INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

RULES COMMITTEE MEETING MINUTES

August 28, 2012
3:30 pm CDT
Madison, Wisconsin

Members in Attendance:
1. Gary Tullock Chair, TN
2. Jane Seigel Vice-Chair, IN
3. David Eberhard AR
4. Ronald Taylor AK
5. Dori Ege AZ
6. Tim Hand CO
7. Jenny Nimer FL
8. John Rubitschun MI
9. John Gusz NJ
10. Ed Ligtenberg SD
11. Jim Ingle UT
12. Jule Cavanaugh WI
13. Chris Moore GA
14. Michael Potteiger PA
15. Gerald VandeWalle Ex-officio, ND

Members not in Attendance:
1. Shari Britton Ex-Officio, FL

Guests:
1. Don Matson
2. Carl Wicklund
3. Jeff Peterson
4. Keith Hardison

Staff:
1. Rick Masters
2. Sam Razor
3. Kevin Terry
4. Barno Saturday

Approved on 11/1/2012. B.S.
Call to Order
Chair G. Tullock (TN) called the meeting to order at 3:30 p.m. CDT. All voting members were present, a quorum was established.

Approval of Agenda
Commissioner D. Ege (AZ) suggested adding Rules Proposals under New Business.

Commissioner G. Tullock (TN) added agenda item Dissemination of Rule Proposals to ex-officio and other related agencies.

Commissioner J. Seigel (IN) moved to approve the agenda as amended. Commissioner R. Taylor (AK) seconded. Agenda approved as amended.

Approval of Minutes
Commissioner J. Siegel (IN) noted that she was not present at the last meeting.

Commissioner J. Rubitschun (MI) moved to approve the minutes from May 17, 2012 as amended. Commissioner E. Ligtenberg (SD) seconded. Minutes approved as amended.

Old Business
2013 Calendar: The Committee reviewed its business calendar. Commissioner G. Tullock (TN) reminded the Committee members about January 31, 2013 deadline to submit proposals.

The Committee will have two face-to-face meetings to review the proposals. The Committee decided to meet on February 20-21, 2013 in Nashville, Tennessee. The Committee decided to move the second face-to-face meeting to June 11-13, 2012. The meeting will take place in Detroit, Michigan.

Commissioner D. Ege (AZ) suggested meeting via WebEx at 2 pm ET on November 1, 2012.

Committee Membership 2013: All Committee members plan to serve the Rules Committee in FY 2013.

New Business
Rule 4.109 (c)(1) Amendment: The Committee reviewed rule amendment 4.109(c)(1). Commissioner G. Tullock (TN) stated that this rule did not reflect ICOTS and still had five business day timeline.

Commissioner D. Ege (AZ) stated that with proposed changes sending state should be changed to receiving state in (c)(1).

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)

(1) The sending state shall respond to a report of a violation made by the receiving state no later than 10 business days following submission receipt by the sending receiving state. Receipt of a violation report shall be presumed to have occurred by the 5th business day following its transmission by the receiving state;
(2) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion date.

Commissioner G. Tullock (TN) moved to adopt Rule 4.109(c)(1) as amended and move forward for Commission comments. Commissioner D. Ege (AZ) seconded. Motion passed.

Rule 1.101 Relocate: Commissioner G. Tullock (TN) stated that Legal Counsel received a request for an advisory opinion on whether or not the definition of the term ‘Relocate’ in ICAOS Rule 1.101 should be interpreted to mean that an offender may not proceed and remain in a receiving state for a cumulative period exceeding 45 days in any twelve month period without being required to apply for transfer of supervision under the Compact.

The Committee had discussion on this issue. The Committee decided to share its ideas via email and discuss them at its next meeting.

Rule Proposals: Commissioner D. Ege (AZ) asked the Committee members to review the proposals prior to its November meeting.

Rule 3.104-1

(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 calendar day following the offender’s intended date 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.

ICOTS Impact: None

Rule 3.103

(e) (2) If the offender does not return to the sending state as ordered, then the sending state shall initiate the retaking of the offender by issuing 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:** The proposed stricken language is no longer needed because warrant is now defined under Chapter 1 of the interstate compact rules.

**ICOTS Impact:** None

**Rule 3.106**

(d) (2) If the offender does not return to the sending state as ordered, then the sending state shall initiate the retaking of the offender by issuing 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:** The proposed stricken language is no longer needed because warrant is now defined under Chapter 1 of the interstate compact rules.

**ICOTS Impact:** None

**Rule 5.103**

(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 retake or order the return of an offender from the receiving state or a subsequent receiving state. The sending state shall order the offender to return to the sending state within 15 calendar days of the receipt of the request by the receiving state. If the sending state opts to retake the offender via warrant, the warrant shall be issued within 15 calendar 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 days following the offender’s failure to appear in the sending state.

**Justification:** The proposed added language in (a) is required because the current 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 violating offenders to the sending state and poses a risk to public safety. The proposed stricken language in (b) is no longer needed because warrant is now defined under Chapter 1 of the interstate compact rules.

**ICOTS Impact:** None

**Rule 5.105**

A sending state shall retake an offender within 30 calendar days after the issuance of the sending state’s warrant, provided the offender is available for retaking, 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.

**ICOTS Impact:** None

**Rule 5.108**

(c) A copy of a judgment of conviction regarding the conviction of a new felony or misdemeanor 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.
Justification: Interstate compact rules can also require the retaking of offenders following the commission and conviction of a new misdemeanor offense. A judgment of conviction showing the misdemeanor conviction is also sufficient evidence of probable cause, so no further proceedings or a probable cause hearing would be needed.

ICOTS Impact: None

Discussion topic: Rule 3.101-1 – Do we need to add the language about referring to the requirements under Rule 4.105 and the ability to withdraw reporting instructions and acceptances to this rule for failing to report, etc. that is included in the other reporting instructions and transfer request rules? It seems missing here and just assumed that the procedures are the same. Or do we remove the references to 4.105 from the other rules and let Rule 4.105 stand alone?

Dissemination of Rule Proposals: Ex-Officio C. Wicklund (APPA) suggested being proactive in publicizing ICAOS open process of rule changes and share them with ex-officious and other interrelated agencies before voting on them.

J. Gusz (NJ) suggested distribution of the White Paper concerning liability of state officials to the ex-officio and other interrelated agencies.

The Committee decided to put together a list of agencies that are affected by ICAOS rule changes.

Adjourn
Commissioner M. Potteiger (PA) moved to adjourn the meeting. Commissioner J. Rubitschun (MI) seconded. Motion passed. The meeting adjourned at 4:22 pm CDT.