

Commissioner D. Eberhard (AR) moved to recommend adoption of the rule proposals 5.101-1. Commissioner C. Moore (GA) seconded. Motion passed.

The Committee reviewed the rule proposal 5.102 proposed by the Rules Committee.

2013-RULES-5.102

Proposal to create/amend rules:
Rule 5.102 Mandatory retaking for a new felony or new violent crime conviction

(a) Upon a request from the receiving state, a sending state shall retake an offender from the receiving state or a subsequent receiving state upon after the offender’s conviction for a new felony offense or new violent crime and:

   (1) completion of a term of incarceration for that conviction; or
   (2) placement under supervision for that felony or violent crime offense.

(b) When a sending state is required to retake an offender, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

Rule 5.103-2 Mandatory retaking for violent offenders and violent crimes

(a) Upon a request from the receiving state, a sending state shall retake a violent offender who has committed a significant violation.

(b) Upon a request from the receiving state, a sending state shall retake an offender who is convicted of a violent crime.

(c) When a sending state is required to retake an offender, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

Rule 1.101 Definitions

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

Justification:

In its present form, 5.103-2 (a) prompts recommendations based on the nature of the instant offense or history of offenses instead of recommendations based on nature of the violation committed. Violations that are insignificant and would go unreported in many instances are treated as significant based on the classification “violent offender”. 5.103 already addresses significant violations of conditions of supervision and 5.102 addresses new felony convictions. Originally, the recommendation was to strike (a) from 5.103-2 for reasons previously stated. Now the recommendation is to strike 5.103-2 in its entirety and address new violent crime convictions in a revised version of 5.102. This moves the Compact in the direction of Evidence Based Practices and away from imprudent practices.

The Committee reviewed forum comments to this rule amendment.

1. District of Columbia: Retaking for violent offenses – May have judicial consequences as to authority and mandates by sentencing/releasing authority, I oppose/Part 2 same opposition
Commissioner C. Moore (GA) moved to recommend adoption of the rule proposal 5.102. Commissioner T. Hand (CO) seconded. Motion passed.

The Committee reviewed the rule proposal 5.103 submitted by the Rules Committee.

2013-RULES-5.103
Proposal to create/amend rules:

Rule 5.103 Mandatory retaking for violation of conditions of supervision

(a) Upon a request by the receiving state and a showing that the offender has committed 3 or more significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the request by the receiving state.

(b) If the offender does not return to the sending state as ordered, then 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 business days following the offender’s failure to appear in the sending state.

Justification:
The current verbiage in this rule is silent regarding how long a sending state has to order the return of the offender or issue a warrant for an offender. This has caused the delay in returning some offenders to the sending state and this can pose a risk to public safety. For these reasons, the additional language in (a) is being proposed to establish a time frame for sending states to affect the return of their offender under this rule.

The Committee reviewed forum comments to this rule amendment.

1. NYS - The phrase “defined by the compact” appears unnecessary as there is already a definitional term of “significant violation”. Further, as the justification recognizes the offender may pose a risk to public safety, it is inconsistent to afford a Sending State fifteen business days to retake or order the return of an offender. Should a Sending State merely order the offender return, under this proposal nearly a month can go by without a warrant being issued should the offender not return. There should be no change in the timeframe regarding issuance of a warrant.

2. District of Columbia: Similar issue with mandatory warrant issuance.

The Committee agreed there would not be a conflict if both the Rules committee version and the Technology committee versions are adopted since the changes proposed are unrelated.

Commissioner J. Nimer (FL) moved to recommend rule amendment 5.103 for adoption. Commissioner C. Moore (GA) seconded. Motion passed.

The Committee reviewed rule proposal 5.103 submitted by the Technology Committee.
Proposal to create/amend rules:

Rule 5.103 Mandatory retaking for violation of conditions of supervision

(a) Upon a request by the receiving state and a showing that the offender has committed 3 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 or order the return of an offender from the receiving state or a subsequent receiving state.

(b) Upon notice by the sending state that the offender will be ordered to return, the receiving state shall request reporting instructions.

(c) Except as provided in subsection (d), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.

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

(e) The receiving state retains authority to supervise the offender until the offender’s directed departure date or issuance of the sending state’s warrant. The receiving state shall notify the sending state as required in Rule 4.105 and submit a case closure as required by 4.112.

(f) If the offender does not return to the sending state as ordered, then 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.

Justification:
Currently the procedures exist in ICOTS to request reporting instructions for offenders being returned to the sending state under Rules 3.103, 3.106, and 5.103. However, the rules of the Interstate Commission do not include an explicit direction that the receiving state request reporting instructions, issue departure notices or that the sending state issue an arrival notice. This leaves the states in the position of following the procedures without any basis in the rules, a practice that is inconsistent with our expressed position that the technology should be driven by the rules and not vice-versa. Some states may fail to follow the ICOTS procedures, creating a patchwork of practices and uncertainty about the right course to follow.

The Technology Committee proposes that these rules be amended to require that states request reporting instructions for these classes of offenders in the same manner as is required under Rule 4.111 for offenders returning to the sending state. Doing so would make Rules 3.103, 3.106, and 5.103 consistent with the practices we use when offenders cross state borders to transfer their supervision under approved reporting instructions.

The Committee reviewed forum comments to this rule amendment.

1. The Minnesota State Council does not support this change. This rule deals with a violation and ICOTS already asks the sending state to give a date for the offender to
2. **District of Columbia:** Retaking – may be difficult to actually enforce, if 3 violations major in nature have occurred, we can ask for the offender to return to the sending state however the releasing authority may not hold a hearing immediately

Commissioner D. Ege (AZ) indicated that the recent enhancement to ICOTS requires a date to report when a sending state orders an offender to return. Requiring the receiving state to request reporting instructions in addition would be duplicate work.

**Commissioner D. Ege (AZ) moved to recommend not adopting rule amendment 5.103. Commissioner D. Eberhard (AR) seconded. Motion passed unanimously.**

The Committee reviewed rule proposals 5.105 proposed by the Rules Committee.

**2013-RULES-5.105**

**Proposal to create/amend rules:**

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

A sending state shall retake an offender within 30 calendar days after the offender has been taken into custody on the sending state’s warrant and the offender is being held solely on the sending state’s warrant, the decision to retake has been made or upon release of the offender from incarceration in the receiving state.

**Justification:**
The “decision to retake” is not defined and causes confusion; the proposed language helps to clarify what triggers the 30 calendar day time frame for retaking.

The Committee reviewed forum comments to this rule amendment.

1. **NYS**-This language might be misconstrued, without clarifying wording in Rule 5.111, to allow bail be set or release authorized under certain circumstances where a Sending State is waiting to retake the offender.

2. **District of Columbia:** Time for retaking, should be ample once warrant is issued however I would question if an extension can be granted as this happens often

**Commissioner D. Eberhard (AR) moved to recommend the adoption on the rule proposal 5.105. Commissioner T. Hudrlik (WI) seconded. Motion passed.**

The Committee reviewed rule proposal 5.108.

**2013-RULES-5.108**

**Proposal to create/amend rules:**
Rule 5.108 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 before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.

(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 copy of a judgment of conviction regarding the conviction of a new felony criminal 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.

(e) The receiving state shall prepare and submit to the sending state a written report within 10 business 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.

(f) 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, within 15 business days of receipt of the hearing officer’s report, notify the receiving state of the decision to retake or other action to be taken.

(g) 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, and continue supervision upon release if the offender is in custody on the sending state’s warrant.
   (3) Vacate the receiving state’s warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

Justification:
A judgment of conviction of any criminal offense is sufficient evidence of probable cause, so no further proceedings or a probable cause hearing would be needed.

The Committee reviewed forum comments to this rule amendment.

1. The Minnesota State Council recommended that instead of listing felony or misdemeanor the rules just state the conviction of a new offense.
The Committee made the following modifications to the proposal: to not specify “felony” and “misdemeanant” in section (c) and instead use the word “criminal” to include any new offense.

Commissioner J. Nimer (FL) move to recommend adoption of the rule amendment 5.108 as amended. Commissioner D. Ege (AZ) seconded. Motion passed.

The Committee reviewed rule amendment 6.103 proposed by the Rules Committee.

2013-RULES-6.103

Proposal to create/amend rules:

Rule 6.103 Enforcement actions against a defaulting state

(a) If the Interstate Commission determines that any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Interstate Commission may impose any or all of the following penalties-

(1) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;
(2) Remedial training and technical assistance as directed by the Interstate Commission;
(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state; the majority and minority leaders of the defaulting state’s legislature, and the state council.

(b) The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the potential penalties that may be imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension.

(c) Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state’s legislature and the state council of such termination.

(d) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(e) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state.
Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

**Justification:**

Provides discretion for penalties to be imposed for a defaulting state and allow for time to cure defaults if appropriate.

The Committee reviewed forum comments to this rule amendment.

**District of Columbia:** Good Addition

**Commissioner T. Hand (CO) moved to recommend adoption of the rule amendment 6.103. Commissioner J. Nimer (FL) seconded. Motion passed.**

The committee reviewed its calendar. Chair J. Seigel (IN) indicated the final proposals will be posted along with the public hearing announcement on July 1, 2013. The public hearing is scheduled to be in Boston on August 27, 2013.

The information session to review the proposals and their impact if adopted will be held on August 27 in Boston, MA. Chair J. Seigel (IN) encouraged all committee members and ex-officio to participate in the session’s panel.

Administrative and Training Coordinator M. Spring will email the proposals to the Committee after the meeting. The Committee members will let Chair J. Seigel know which proposal they would each like to represent at the information session in Boston, MA.

Commissioner T. Hand (CO) requested further discussion of the proposal to Rule 2.105 since he was absent from the room at the time the committee discussed the changes. Commissioner T. Hand (CO) discussed the ongoing issue in Colorado in educating the lower courts on the eligibility of misdemeanants. Commissioner T. Hand (CO) added his vote to support the changes to Rule 2.105 as proposed.

**Adjourn**

Commissioner C. Moore (GA) moved to adjourn the meeting. Commissioner D. Eberhard (AR) seconded. Motion passed. The meeting adjourned at 3:17 pm ET.