INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

RULES COMMITTEE MEETING MINUTES

September 22, 2009
9:00 a.m. EDT

Lexington, KY

**Members in Attendance:**
1. William Rankin  Chair, WI
2. Ed Ligtenberg  SD
3. John Rubitschun  MI
4. Wayne Theriault  ME
5. Dori Ege  AZ
6. Gary Tullock  TN
7. David Morrison  GA
8. Denise Sitler  Ex-officio, OR

**Members not in Attendance:**
1. Robert Ambroselli  CA
2. Yolette Ross  NJ
3. Gerald VandeWalle  Ex-officio, ND
4. Patricia Malone  Ex-officio, MA
5. Nick Alexander  Ex-officio, VA

**Staff:**
1. Harry Hageman
2. Ashley Hassan
3. Rick Masters  Legal Counsel
4. Barlow Saturday
5. Xavier Donnelly
6. Sam Razor
7. Mindy Spring

**Call to Order**
Chair W. Rankin called the meeting to order at 9.02 a.m. EDT. Seven out of nine voting members were present, quorum was established.
Chair W. Rankin welcomed new committee members Commissioner G. Tullock and Commissioner D. Morrison.

**Approval of Agenda**
Commissioner G. Tullock made a motion to approve the agenda. Commissioner E. Ligtenberg seconded. The agenda was approved as drafted.

**Approval of Minutes**
Commissioner D. Ege made a motion to approve the minutes from April 22, 2009. Commissioner W. Theriault seconded. The minutes were approved as drafted.

The minutes from May 14, 2009 were approved by acclamation.

**Discussion**
The Committee reviewed an amendment to Rule 1.101 submitted by the Rules Committee.

*Rule 1.101 Definitions*

“Business day” means a day other than a Saturday, Sunday or legal holiday, during the hours when an office is open to the public and may receive mail or parcels from public and private mail or parcel delivery services. When a state is required, by rule, to act within a number of “business days,” only the business days recognized in that state are counted.

*Justification:*
Several ICAOS rules impose an obligation on a compact state to perform an act within a specified number of “business days”. Agencies sponsoring compact offices may have widely differing operating schedules; some states have unique holidays; electronic correspondence across time zones may not be received on the same “business” day it was sent. In the same calendar period, a state requesting action may experience a different number of business days than are recognized in the state required to act. This definition is intended to provide guidance in counting business days.

Based on Appriss’ calculation, this rule change has the potential to be an expensive ICOTS enhancement. A search of the rules indicates that in 40 different areas the rules refer to days in three different ways, i.e. business day, calendar day and day. The term “business day” is used 15 times throughout the rules; “calendar day” 12 times and “days” 13 times. The implementation of this rule amendment requires changes to the code, reports, forms and screens.

After discussion, the Committee decided that this rule amendment was not necessary and created complications. The Committee voted 6-1 to withdraw the proposal.

The Committee reviewed an amendment to Rule 1.101 referred by the West Region.

*RULE 1.101 Definitions*

“Supervision” means the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.

*Justification:*
The current definition of supervision has been interpreted to require transfer of certain offenders whom the sentencing courts have clearly not intended to be subject to “supervision” as it has been
traditionally understood. These include offenders placed on probation as a means to preserve jurisdiction while the offenders pay court-ordered fees, fines, court costs and restitution.

Since the monitoring and collection of outstanding monies is the sending state’s responsibility under Rule 4.108, regardless of the offender’s location, there is no benefit in requiring transfer of cases, when the only conditions to be satisfied are monetary.

This amendment will eliminate confusion and inconsistencies among states in applying compact rules.

The Committee decided the rule amendment had no effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

The Rules Committee recommended this rule amendment in favor of adoption by 7-0 vote with the effective date January 1, 2010.

The Committee reviewed an amendment to Rule 2.104 submitted by the Rules Committee.

**Rule 2.104 Forms**

(a) States shall use the forms or electronic information system authorized by the commission for all communication regarding offenders between or among states.

(b) The sending state shall retain the original forms containing the offender’s signature until the termination of the offender’s term of compact supervision.

(c) Section (a) shall not be construed to prohibit written, electronic or oral communication between compact offices.

**Justification:**
Existing language appears to restrict compact offices from communicating about offenders’ cases, by any means other than ICAOS forms or the electronic information system (ICOTS). Efficient compact operations require that compact offices have the ability to send messages and to clarify, discuss and resolve certain issues outside of ICOTS. The revised language clarifies the intent of the rule that ICAOS forms and ICOTS are to be used when appropriate to the purpose, but does not restrict other communications.

The Committee decided the rule amendment had no effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

By a vote of 7-0, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

The Committee reviewed an amendment to Rule 1.101 submitted by the South Region.

**Rule 2.106 Offenders subject to deferred sentences**

Offenders subject to deferred sentences are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this compact. Persons subject to supervision pursuant to a pre-trial release intervention program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

**Justification:**
The intent of this proposal is to eliminate any case where the offender was in a bond-like status and focus on those offenders where courts/parole boards have made a final determination that the offender has committed an offense and should be supervised for a period of time.
The Committee decided the rule amendment is consistent with Advisory Opinion 6-2005 and had no ICOTS impact.

The Rules Committee recommended against adoption of this rule amendment, by 4-3 vote.

The Committee reviewed an amendment to Rule 2.110 submitted by the Rules Committee.

**Rule 2.110 Transfer of offenders under this compact**

(a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.

(b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender’s supervision.

(c) Upon violation of section (a), the sending state shall direct the offender to return to the sending state within 15 calendar days of receiving such notice. If the offender does not return to the sending state as ordered, 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:**
Under the current rules, there is no explicit process requiring a sending state to take specific action when it or a receiving state learns that an offender who is eligible for transfer under the Compact has been permitted to relocate to the receiving state in violation of Compact rules. This poses a significant public safety risk because the offender is residing in the receiving state but not under supervision there. Paragraph (c) would clarify a sending state’s responsibilities in this situation to remove the offender from the receiving state. This does not apply to offenders who have relocated to another state without permission.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

By a vote of 7-0, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

The Committee reviewed an amendment to Rule 3.101 submitted by the West Region.

**Rule 3.101 Mandatory transfer of supervision**

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, if the offender:

(a) has more than 90 days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and

(b) has a valid plan of supervision; and

(c) is in substantial compliance with the terms of supervision in the sending state; and

(d) is a resident of the receiving state; or

(e)
(1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and

(2) can obtain employment in the receiving state or has means of support.

(f) Upon 3 returns from the same receiving state for violations and closures within five years of a specific offender to the sending state under the terms of this rule, any future applications for transfer to the same receiving state shall be considered under Rule 3.101-2.

Justification:
Many offenders apply multiple times for transfer to a specific state, after multiple failures of supervision. A reasonable case can be made that after three case failures in the same receiving state, that any future applications for transfer should be considered discretionary and not mandatory. After a certain point, the offender is simply not having a successful experience with supervision in the receiving state where multiple failures have occurred (3-Strikes Rule on Mandatory Cases).

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

The Rules Committee amended the language clarifying that all three violations and returns must occur from the same receiving state.

The Rules Committee recommended against adopting this rule amendment, by 7-0 vote.

The Committee reviewed an amendment to Rule 3.101-1 submitted by the West Region.

Rule 3.101-1 Mandatory transfers of military, families of military, and family members employed, and employment transfer.
(a) 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 two business days following receipt of such a request from the sending state.

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

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

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

**Justification:**
(c) For purpose of consistency

(d) An offender’s ability to support themselves plays a major part in:
1) rehabilitation,
2) the ability to be a productive member of society and
3) the ability to pay legal financial obligations, including victim’s compensation.

Offenders should not be put in a position to lose employment and become unemployed because they are transferred by their company to another state. If moving to the receiving state allows the offender to maintain employment, it should be a requirement to accept the offender.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions.

Based on Appriss’ calculation, the impact on ICOTS may be significant, requiring changes to code, menus, screens, forms and reports. The estimated cost is $11,360.

Based on the comments the Committee replaced some of the language in the proposal and justification without materially altering the intent of the proposal.

By a vote of 7-0, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

The Committee reviewed an amendment to Rule 3.101-3 submitted by the Midwest Region.

**Rule 3.101-3 Transfer of supervision of sex offenders**

(a) Eligibility for Transfer-At the discretion of the sending state a sex offender shall be eligible for transfer to a receiving state under the Compact rules. A sex offender shall not be allowed to leave the sending state until the sending state’s request for transfer of supervision has been approved, or reporting instructions have been issued, by the receiving state. In addition to the other provisions of Chapter 3 of these rules, the following criteria will apply.

(b) Application for Transfer-In addition to the information required in an application for transfer pursuant to Rule 3.107, in an application for transfer of supervision of a sex offender the sending state shall provide the following information, if available, to assist the receiving state in supervising the offender:

(1) assessment information, including sex offender specific assessments;
(2) social history;
(3) information relevant to the sex offender’s criminal sexual behavior;
(4) law enforcement report that provides specific details of sex offense;
(5) victim information
   (A) the name, sex, age and relationship to the offender;
   (B) the statement of the victim or victim’s representative;
(6) the sending state’s current or recommended supervision and treatment plan.

(c) Reporting instructions for sex offenders living in the receiving state at the time of sentencing—Rule 3.103 applies to the transfer of sex offenders, who are placed on
probation for a sex offense requiring registration in the sending or receiving states except for the following:

(1) The receiving state shall have five business days to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instruction. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.

(2) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state.

**Justification:**
Current rule requires all sex offenders requesting reporting instructions under 3.103 to remain in the sending state until reporting instructions are received. Early experience with the new rule has shown that a significant proportion of affected offenders are individuals who are not on probation for a sex offense. Rather, they have previous convictions or adjudications, and are already registered as sex offenders in the receiving states.

Recent examples of affected offenders already registered and residing in the receiving state at the time of sentencing include:

- Offender placed on probation for DUI-2nd Offense; previously convicted and currently registered in receiving state;
- Offender placed on probation for Harassing Behavior; previously convicted and currently registered in receiving state;
- Offender placed on probation for Issue Worthless Checks, Possession of Marijuana; currently registered in receiving state;
- Offender placed on probation for Fraudulent Use of Credit Card; previously convicted and currently registered in receiving state;
- Offender placed on probation for Failure to Register Vehicle Information; currently registered in receiving state.

To require all sex offenders to remain in the sending state places unnecessary financial burdens on the offenders and/or the sending state. Preventing these individuals from returning to their residences also may create new public safety risks, by displacing the offenders and requiring them to find temporary housing. These registered sex offenders already reside in the receiving state, presumably in compliance with the state’s residence and registration requirements. This proposal limits the scope of Rule 3.101-3 (c) to those offenders newly convicted of offenses requiring registration. In these cases, a receiving state is more likely to serve a public protection function by conducting a prior investigation to confirm the residence does not conflict with existing state law or policy.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

In response to the Commission comments, the Committee removed the language “have been” with “are” placed on probation.

The Rules Committee recommended against adopting this rule amendment, by 4-3 vote.

The Committee reviewed an amendment to Rule 3.102 submitted by the Rules Committee.

**RULE 3.102 Submission of transfer request to a receiving state**

(a) Except as provided in section (c), 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 section (c), 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.

Justification:
This amendment allows an offender to maintain existing employment in a receiving state, without interruption, while a transfer request is investigated. Under existing rules, an offender who has not requested transfer to another state may travel to and from that state, as long as the offender does not relocate. However, once a sending state submits a request to transfer supervision, Rule 3.102 bars the offender from any further travel to that state. Exceptions are possible for offenders who already reside in or who, due to emergency circumstances, need to relocate to the receiving state. No exception is currently provided for an offender who has employment in that state, but does not intend to relocate prior to completion of the investigation.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

By a vote of 6-1, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

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

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 days following the rejection.

Justification:
This rule currently requires an incomplete transfer application to be rejected. Other ICAOS rules require that an offender in the receiving state with reporting instructions, must return to the sending state upon notice of rejection. The addition of this language allows the offender, whose transfer has been rejected pursuant to this rule, to remain in the receiving state for a reasonable amount of time to allow the sending state to either cure the defect in the transfer application or order the return of the offender. The addition of this language further clarifies the responsibilities of the sending state.
The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions.

Appriss estimated $2,600 to make the appropriate changes to ICOTS.

By a vote of 6-1, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

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

**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.

**Justification:**
This proposal is consistent with language in Rules 3.103 and 3.106 for offenders arriving in a receiving state. This language should be a part of Rule 3.104-1 as well because not all offenders arrive in a receiving state via Rules 3.103 or 3.106. Adding this language to this rule also makes it clear that the receiving state’s responsibility for supervision begins upon the offender’s arrival in the receiving state, and that an arrival notice is then due.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions and had no ICOTS impact.

By a vote of 7-0, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

The Committee reviewed an amendment to Rule 3.107 submitted by the Rules Committee.

**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. 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;
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, if available;
9. supervision history, if available;
10. 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.

(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, such as the Judgment and Commitment, and any other information may be requested from the sending state following acceptance of the offender. The sending state shall provide the documents if available.

Justification:
We are discovering that in cases when states do not include the Offender Application with their packets as a discretionary attachment, it is difficult to obtain one from the sending state after the fact. We spend time we don’t have in trying to obtain a signed copy of this application for violating offenders. In addition, we are becoming aware that because it is not mandatory in the rule that officer’s are forgetting to even have the offender sign one – that can cause a lot of problems.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions.

Appriss estimated $1,000 cost to make the appropriate changes to ICOTS.

By a vote of 7-0, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

The Committee reviewed an amendment to Rule 4.105 submitted by the Rules Committee.

RULE 4.105 Arrival and departure notifications; withdrawal of reporting instructions

(a) Departure notifications
At the time of an offender’s departure from any state pursuant to a transfer of supervision or the granting of reporting instructions, the state from which the offender departs shall notify the intended receiving state, and, if applicable, the sending state, through the electronic information system of the date and time of the offender’s intended departure and the date by which the offender has been instructed to arrive.

(b) Arrival notifications
At the time of an offender’s arrival in any state pursuant to a transfer of supervision or the granting of reporting instructions, or upon the failure of an offender to arrive as instructed, the intended receiving state shall immediately notify the state from which the offender departed, and, if applicable, the sending state, through the electronic information system of the offender’s arrival or failure to arrive.

(c) A receiving state may withdraw its reporting instructions or submit a case closure notice if the offender does not report to the receiving state as directed.

Justification:
The revised language clarifies what a receiving state can do should an offender fail to report as instructed. This amendment is necessary because in some circumstances ICOTS does not permit a user to withdraw reporting instructions. In those cases, a case closure notice is necessary.

After discussion, the Committee voted 6-0 to withdraw the proposal.
The Committee reviewed an amendment to Rule 4.106 submitted by the South Region.

**Rule 4.106 Progress reports**

(a) A receiving state shall provide to the sending state a progress report annually, or more frequently, upon the request of the sending state, for good cause shown. The receiving state shall provide the progress report within thirty (30) calendar days of receiving the request.

(b) A progress report shall include-

1. offender’s name;
2. offender’s residence address;
3. offender’s telephone number and electronic mail address;
4. name and address of offender’s employer;
5. supervising officer’s summary of offender’s conduct, progress and attitude, and compliance with conditions of supervision;
6. programs of treatment attempted and completed by the offender;
7. information about any sanctions that have been imposed on the offender since the previous progress report;
8. supervising officer’s recommendation;
9. any other information requested by the sending state that is available in the receiving state.

**Justification:**

Progress reports are frequently needed for the sending state to complete regularly scheduled supervision reviews or final termination audits and must be received timely so that violations can be addressed prior to termination of supervision. All other compact processes have timeframes for response.

The Committee decided the rule amendment does not have effect on other Rules, Advisory Opinions or Dispute Resolutions.

Based on the Appriss’ calculation, the estimated cost to make appropriate changes to ICOTS is $7360.

By a vote of 7-0, the Rules Committee recommended adoption of this rule amendment, with the effective date January 1, 2010.

The adopted amendments will be posted on the Commission website for review. The public can email their comments to the National Office. The Committee decided not to post the adopted amendments on the Public Forum for discussion.

**New Business**

The Committee had discussion on issues with case closure responses in ICOTS initiated by Commissioner D. Ege.

Executive Director H. Hageman suggested raising this issue during the Technology Committee report at the Business Meeting.

Commissioner D. Morrison suggested taking no actions at present time since ICOTS is still just one year old.

Legal Counsel R. Masters brought to the Committee attention P. Tuthill concerns about the victim notification issue.
The Committee suggested P. Tuthill submit an official proposal through region or standing committee to the Rules Committee for review.

Commissioner D. Ege suggested changing the effective date for all adopted rule amendments for training purposes.

**Commissioner D. Ege moved to change the effective date for all rule amendments from January 1, 2010 to March 1, 2010. Commissioner G. Tullock seconded. The motion carried.**

**Adjourn**
Commissioner G. Tullock made a motion to adjourn. Commissioner D. Morrison seconded. Motion passed.

The meeting was adjourned at 4:18 pm EDT.