



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

April 7, 2020 - 1:00 pm ET
Teleconference

Members in Attendance:

1. Mary Kay Hudson (IN), Chair
2. Dori Littler (AZ), Vice-Chair
3. Rebecca Brunger (AK)
4. Joe Winkler (FL)
5. Chris Moore (GA)
6. Robert Maccarone (NY)
7. Joselyn Lopez (WI)
8. Tim Strickland (FL), Ex-Officio
9. Turran Blazier (IN), Ex-Officio
10. Tracy Hudrlik (MN), Ex-Officio
11. Margaret Thompson (PA), Ex-Officio

Members not in Attendance:

1. Linda Rosenberg (PA)
2. Pat Odell (WY), Ex-Officio

Guests:

1. Jeremiah Stromberg (OR)
2. Tina Balandran (TX)
3. Brandon Watts (TX)
4. Thomas Travis, Legal Counsel

Staff:

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Policy and Operations Director
3. Barno Saturday, Logistics and Administrative Coordinator
4. Mindy Spring, Administrative and Training Coordinator
5. Xavier Donnelly, ICOTS Project Manager

Call to Order

Chair M. Hudson (IN) called the meeting to order at 1:01 pm ET. Executive Director A. Lippert called the roll. Seven voting members were present, a quorum was established.

Approval of Agenda and Minutes

Chair M. Hudson (IN) asked to amend the agenda by adding *Consideration of Emergency Rule* under *Discussion*.

Commissioner C. Moore (GA) moved to approve the agenda as amended. Commissioner R. Maccarone (NY) seconded. Agenda approved.

Commissioner C. Moore (GA) moved to approve the minutes from February 12, 2019 meeting as drafted. Commissioner D. Littler (AZ) seconded. Minutes approved.

Discussion

Consideration of Emergency Rule: Commission Chair J. Stromberg (OR) stated that the declarations of emergency from the federal and state governments impacted Compact members ability to comply with timelines and procedural requirements as outlined in the Commission’s Rules. As a response, the Executive Committee adopted AP 01-2020 Emergency Guidelines policy that allows “suspensions or delays in Compact duties...up to sixty (60) days from implementation of such delays”.

He added that based on the ICAOS legal counsels’ advice, any prolonged period without access to certain areas of the country leaves any policy legally inadequate in comparison to the Rules and the Compact itself. Therefore, an emergency rule was needed for stability and predictability given the current COVID-19 crisis.

After consultation with legal counsel and the national office, Commission Chair J. Stromberg charged the Rules Committee with drafting a rule granting the Executive Committee emergency discretion to suspend enforcement of Commission rules or parts thereof. The new rule should require states to define the authority for their suspensions and should promote a return to normality as quickly as possible.

Commission Chair J. Stromberg (OR) added that pursuant to the authority given to the Chair under Article VII, Paragraph 3 of the Interstate Commission for Adult Offender Supervision, he is calling a special emergency meeting of the Commission scheduled for April 21, 2020. This emergency meeting requires a quorum of commissioners be present to officially vote on the proposed emergency rule.

The new rule will allow the Commission to act in advance when a crisis occurs. Should the Commission not pass this rule, enforcement as outlined by the Commission prevails and states will be held accountable regardless of the crisis at hand.

The Rules Committee discussed the Emergency Rule proposal drafted by ICAOS Legal Counsel.

Executive Director A. Lippert noted that this rule applied not only in the current health crisis, but also in any crisis declared by the U.S. President or one or more Governors. She encouraged states to work with each other and document activities in ICOTS, even if a transfer request cannot be completed due to the COVID-19 crisis.

Commissioner R. Maccarone (NY) noted the importance of passing this rule.

For clarity reason, the committee modified section (a) by adding “the Executive Committee to temporarily suspend enforcement of Commission rules or parts thereof, but shall not suspend enforcement of any Compact powers and duties specified in the statute.”

Rule 2.111 Emergency Suspension of Enforcement

(a) Upon a declaration of a national emergency by the President of the United States and/or the declaration of emergency by one or more Governors of the compact member states in response to a crisis, the Commission may, by majority vote, authorize the Executive Committee to temporarily suspend enforcement of Commission rules or parts thereof, but shall not suspend enforcement of any Compact powers and duties specified in the statute. Such suspension shall be justified based upon:

- (1) The degree of disruption of procedures or timeframes regulating the movement of offenders under the applicable provisions of the Compact, which is the basis for the suspension;
- (2) The degree of benefit (or detriment) of such suspension to the offender and/or public safety; and
- (3) The anticipated duration of the emergency.

(b) The length of any suspension shall be subject to the length of the national/state declaration(s) of emergency, or preemptively concluded by majority vote of the Executive Committee, whichever occurs sooner.

(c) States shall still maintain all of their duties under the Compact, unless instructed otherwise.

Justification:

In the wake of the COVID-19 pandemic, states of emergency have been declared by the President of the United States and the Governors of most member states. Due to these states of emergency, related executive orders, and other official directives, state compact offices throughout the nation have found it difficult or impossible to comply with the timelines and procedures set forth in the Commission's Rules. As this crisis continues, stability and predictability is needed, as any policy adopted by the Executive Committee is legally inadequate in comparison to the Rules and the Compact itself.

As recommended by Legal counsel, this rule promulgated in accordance with Rule 2.109 (j,) gives discretion to the Executive Committee to grant the suspension of enforcement with proper justification. This emergency rule would apply only during the duration of the emergency and would be subjected to the ordinary rule making processes within ninety (90) days of its promulgation.

Commissioner R. Maccarone (NY) moved to approve the Emergency Rule proposal as presented. Commissioner C. Moore (GA) seconded. Motion passed.

Executive Director A. Lippert noted that in accordance with Rule 2.109 (j), the Executive Committee will meet immediately after the full Commission meeting to grant the suspension of enforcement with proper justification.

Review timeframes for warrants in all rules: The committee reviewed warrant timeframes outlined in the ICAOS Rules in search for any inconsistencies and conflicts.

Chair C. Hudson (IN) noted that different rules listed different warrant related timeframes starting with 10 business days going up to 30 calendar days.

The committee reviewed the following rules:

- Rules 2.110 (c) Transfer of Offenders under this Compact [*warrant due in 10 business days*]
- Rule 4.105 (b) Arrival and Departure Notifications [*language does not mention warrant*]

- Rule 4.111 (f) Offenders Returning to the Sending State [*warrant due in 10 business days*]
- Rule 5.101 (a) Discretionary Retaking [*warrant due in 30 calendar days*]
- Rule 5.101 (b) Discretionary Retaking [*language does not list warrant timeframe*]
- Rule 5.102 (b) Mandatory Retake for New Felony or Violent Crime [*language mentions warrant is required, but no timeframe*]
- Rule 5.103 (a) Mandatory Retaking for Behavior Requiring Retaking [*warrant due in 15 business days*]
- Rule 5.103 (c) Mandatory Retaking for Behavior Requiring Retaking [*warrant due in 10 business days*]
- Rule 5.103-1 (a) Mandatory retake for offenders who abscond [*warrant due “upon receipt”*]

The committee discussed achieving a consistent timeframe given different requirements in each rule.

Commissioner D. Littler (AZ) recalled an informal poll within the West region, where most of the states preferred a 30 calendar day timeframe.

DCA M. Thompson (PA) noted that the warrant issuance was mostly a problem for probation cases and that years ago, the Commission had a discussion on creating separate rules for probation and parole. She was not in favor of this idea and suggested amending the language with “as soon as possible, but no longer than 30 days”.

Commissioner C. Moore (GA) noted the importance of triggering events, when determining the warrant timeframes.

DCA T. Hudrlik (MN) liked DCA Thomson’s proposed language. She was not in favor of the idea of separate language for parole and probation cases.

DCA T. Strickland (FL) noted that on the side of the public safety, 30 calendar days was too long to get a warrant. He was in favor of a 15 business day timeframe.

Commissioner A. Littler (AZ) suggested decreasing time to respond to violation reports.

The committee discussed extending all warrant timeframes to 30 calendar days and agreed that some timeframes were shorter (10 days) for a reason.

Commissioner R. Maccarone (NY) noted that New York would not be able to meet a 10 day deadline, and that a 15 day timeframe was more reasonable. He added that last year’s audit showed that many states had problems issuing a compact compliant warrant within required timeframes.

Commissioner R. Maccarone (NY) suggested polling the states on the most reasonable timeframe for issuing warrants in their state.

The committee discussed using the last year’s compliance audit results to determine the most reasonable timeframe for issuing warrants.

Executive Director A. Lippert noted that the survey did not have a reliable data because it was self-reported.

Address conflicting timeframes in Rule 4.111(f) & Rule 5.101(b): The committee discussed a conflict in the rules with respect to the return of offenders to sending states, and the sending state's timeframe to obtain a warrant for failure to appear in that state. The timeframe in Rule 5.101(a) approved at the 2019 ABM was in conflict with Rule 4.111 (f) for the same action.

Chair M. Hudson (IN) requested Legal Counsel T. Travis to prepare a legal analysis on a likely textual outcome in the event of dispute between two rules: Rule 4.111(f) and newly enacted Rule 5.101(a).

Commissioner R. Maccarone (NY) moved to table the discussion on warrant timeframes. Commissioner D. Littler (AZ) seconded. Motion passed.

The West's concept rule proposal of managing offenders convicted of domestic violence: The committee tabled the agenda item until its next meeting time.

Implementation of the 2019 approved amendments effective April 1, 2020. (Concerns or issues that need to be addressed) - The national office had no issues reported regarding the new rule amendments implementation.

Old/New Business

Rules Committee Calendar: The committee will meet again in July 2020.

Adjourn

Commissioner C. Moore (GA) moved to adjourn. Commissioner J. Lopez (WI) seconded.

The meeting adjourned at 3:34 pm ET.