INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

RULES COMMITTEE MEETING MINUTES

November 1, 2012
2:00 pm ET
WebEx

Members in Attendance:
1. Jane Seigel Chair, IN
2. Ronald Taylor AK
3. David Eberhard AR
4. Dori Ege AZ
5. Jenny Nimer FL
6. Chris Moore GA
7. John Rubitschun MI
8. Michael Potteiger PA
9. Jim Ingle Ex-Officio, UT
10. Shari Britton Ex-Officio, FL
11. Gerald VandeWalle Ex-Officio, ND

Members not in Attendance:
1. Tim Hand CO
2. Ed Ligtenberg SD
3. Jule Cavanaugh WI
4. John Gusz Ex-Officio, NJ

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

Call to Order
Chair J. Seigel (IN) called the meeting to order at 2:01 p.m. ET. Eight voting members were present, a quorum was established.
Commissioner J. Seigel (IN) stated that Commissioner G. Tullock has retired since the last meeting and Chairman Gilliam appointed her as the Rules Committee chair.

**Approval of Agenda**
Commissioner D. Ege (AZ) moved to approve the agenda as drafted. Commissioner J. Rubitschun (MI) seconded. Agenda approved.

**Approval of Minutes**
Commissioner J. Nimer (FL) moved to approve the minutes from August 28, 2012 as drafted. Commissioner J. Rubitschun (MI) seconded. Minutes approved as drafted.

**Discussion**
*Rule Proposals from Commissioner Ege:* The Committee reviewed an amendment to Rule 3.104-1. The Committee made the following changes to the proposal.

**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 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.

**ICOTS Impact:** None

Commissioner D. Ege (AZ) moved to adopt the proposal 3.104-1 as amended and forward it for Commission comments. Commissioner J. Rubitschun (MI) seconded. Motion passed.

Commissioner D. Ege (AZ) moved to amend Rule 3.105 (c) to reflect the wording change made in Rule 3.104-1. Commissioner R. Taylor (AK) seconded. Motion passed.

**Rule 3.105 Pre-release transfer request**

(a) A sending state may submit a completed request for transfer of supervision no earlier than 120 days prior to an offender’s planned release from a correctional facility.

(b) If a pre-release transfer request has been submitted, a sending state shall notify a receiving state:

(1) if the planned release date changes; or
(2) if recommendation for release of the offender has been withdrawn or denied.

(c) 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 transmission of notice the offender’s intended date of departure and shall provide immediate notice of such withdrawal to the sending state.

Justification: to be consistent with the wording change made in Rule 3.104-1.

The Committee reviewed amendments to Rule 3.103 and 3.106.

**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

Commissioner D. Ege (AZ) moved to adopt amendments to Rule 3.103 and 3.106 and forward them for Commission comments. Commissioner M. Potteiger (PA) seconded. Motion passed.

Commissioner J. Seigel (IN) noted that Rule 2.110 (c) has similar problem. The Committee decided to postpone the discussion on Rule 2.110(c).

The Committee discussed an amendment to Rule 5.103.

**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

Commissioner D. Ege (AZ) moved to adopt the amendment to Rule 5.103 and forward it for Commission comments. Commissioner J. Nimer (FL) seconded. Motion passed.

Commissioner D. Ege (AZ) presented an amendment to Rule 5.105.

Rule 5.105

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, 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

Commissioner D. Ege (AZ) moved to adopt the amendment to Rule 5.105 as amended and forward it for Commission comments. Commissioner J. Rubitschun (MI) seconded. Motion passed.

Commissioner D. Ege (AZ) presented an amended to Rule 5.108.

Rule 5.108

Approved on 02/20/2013. B.S. 4
(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

**Commissioner D. Ege (AZ) moved to adopt the amendment to Rule 5.108 and forward it for Commission comments. Commissioner J. Nimer (FL) seconded. Motion passed.**

The Committee discussed Rule 3.101-1 and Rule 4.105.

**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?

Commissioner D. Ege (AZ) volunteered to search if other rules need to be amended if the Committee decides to amend Rule 4.105. The Committee will continue its discussion at its next meeting.

The Committee discussed an amendment to Rule 2.110 presented by Commissioner D. Ege (AZ).

**Rule 2.110:**

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

Propose New Definition “Reside” means to exist in or be inherently present and living in a place permanently or for more than 30 days in a row.

Strike “relocate” definition

Legal Counsel R. Masters noted that the Committee needs to keep in mind Rules definition of *residence*. Chair J. Seigel (IN) will email her office attorneys’ research on definition of *reside* and *relocate*. The Committee will continue the discussion at its next meeting.

**Agencies Affected by ICAOS Rules:** Chair J. Seigel (IN) suggested including the Commission ex-officio in the email regarding posted rule amendments.

Approved on 02/20/2013. B.S. 5
Legal Counsel R. Masters noted the rise of possible problem with inadequate notice. The Committee will continue the discussion at its next meeting.

**Old Business**

*2013 Calendar:* The Committee agreed to move the location of its February face-to-face meeting to Indianapolis, IN. The Committee will have a two-day meeting.

Chair J. Seigel (IN) stated that at the last meeting the Committee passed amendment to Rule 4.109. She suggested changing word *submission* to *transmission* in passed Rule 4.109 to be consistent with ICOTS terminology.

**Commissioner R. Taylor (AK) moved to adopt the amendment to Rule 4.109 and forward it for Commission comments. Commissioner M. Potteiger (PA) seconded. Motion passed.**

**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 transmission 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.

**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.
Adjourn
Commissioner D. Ege (AZ) moved to adjourn the meeting. Commissioner R. Taylor (AK) seconded. Motion passed. The meeting adjourned at 3:00 pm ET.