



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

**March 4, 2021 - 1:00 PM ET
Video Conference**

Members in Attendance:

1. Mary Kay Hudson (IN), Chair
2. Dori Littler (AZ), Vice-Chair
3. Rebecca Brunger (AK)
4. Amber Schubert (AR)
5. Chris Moore (GA)
6. Susan Gagnon (ME)
7. Amy Vorachek (ND)
8. Robert Maccarone (NY)
9. Tim Strickland (FL), Ex-Officio
10. Tracy Hudrlik (MN), Ex-Officio
11. Margaret Thompson (PA), Ex-Officio
12. Thomas Travis, Legal Counsel

Members not in Attendance:

1. Pat Odell (WY), Ex-Officio

Guests:

1. Matthew Charton (NY)
2. Tina Balandran (TX)
3. Brandon Watts (TX)

Staff:

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Policy and Operations Director
3. Barno Saturday, Logistics Coordinator
4. Mindy Spring, Administrative and Training Coordinator
5. Xavier Donnelly, ICOTS Project Manager
6. Kelsey Moore, Web Applications and Tech Support 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. All voting members were present, a quorum was established.

Approval of Agenda and Minutes

Commissioner D. Littler (AZ) moved to approve the agenda as presented. Commissioner R. Maccarone (NY) seconded. Agenda approved.

Commissioner R. Maccarone (NY) moved to approve the minutes from February 3, 2021 meeting as drafted. Commissioner D. Littler (AZ) seconded. Minutes approved.

Discussion

Rule 1.101 Definitions of Resident proposed by New York: Chair M. Hudson (IN) stated that at the last meeting the committee discussed the proposal to amend Rule 1.101 Definition of Resident proposed by Midwest Region. New York proposed an alternative version for the change.

The committee reviewed the Midwest Region proposal to amend Rule 1.101 Definitions of Resident.

Rule 1.101 Definitions (Midwest's proposal)

"Resident" means a person who—

- ~~(1) has continuously inhabited a state for at least 1 year prior to the commission of the offense for which the offender is under supervision; and~~
- ~~(2) (1) intends that such state shall be the person's principal place of residence; and~~
- ~~(2) has continuously resided in the receiving state for at least 180 days prior to:~~
 - ~~_____ (a) the date of the transfer request; or~~
 - ~~_____ (b) current incarceration; or~~
 - ~~_____ (c) active military duty.~~
- ~~(3) has not, unless incarcerated or on active military deployment, remained in another state or states for a continuous period of 6 months or more with the intent to establish a new principal place of residence.~~

Justification:

The current definition is too restrictive and particularly challenging to supply proper documentation when it has been months or years from the time the offense is committed until conviction/sentencing. Especially so when an offender has lived in a receiving state for years at the time of transfer, but still doesn't meet the current definition of resident per compact rules. Further, the current definition implies that living in another state for 6 months at any time after commission of the offense would disqualify them as a resident and excludes the offender from meeting the definition for 'resident' in ANY state. The misapplication of the current definition results in delays or denials as transfer requests marked 'resident' incorrectly are returned to end users for correction or denied when transmitted to a receiving state and the offender does not meet 'resident' criteria even if the plan of supervision is valid.

By mirroring the timeframe (180 days) in the "resident family" definition, providing greater consistency in training and applying the definition, this language is also expected to increase mandatory transfers overall and acceptance rates for 'resident' reason.

Commissioner R. Maccarone (NY) presented an alternative proposal to the committee for review and consideration. He stated that many homeless people from neighboring states were drawn to the shelter system in New York City. Subsequently, they claim to be residents and request a right for mandatory transfer of their supervision. At any given day, New York City has about 70,000 homeless people.

New York proposed changing the duration of the residence from 180 days to one year. This would also help to ensure the presence of genuine means of support for the offender. In addition, New York suggested adding "supervision start date for the original offense for which transfer is being requested" and removing "~~commission of the offense for which the offender is under supervision.~~"

New York proposal replaced “~~military deployment~~” with “military orders” in third paragraph to be consistent with recent rule changes.

Commissioner R. Maccarone (NY) added that the NY proposal had less changes to the current rule, was more consistent with the other rules, and addressed the concerns and need for change.

DCA M. Charton (NY) added that their proposal did not have a sentencing date as they recognized deferred sentencing was compact eligible.

The committee reviewed the New York’s proposal to amend Rule 1.101 Definitions of Resident.

Rule 1.101 Definitions (New York’s proposal)

“**Resident**” means a person who—

1. has continuously resided in a state for at least 1 year prior to the supervision start date for the original offense for which transfer is being requested ~~commission of the offense for which the offender is under supervision~~; and
2. intends that such state shall be the person’s principal place of residence; and
3. has not, unless incarcerated or under active military ~~orders deployment~~, remained in another state or states for a continuous period of 6 months or more with the intent to establish a new principal place of residence.

Justification:

The current definition of resident in Rule 1.101 is overly restrictive and does not address the circumstances of individuals who have resided in a receiving state for an extended time, especially between commission of the offense and placement on supervision. Moreover, the current definition makes it particularly challenging for the sending state to provide proper documentation to support residency in such circumstances. The misapplication and limitations of the current definition often result in unnecessary delays or denials of the transfer request because the individual does not meet the current criteria of “resident”, despite having a valid plan of supervision in the receiving state. This proposal maintains the protections provided to the receiving state under the existing “resident” rule, while recognizing individuals who have established themselves with the requisite supports in the receiving state. Lastly, this proposal ensures that the request for transfer under the qualifying reason remains tied to the commission of the offense for which the offender is placed under supervision.

Commissioner D. Littler (AZ) was in support of one a year residence requirement from a training perspective. She suggested removing the third paragraph from the rule, noting that it was common knowledge.

~~3. has not, unless incarcerated or under active military orders deployment, remained in another state or states for a continuous period of 6 months or more with the intent to establish a new principal place of residence.~~

Commissioner R. Maccarone (NY) agreed with Arizona, noting that the paragraph had instructional, but not required information.

Commissioner A. Schubert (AR) asked the committee whether adding “immediately prior to the supervision start date” would provide clarity. Alternatively, the committee could add to “either the

supervision start date or sentence date for the original offense for which transfer is being requested.”

DCA T. Hudrlik (MN) was in favor of removing “~~commission of the offense~~” from the rule, as it was confusing.

Commissioner D. Littler (AZ) was against using “immediately prior to the supervision date”, noting that the word was not used in the other rules. She agreed that “resident family” definition was different from “resident” definition and should not be mirrored.

DCA T. Strickland (FL) was in favor of using one year residence requirement. He noted that in most states a person had to reside for one year to qualify for an in-state tuition.

DCA M. Thompson (PA) was in favor of proposed changes. She agreed to remove the third paragraph about military orders for training purposes.

Commissioner R. Brunger (AK) was in favor of changes in the first and second paragraphs. She was against removing the third paragraph, noting that in some circumstances, it might be useful to have this information spelled out in the rule.

Commissioner C. Moore (GA) spoke against the one-year residence requirement. He noted that it was already difficult for the offender population to meet qualifications for transfer and advised the committee to leave the 180 days requirement.

Commissioner R. Maccarone (NY) noted that one year residence requirement also ensured that the offender had means of support for successful rehabilitation, adding that the other offenders could utilize discretionary transfer, if they had genuine means of support in the receiving state.

The committee discussed that both supervision start date and sentence date for the original offense were recorded in ICOTS.

The committee made changes in red to the NY proposal.

“**Resident**” means a person who—

1. has continuously resided in a state for at least 1 year prior to either the supervision start date or sentence date for the original offense for which transfer is being requested ~~commission of the offense for which the offender is under supervision~~; and
2. intends that such state shall be the person’s principal place of residence; ~~and~~
3. ~~has not, unless incarcerated or under active military deployment, remained in another state or states for a continuous period of 6 months or more with the intent to establish a new principal place of residence.~~

Executive Director A. Lippert advised the committee that both the Midwest and Rules Committee proposals to amend Rule 1.101 Definition of Resident would be posted on the Commission’s website for comments on April 1.

Commissioner R. Maccarone (NY) moved to recommend approval of New York proposal to amend Rule 1.101 Definition of Residence as amended. Commissioner R. Brunger (AK) seconded. Motion passed.

DCA T. Hudrlik (MN) noted that the Midwest proposal allowed absconded offenders to return to the state where they had resided after their absconding charges were resolved. She noted that it was the best for these offenders, as they had been residing in that states for many years before apprehension.

Commissioner D. Littler (AZ) noted that she had seen absconders committing many crimes in her state and would not support Minnesota's proposal.

Commissioner R. Maccarone (NY) agreed with Arizona on that matter.

Commissioner D. Littler (AZ) moved to not recommend for adoption the Midwest Region proposal to amend Rule 1.101 Definition of Resident. Commissioner R. Maccarone (NY) seconded. Motion passed.

Old Business

Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding proposed by the South Region: Chair M. Hudson (IN) stated that at the last meeting, the Rules Committee discussed the South Region proposal to amend Rule 3.103 and the amount of responsibility the proposed amendment placed on receiving states by advising offenders on supervision standards of another state as well as adding the unnecessary procedures to the rules. In addition, the committee discussed challenges of putting processes in the rules, as different states operated differently. The Rules Committee decided that the amendment's concept generated many concerns, and recommended the South Region withdraw its proposal.

Commissioner A. Schubert (AR), South Region member, stated that the South Region met to discuss the Rules Committee recommendation. The region had concerns about the withdrawal of the proposal as the proposed language mirrored the wording in Rule 3.102(d)(1). After informing the region that the Rules Committee discussed the need to revise the language in Rule 3.102(d)(1) as well as the fact that procedure matters needed to be handled on the local level, rather than be added to the rules, the region reluctantly withdrew its proposal.

Rule 4.105 Arrival and departure notifications; withdrawal of reporting instructions proposed by Midwest Region: Chair M. Hudson (IN) stated that at the last meeting, the Rules Committee discussed a proposal to amend Rule 4.105 proposed by the Midwest Region. The committee debated if it was more important to receive the Notice of Departure (NOD) before the offender departs or after; as well as the difficulty to predict an offender's accurate departure time and date. The Rules Committee recommended not to add additional restrictions to the rules, withdraw the proposal and address the issue via training.

The Midwest Region met and withdrew its proposal.

Rule 5.108 Probable cause hearing in receiving state proposed by Midwest Region: Chair M. Hudson (IN) noted that the Rules Committee also recommended alternative language to the Midwest Region proposal to amend Rule 5.108. The proposed alternative language was more consistent with other language in the rule and the definition for 'Behavior Requiring Retaking'.

Commissioner A. Schubert (AR) brought to the committee's attention that the proposal said, "the conditions of supervision that would result in the pursuance of revocation of supervision". She noted that the conditions themselves were never subject to revocations, but the offenders were subject to revocation, when they commit a violation.

Commissioner R. Maccarone (NY) noted that in his recollection, the committee decided against using the "pursuance of revocation" and agreed to use "the conditions of supervision that would result in the pursuance of revocation of supervision". He added that the current wording means that officers were uncertain that the behavior would result in revocation.

Commissioner D. Littler (AZ) stated that the Rules Committee's alternative language was recorded correctly. She noted that in Arizona, the hearing officers could not guarantee that their requests would result in revocation.

Chair M. Hudson (IN) stated that at its last meeting, the committee discussed the procedures and protocols within states and circumstances court officers or parole agents were instructed to file for revocation. She added that in Indiana, hearing officers and parole and probation supervisors could not guarantee that the condition of supervision would result in revocation.

Commissioner R. Brunger (AK) agreed with Arizona and Indiana that the alternative language proposed by the Rules Committee was correctly recorded.

Chair N. Hudson (IN) added that the Midwest Region adopted the Rules Committee's recommendation for alternative language.

Commissioner R. Maccarone (NY) moved to recommend approval of the Midwest Region proposal to amend Rule 5.108 as presented. Commissioner A. Schubert (AR) seconded. Motion passed.

New Business

Warrant timeframe rule proposal package: Chair M. Hudson (IN) and Vice-chair D. Littler (AZ) had attended the South and Midwest region meetings to address any questions and concerns regarding the warrant timeframe proposal package. The package includes amendments to six rules expanding the timeframe for issuing compact compliant warrants to a standard 15-business day, when an offender fails to arrive or return as instructed or is subject to retaking.

Chair M. Hudson (IN) continued that there was minimal discussion in both meetings. She advised the regions to utilize the ICAOS Technical and Training Assistance Policy to train their stakeholders.

Commissioner D. Littler (AZ) extended the Rules Committee and the national office's assistance to resolving obstacles with implementing the new rules. She added that after the meeting, a couple of South Region members suggested looking at responses to violation report timeframes.

Commissioner C. Moore (GA), South Region member, did not receive any negative feedback about the proposal package. At the meeting, he commented about the triggers of the timeframe start for the violation reports. He added that large states would have challenges implementing the

15-business day timeframe, sometimes, simply due to circumstance outside of their control, as an example he noted that some courts had limited availability as they served multiple counties.

Chair M. Hudson (IN) asked if Georgia's supervision agencies and courts were gravitating towards remote sentencing.

DCA T. Strickland (FL) stated that Texas indicated difficulties to comply with the 15-business day timeline. They had traveling judges serving rural areas in Texas, who might not be in the jurisdiction for 2-3 weeks at the time. He noted that there would be some physical difficulties to overcome.

Chair M. Hudson (IN) emphasized the importance of providing proper education on compact warrant requirements to all stakeholders.

Commissioner A. Schubert (AR) stated that even though she had started working on preparing Arkansas stakeholders for the 15-business day warrant timeframe, she did not think her state would be ready to implement the proposed changes. She inquired about the upcoming ICOTS enhancement to track warrants.

Executive Director A. Lippert stated that the national office was working on an ICOTS enhancement to create new managed processes for tracking warrants for compact offenders. The enhancement consisted of two parts: 1) the system would automatically notify the user if they need to issue a warrant on the offender; 2) users needed manually enter the warrant information into ICOTS.

She added that the tracking mechanism depended on manual entry as the NCIC and ICOTS systems did not speak with each other.

She added that the Commission received a grant to establish a process to notify states when a warrant was issue on a compact offender. To fulfill the grant's requirements to enter offender information into the FBI's program, the Commission needs to obtain an Originating Agency Identifier (ORI) number. There had been challenges in getting the ORI number for the Commission on the national level. The Commission was taking alternative approach to receive the ORI number through individual states. Kansas agreed to be a pilot state for this project. The national office continued to pursue the ORI number.

Executive Director A. Lippert noted that the FBI approved adding a compact indicator in the NCIC system.

Commissioner R. Maccarone (NY) stated that New York already implemented the 15-business day warrant timeframe last year. He noted that the biggest challenges they had implementing these timeframes were in New York City. He noted how important it was to distinguish the interstate compact warrants from the other warrants and explained to judges that the receiving state had already done due diligence to locate these offenders. He offered to share NY implementation strategies with the committee. New York was in support of the proposed changes as they were in line with the goals of victims and public safety.

Chair M. Hudson (IN) stated that before she asks the courts to issue a compact complaint warrant, oftentimes, she needs to convince them not to terminate their supervision.

Adjourn

The meeting adjourned at 2:58 pm ET.