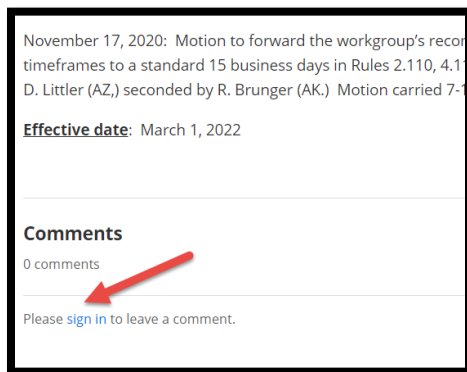


## 2021 ICAOS Rule Proposals

*Pursuant to ICAOS Rule 2.109, the Rules Committee has reviewed the draft proposals received from standing and regional committees for action on September 29th at the 2021 Virtual Annual Business Meeting . These proposals are now posted on the ICAOS website for your review and comment. Please review these proposals and discuss them within your offices, at state council meetings and in your ICAOS regional meetings. Comments may be posted to the Discussion Forum until 5:00pm ET, Tuesday, June 1, 2021. Your comments provide valuable guidance to the Rules Committee and other commissioners in finalizing these proposals. In accordance with ICAOS Rule 2.109(c), the Rules Committee shall publish the text of the final proposed rules or amendments along with a public hearing notice no later than 30 days prior to the meeting at which the vote on the rule is scheduled (September 29, 2021)*

To Comment on the Proposals, Click the links below, scroll to the bottom of the page to sign in.



- [2021-Warrant Timeframe Amendments to Rules 2.110, 4.111, 5.101, 5.102, 5.103 & 5.103-1 \(Rules Committee\)](#)
- [2021-Rule 1.101 Definition of 'Resident' \(Rules Committee\)](#)
- [2021-Rule 5.108 \(Midwest Region\)](#)
- [2021- By-LawArt2Sec2 \(Executive Committee\)](#)

## **Warrant Timeframe Amendments-Rules 2.110, 4.111, 5.101, 5.102, 5.103 & 5.103-1**

### Summary & Justification:

The following rules package includes amendments to six (6) rules (2.110, 4.111, 5.101, 5.102, 5.103 & 5.103-1) expanding the timeframe for issuing compact compliant warrants to a standard 15 business days when an offender fails to arrive/return as instructed or is subject to retaking. In addition, this proposal includes a proposed ICOTS enhancement to create new managed processes for tracking warrants for compact offenders enhancing the Commission's efforts and goals to provide effective tracking and communication.

This package is thought to improve stakeholder training efforts (due to confusion over various timeframes in current rules) while ensuring the timeframe supports public safety and efficient actions for managing offender movement as required in each state's compact statute.

### FAQ's:

Q: My state has compliance concerns of meeting a 15-business day timeframe. Is assistance available?

A: As every state functions differently, states face different challenges issuing compact compliant warrants. States with compliance concerns are encouraged to proactively reach out for assistance sooner than later. The proposed rules actually EXPAND timeframes in most instances a warrant is required. The Commission's [Technical Training Assistance Policy](#) is available to all member states and provides solutions based on your state's specific technical or training needs.

Q: Fifteen business days (3 weeks) is too long and our in-state policies require warrants to be issued within 5 business days. Why 15 business days?

A: Through various committee/region discussions over the years and based of the 2019 Warrant Audit responses, 15 business days is a balance between public safety and a state's ability to issue warrants. While recognizing some states may face challenges, it is important to establish a standard that can be measured. States can certainly establish their own policies and procedures for shorter timeframes internally to ensure activities are completed within the ICAOS rules.

### Proposal to Create/Amend Rules:

#### ***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 business 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~~ 15 business days following the offender's failure to appear in the sending state.

#### ***4.111 Offenders returning to the sending state***

- (a) For an offender returning to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent felony or violent crime in the receiving state. The receiving state shall provide the sending state with the reason(s) for the offender's return. The offender shall remain in the receiving state until receipt of reporting instructions.
- (b) If the receiving state rejects the transfer request for an offender who has arrived in the receiving state with approved reporting instructions under Rules 3.101-1, 3.101-3, 3.103 or 3.106, the receiving state shall, upon submitting notice of rejection, submit a request for return reporting instructions within 7 business days, unless 3.104 (b) or (c) applies or if the location of the offender is unknown, conduct activities pursuant to Rule 4.109-2.
- (c) Except as provided in subsection (e), the sending state shall grant the request no later than 2 business days following receipt of the request for reporting instructions from the receiving state. The instructions shall direct the offender to return to the sending state within 15 business days from the date the request was received.
- (d) The receiving state shall provide the offender reporting instructions and determine the offender's intended departure date. If unable to locate the offender to provide the reporting instructions, the receiving state shall conduct activities pursuant to Rule 4.109-2.
- (e) The receiving state retains authority to supervise the offender until the offender's directed departure date or issuance of the sending state's warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 (a) and submit a case closure as required by Rule 4.112 (a)(5). The sending state shall notify the receiving state of the offender's arrival or failure to arrive as required by Rule 4.105 (b) prior to validating the case closure notice.
- (f) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than ~~10~~ 15 business days following the offender's failure to appear in the sending state.

#### ***Rule 5.101 Discretionary retaking by the sending state***

- (a) Except as required in Rules 5.101-1, 5.102, 5.103 and 5.103-1 at its sole discretion, a sending state may order the return of an offender. The sending state must notify the receiving state within 15 business days of their issuance of the directive to the offender to return. The receiving state shall request return reporting instructions under Rule 4.111. If the offender does not

return to the sending state as ordered, then the sending state shall issue a warrant no later than ~~30 calendar~~ 15 business days following the offender's failure to appear in the sending state.

- (b) Except as required in Rules 5.101-1, 5.102, 5.103 and 5.103-1 at its sole discretion, a sending state may retake an offender via warrant. The sending state must notify the receiving state within 15 business days of the issuance of their warrant. The receiving state shall assist with the apprehension of the offender and shall notify the sending state once the offender is in custody on the sending state's warrant.

***Rule 5.102 Mandatory retaking for a new felony or new violent crime conviction***

- (a) Upon a request from the receiving state, a sending state shall retake an offender from the receiving state or a subsequent receiving state after the offender's conviction for a new felony offense or new violent crime and:
- (1) completion of a term of incarceration for that conviction; or
  - (2) placement under supervision for that felony or violent crime offense.
- (b) When a sending state is required to retake an offender, the sending state shall issue a warrant no later than 15 business days and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

***Rule 5.103 Offender behavior requiring retaking***

- (a) Upon a request by the receiving state and documentation that the offender's behavior requires retaking, a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the violation report.
- (b) If the offender is ordered to return in lieu of retaking, the receiving state shall request reporting instructions per Rule 4.111 within 7 business days following the receipt of the violation report response.
- (c) The receiving state retains authority to supervise until the offender's directed departure date. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than ~~10~~ 15 business days following the offender's failure to appear in the sending state.
- (d) If the sending state issues a warrant under subsection (c) of this rule, the receiving state shall attempt to apprehend the offender on the sending state's warrant and provide notification to the sending state. If the receiving state is unable to locate the offender to affect the apprehension, the receiving state shall follow Rule 4.109-2 (a) and (b).

***Rule 5.103-1 Mandatory retaking for offenders who abscond***

- (a) ~~Upon~~ **Within 15 business days of** receipt of an absconder violation report and case closure, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.
- (b) If an offender who has absconded is apprehended on a sending state's warrant within the jurisdiction of the receiving state that issued the violation report and case closure, the receiving state shall, upon request by the sending state, conduct a probable cause hearing as provided in Rule 5.108 (d) and (e) unless waived as provided in Rule 5.108 (b).
- (c) Upon a finding of probable cause, the sending state shall retake the offender from the receiving state.
- (d) If probable cause is not established, the receiving state shall resume supervision upon the request of the sending state.
- (e) The sending state shall keep its warrant and detainer in place until the offender is retaken pursuant to paragraph (c) or supervision is resumed pursuant to paragraph (d).

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**Effect on other rules, advisory opinions or dispute resolutions:**

Possible footnote to [Advisory Opinion 3-2012](#)

**ICOTS impact:**

A separate ICOTS Enhancement to create a compliance measuring tool for warrant issuance will be proposed at the Annual Business Meeting as a separate vote. Review the functional specifications for this enhancement.

**Scope and Metric**

ICOTS proposals will provide new managed processes and data elements to enhanced state's warrant tracking efforts.

**Committee action:**

Rules Committee Nov 2020: Commissioner D. Littler (AZ) moved to adopt the workgroup's rule proposal package (which includes a warrant tracking ICOTS enhancement) expanding the timeframe for issuing compact compliant warrants to a standard 15-business day for Commission's consideration at the 2021 Annual Business Meeting. Commissioner R. Brunger (AK) seconded. Motion passed 7 to 1.

**Effective date:** March 1, 2022

Proposal to create/amend rules:

### **Rule 1.101 Definitions**

“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.~~

#### **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.

*The following information is drafted by the Rules Committee*

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#### **Effect on other rules, advisory opinions or dispute resolutions:**

[Review Benchbook and AOs to determine] Benchbook updates required.

#### **ICOTS impact:**

Update Help Points in ICOTS and TREQ & TREP PDFs

## 2021\_1101ResidentDefRULES

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\* Resident of receiving state - a person who (1) has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under (2) with the intent that such state shall be the person's principal place of residence and (3) who has not, unless incarcerated, relocated to another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.  
\*\* Resident family - a parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who-1) has resided in the receiving state for 180 days or longer; and 2) indicates willingness and ability to assist the offender as specified in the plan of supervision.

### **Scope and Metric**

Definition change is expected to increase the number of offenders qualifying as a 'resident' as well as increase the acceptance rate.

As of 11/18/2020 the number of active compact cases transferred as 'resident' = 54,099 or 49% of total compact offenders

#### Acceptance Rates:

2018: 86.5%

2019: 87.5%

2020: 86.5%

### **Region/Committee action:**

Rules Committee March 2021: Motion to forward and recommend NY's version of the proposed amendment to the definition of 'resident' made by NY, seconded by AK.  
Motion carried.

### **Effective date:**

March 1, 2022

**Proposal to create/amend rules:**

***Rule 5.108 – Probable cause hearing in receiving state***

(a) An offender subject to retaking that may result in a revocation shall be afforded the opportunity for a probable cause hearing before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.

(b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to 1 or more violations of the conditions of supervision that would result in the pursuance of revocation of supervision in the receiving state and require retaking.

(c) A copy of a judgment of conviction regarding the conviction of a new criminal 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.

(d) The offender shall be entitled to the following rights at the probable cause hearing:

1. Written notice of the alleged violation(s);
2. Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);
3. The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);
4. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

(e) The receiving state shall prepare and submit to the sending state a written report within 10 business days of the hearing that identifies the time, date and location of the hearing; lists the parties present at the hearing; and includes a clear and concise summary of the testimony taken and the evidence relied upon in rendering the decision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

(f) If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of conditions of supervision that would result in the pursuance of revocation of supervision, the receiving state shall hold the offender in custody, and the sending state shall, within 15 business days of receipt of the hearing officer's report, notify the receiving state of the decision to retake or other action to be taken.

(g) If probable cause is not established, the receiving state shall:

1. Continue supervision if the offender is not in custody.
2. Notify the sending state to vacate the warrant, and continue supervision upon release if the offender is in custody on the sending state's warrant.



3. Vacate the receiving state's warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

**Justification:**

Added language to this rule would align it more with both ICAOS Bench Book and ICAOS training of this rule. In 2016 this rule was amended to remove language as the commission no longer used the term "significant" in referring to violations resulting in revocation in order to be consistent with the supervision of probationers and parolees in the receiving state. The intent was to create a single standard of supervision in the respective states by eliminating the three significant violations. However, by removing the word significant it leaves open interpretation that any admission of any violation could result in the requirement for retaking. For example, a receiving state may report a combination of violations including major violations such as violence or prohibited contact, in addition to a minor violation of failing to report. Should the offender only admit guilt to the failing to report, many could and do interpret that to create a mandatory retaking situation. In discussion of this amendment, multiple states reported this occurring multiple times. In this situation, it would then require the sending state to request further action from the sending or be forced to conduct a probable cause hearing in the sending state, foregoing rights such as the opportunity to confront witnesses, and have the hearing near the location of the violation.

This is in accordance with the ICAOS Bench Book 4.7.3.3 Probable Cause Waiver, where it states that the effect of waiving the probable cause hearing is "in effect, an admission that they have committed an offense of sufficient gravity as to justify revocation...". Also that "by waiving the hearing, the offender is implicitly admitting that their actions could justify revocation of supervised release". It is important to clarify that the intent of the rule is that the offender must admit guilt to a violation that would result in revocation.

In accordance with ICAOS Bench Book 4.7.3.2.2 Probable Cause Hearing Report it discusses that the purpose of Rule 5.103 – Offender behavior requiring retaking is "that officials in the receiving state must show through documentation that the offender has engaged in behavior requiring retaking. Therefore, by adding language to both (a) and (f) it supports that the waiver or evidence of a violation that would result in revocation, be supplied to the sending state.

*The following information is drafted by the Rules Committee*

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**Effect on other rules, advisory opinions or dispute resolutions:**

Consistent with ICAOS Benchbook and Hearing Officer Guide on Rule 5.108.

**ICOTS impact:**

## 2021\_5108MIDWEST

None.

### **Scope and Metric**

N/A

### **Region/Committee action:**

Midwest Region Jan 2021: Commissioner K. Ransom (OH) moved to forward proposal to Rule 5.108 (b) & (f), Commissioner R. Walton (IL) seconded. Motion passed.

Rules Committee Feb 2021: Motion to recommend alternate language for the Midwest's proposal to Rule 5.108 (b) '.....that would result in the pursuance of revocation of supervision in the receiving state and require retaking' for consideration made by R. Maccarone (NY,) seconded by D. Littler (AZ.) Motion carried.

Midwest Region Feb 2021: Motion to amend proposal as recommended by the Rules Committee made by MN, seconded by WI. Motion carried. *Replace that are subject to revocation of supervision. with that would result in the pursuance of revocation of supervision in the receiving state and require retaking' in section (b)*

Rules Committee Mar 2021: Motion to recommend proposal to Rule 5.08 made by NY, seconded by AR. Motion carried.

### **Effective date:**

March 1, 2022

**Proposal to create/amend ICAOS Bylaws:**

***Section 2. Ex-Officio Members***

The Commission membership shall also include but are not limited to individuals who are not commissioners and who shall not have a vote, but who are members of interested organizations. Such non-commissioner members must include a representative of the National Governors Association, the National Conference of State Legislatures, the Conference of Chief Justices, the National Association of Attorneys General and the National Organization for Victim Assistance. In addition representatives of the National Institute of Corrections, the American Probation and Parole Association, Association of Paroling Authorities International, the Interstate Commission for Juveniles, the Association of Prosecuting Attorneys, the Conference of State Court Administrators, the National Sheriff's Association, the American Jail Association, the National Association of Police Organizations, National Association for Public Defense, [National District Attorneys Association](#) and the International Association of Chief of Police may be ex-officio members of the Commission.

**Justification:**

This amendment adds the National District Attorney Association (NDAA) as an ex-officio member. NDAA is a national association that provides training, technical assistance and services to prosecutors around the country. It is the oldest and largest association of prosecutors in the country with over 5,000 members, their mission is to be the voice of America's prosecutors and to support their efforts to protect the rights and safety of the people by providing its members with the knowledge, skills, and support they need to ensure justice is attained.

ICAOS has collaborated with NDAA over the last year to deliver training, share information and collaborate on issues affecting both organizations. Inviting NDAA to become an Ex Officio formalizes our partnership and cooperative efforts.

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**Executive Committee action:**

Executive Committee January 2021: Motion to recommend the Commission add the National District Attorney Association as an ex-officio member made by D. Crook (VT,) seconded by R. Marlan (MI). Motion carried.

**Effective date:**

September 29, 2021