INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

Minutes

Rules Committee
Face-to-Face Meeting
Cincinnati, Ohio
The Westin

August 24th - 25th, 2004
8 a.m. (EST)

Day 1

Committee Members in Attendance

1. Kathie Winckler (TX)
2. Paul Quander (DC)
3. Benjamin Martinez (PA)
4. Barry Groves (FL)
5. Henry Lowery (WV)
6. Pat Tuthill (ex officio)
7. Milt Gilliam (OK)
8. David Guntharp
9. Doreen Geiger (WA)
10. Judge John D’Amico (NJ)
11. Renate Ast (OH)-sitting in for Harry Hageman

Committee Members not in Attendance

1. A.T. Wall (RI)
2. Jerry VandeWalle (ex-officio)
3. Henry Hageman (OH)

Guests

1. Mike Buenger

Staff

1. Don Blackburn
2. Rebecca Robbins
3. Rick Masters
Call to Order and Roll Call

I. The meeting was called to order by K. Winckler at 8:30 a.m. EST. There were 8 voting members present, establishing a quorum.

II. Minutes from the July 23rd meeting were unanimously approved.

The amendments proposed to the rules of the Interstate Commission for Adult Offender Supervision in the following pages were approved by the Rules Committee at meetings for which at least 30-days’ notice had been given and at which a quorum was present. These meetings took place by teleconference on June 25, 2004 and in person at Cincinnati, Ohio on August 24 & 25, 2004.

The proposed amendments are presented using the following:

- Deleted language is struck through;
- Added language is underlined;
- A “rationale” is presented following each change, which describes the reasoning of the Rules Committee in proposing the changes.

Old Business

I. P. Quander has sent out a summary on the use of variances for cross-border travel for treatment or employment.

II. Judge D’Amico recommended amending the agenda. P. Quander made the motion and B. Martinez seconded that a, b, and c be deferred until M. Buenger arrived. Motion carried.

III. A motion to discuss the number of days to respond to reporting instructions (3.103 (b), 3.104 and 3.106 (c)) was made by M. Gilliam and seconded by P. Quander. It was determined that it should be changed to 15 days. A motion was made by H. Lowery and seconded by M. Gilliam to make this change. There was no discussion and the motion carried.

SEC. 3.107 Application for transfer of supervision

IV. There was a discussion on the language in Rule 3.107 and its consistency with language used in forms. H. Lowery made a motion to combine 17-19 and it was seconded by Judge D’Amico. D. Geiger discussed taking out the words “signed” and “form” out of 18 and 19. 17 would still be signed. Judge D’Amico stated that the integrity of the form would not be compromised if this change took place. D. Geiger made a motion to make these changes and Judge D’Amico seconded. There was no further discussion and the motion carried.

(a) An application for transfer of supervision of an offender shall contain—
(1) offender’s full name and any aliases by which the offender is known;
(2) indication of whether the offender seeks transfer to the receiving state based on residency in the receiving state, family residing in the receiving state, or consent of the receiving state;
(3) name, address, and telephone number of family in the receiving state if the offender bases the transfer request on family’s residency in the receiving state;
(4) offender’s proposed residence in the receiving state;
(5) offender’s current or prospective employer in the receiving state;
(6) offender’s criminal justice identification number in the sending state;
(7) offender’s date of birth;
(8) offender’s social security number, if known;
(9) county of conviction or imposition of supervision;
(10) indication of the type of criminal justice supervision to which the offender has been sentenced;
(11) instant offense in sufficient detail to describe the type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;
(12) offender’s criminal history;
(13) notice, if applicable, indicating that the supervision of the offender is a victim-sensitive matter;
(14) date supervision is to begin, if known;
(15) date supervision is to terminate, if known;
(16) name and title of supervising officer;
(17) signed “Offender Application for Interstate Compact Transfer” form, which shall include “Agreement to Return on Demand of the Sending State” form and “Waiver of Extradition” form;
(18) signed “Consent to Random Drug or Alcohol Testing and to Searches Based on Reasonable Suspicion” form;
(19) signed “Consent to Authorization for Release of Medical and Psychological Information form”;
(20) photograph of offender;
(21) conditions of supervision;
(22) any orders restricting the offender’s contact with victims or any other person;
(23) any known orders protecting the offender from contact with any other person;
(24) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
(25) judgment and commitment documents;
(26) pre-sentence investigation report, if available;
(27) supervision history, if available;
(28) 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.
(29) medical information, if available; and
(30) psychological evaluation, if available.
Rationale: Practitioners had requested that the names of forms required by the rule match the names on the forms that the Commission issues. Gilliam made a motion to these changes and Judge D’Amico seconded. There was no discussion and motion carried.

V. Break from 9:05 a.m. to 9:10 a.m.

VI. M. Gilliam made a motion to discuss what the word “relocate” means. P. Quander seconded. Judge D’Amico stated the term is too broad. P. Quander mentioned that it means long-term or permanency and that a definition for temporary relocation needs to be determined. P. Quander raised the question if someone goes to another state for treatment, college or military, has that person relocated? M. Gilliam and Judge D’Amico stated that as long as it is 3+ months and they meet the other requirements, then yes. He asked should there be a variance rule? D. Guntharp suggested having offering the commission something concrete to review and to proceed on. It was agreed.

VIII. K. Winckler asked for a list of circumstances to discuss. Judge D’Amico listed:
- Treatment Placement
- Short-term employment
- Military transfer
- Job transfer
- College

Break from 10:45 a.m. to 11:00 a.m.

VII. Judge D’Amico rewrote #7 and it was agreed that this would be used as a template for changes. Judge D’Amico made a motion to conform to the changes and B. Martinez seconded.

VIII. K. Winckler stated that an informal meeting 30 days prior to the annual meeting would take place.

Record Vote
1. Geiger-Yes
2. Lowrey-Yes
3. D’Amico-Yes
4. Winckler-Yes
5. Gilliam-No
6. Quander-Yes
7. Groves-No
8. Martinez-Yes
Majority voted on a working lunch. Break from 11:55 a.m. - 12:20 p.m.

M. Buenger discussed the proposal of a matrix. He states that uniformity is an issue that has good and bad meanings. Most severe cases need to get more attention. Rules should not dictate the business principles. Some states don’t have any meaning of state boundaries.

**Day 2**

I. Everyone was present except D. Guntharp. The meeting was called to order by K. Winckler at 8:20 a.m. EST.

II. M. Buenger discussed the matrix and the elements included. He suggested we need a criminologist, a person from parole and probation and a victim’s advocate. K. Winckler stated that at least two people from the Rules Committee should serve on the matrix. M. Gilliam, P. Tuthill and B. Martinez wanted to serve on the matrix. D’Amico made a motion that Winckler should be on the committee and Quander seconded. Winckler is going to put something together for everyone on the matter.

III. On the misdemeanor issue, 6 people wanted to go with Buenger’s rule and 4 wanted to go with D’Amico’s rule, so both were considered.

IV. Quander made a motion to add the word “or” and Martinez seconded. It was unanimous and motion carried. Gilliam made a motion to include “and the instant offense falls within one or more of the following categories. There was a discussion and Winckler suggested removing words “following categories” and reword by adding “includes” and delete “falls within”. All were in favor except D’Amico.

V. A motion was made by Lowrey to delete “or” and Martinez seconded. Motion carried.

VI. A motion was made by D’Amico to keep the word “misdemeanor”, line 1, of 2.105. Lowrey seconded. Martinez disagreed.

**Record Vote**

1. D’Amico-Yes
2. Martinez-No
3. Quander-Yes
4. Winckler-Yes
5. Geiger-Yes
6. Gilliam-Yes
7. Lowrey-Yes
8. Groves-Yes

VII. A motion was made by M. Gilliam to include “and the instant offense falls within 1 or more of the following categories” of 2.105 (a).

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IX. P. Quander made a motion to include the word “firearm” in #2 instead of “weapon”. J. D’Amico seconded.

X. J. D’Amico made a motion to include #4. P. Quander seconded. Motion did not carry.

XI. K. Winckler suggested deleting “or” between #3 and #4. All agreed but B. Martinez.

Break from 9:45 a.m. – 10:10 a.m.

XII. P. Tuthill raised a question on the issue of temporary travel of employment crossing state lines. K. Winckler asked if a rule should be adopted to allow an offender to cross over state lines to go to a doctor’s appointment, etc. Should sending state be notified of such temporary travel-not transferring but temporary travel.

XIII. Daily Travel Permits-Groves made a motion to adjust language, P. Quander seconded. M. Gilliam recommended putting together a sub-committee to handle the daily travel permit issue. P. Quander made a motion and B. Groves seconded it. Unanimous and motion carried.

XIV. Proposal to amend 3.105

XV. D. Geiger suggested modifying (c) 1 from waiting until 5th day to “as instructed”, also to take out report to and arrive in. There was no discussion all were in favor and motion carried.

XVI. There was a question on significant violation definition, change to substantial compliance and amend definition. Substantial Compliance-take compliance definition and add offender is sufficiently in compliance. J. D’Amico made the motion for these changes and M. Gilliam seconded. There was no discussion and motion carried.

XVII. Break for lunch at 12:00 p.m. – 12:25 p.m.

XVIII. Definition of offender-no discussion
SEC. 3.101  Eligibility for transfer of supervision

(a) 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 valid 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.

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

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

(3) College students

(A) An offender meeting the criteria, as specified in sec. 3.101 (a)(1), and who can provide verification of acceptance in or attendance at a recognized, certified college, university or post-secondary technical school shall be eligible for transfer unless the receiving state can show good cause for rejecting the transfer request.

(B) The offender must be a full-time student, carrying at least 12 credit hours per semester. If the offender returns to the sending state between semesters for periods in excess of 30 days, the receiving state shall inform the sending state of the offender’s presence in the sending state and responsibility for supervision shall remain with the receiving state. Responsibility for supervision shall revert to the sending state upon the student’s graduation or an interruption of studies in excess of three months.

(4) Employment of family member in another state  An offender who meets the other criteria specified in sections 3.101 (a)(1) and 3.101 (a)(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, provided that the offender will live with the family member in the receiving state.
A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision.

Rationale: Many have commented on the difficulty of dealing with offenders who have special circumstances, such as family members whose job site has changed and military members who must quickly transfer to another base. This proposed change attempts to provide quick disposition of offenders who request transfer in these circumstances.

XIX. Definition of resident-Simplify but keep meaning. Should break it down to a 3.101 (1) and so on-into 3 sections. M. Gilliam made a motion to this change and J. D’Amico seconded. No further discussion. All in favor and motion carried.

XX. Review (e) in 3.101-no discussion moved on to 3.104 (a). M. Gilliam suggested that we change the language of (a). J. D’Amico proposed to defer it.

XXI. Clarification of victim’s rule-what is a known victim (who is registered). Redefine (ee) victim-need to specify sending and receiving state. M. Gilliam made a motion to accept changes and B. Martinez seconded. It was unanimous and the motion carried.

XXII. 4.112 Closure Notice-changes made to (c)-no discussion.

XXIII. 4.106 (b) delete (b)-Progress reports. M. Gilliam made a motion for these changes and P. Quander seconded. All were in favor and the motion carried.

XXIV. M. Buenger proposed taking work “known” out of the rule and 3.108 (1). M. Gilliam made the motion and B. Groves seconded. No further discussion and the motion carried.

XXV. 4.107 Fees. M. Gilliam recommended not changing the rule. Motion was unanimous.

XXVI. 4.110 Transfer to a subsequent receiving state. The word “subsequent” has already been removed.

XXVII. 5.101 Retaking by the sending state-issue-most states don’t agree to retake misdemeanors. Discussion ended.

XXVIII. 5.105 Time allowed for retaking and offender-Extradition laws state 10 days to retake, 30 days is too long, which is listed in rule. Defer changes for this rule.

XXIX. Break 1:40 p.m -1:55 p.m.
XXX.  Question of illegal aliens was deferred.

XXXI.  Question of receiving state having responsibility of an offender that’s not in their state. Amend 3.103 (3).  3.103 (2) (c) amended, moved (2) (c) after 2 (c), moved 2 (d) before original 2 (c).  Take out provisional of 3.103 (2) and out of 2 (d).  M. Gilliam made a motion for above changes and seconded by D. Geiger.  Motion was carried and was unanimous.

XXXII.  D. Geiger made a motion to change 3.106 (b) and P. Quander seconded.  Motion carried.  4.111 (b) B. Groves proposed to change (b) to 2 days from 3 days.  B. Groves made a motion to make these changes and H. Lowery seconded.  Motion carried.

XXXIII.  Review of the June 25th minutes.

XXXIV.  R. Masters proposed clarifying of types of sentences under 2.106.  J. D’Amico proposes to change 2.106 that include 2.105 (b).  It was seconded by B. Groves.  No discussion and motion carries.

XXXV.  Definition of supervision- K. Winckler opposes changing definition.  There was a discussion but no proposal of amendment.  Moved to next item.

XXXVI.  3.101 Military transfer-Amend 3.101 (b) (1)-2 sections and b (4).  J. D’Amico made a motion and P. Quander seconded.  There was no discussion and motion carried (unanimous).

3.109 Waiver of extradition-discussion but no changes made.

Issues of defining resident family J. D’Amico made a motion and B. Martinez seconded.  It was unanimous and motion carried.

An agenda for the next meeting on September 17th will go out and will consist of the discussion of amendments.  Sub-committee won’t have information before the 17th meeting.

M. Gilliam made a motion to adjourn and B. Groves seconded.  Motion was unanimous and motion carried.