Nebraska State Council

Interstate Compact for Adult Offender Supervision

April 21, 2023

**Call to Order/Roll Call:**

The regular meeting of the Nebraska State Council of Interstate Compact for Adult Offender Supervision was called to order at 9:05 a.m. by Commissioner Sally Reinhardt-Stewart. The meeting was published and posted per the Open Meetings Act and the agenda and minutes of the last meeting were forwarded to all Council members in advance of the meeting. The meeting was recorded. Roll was called by Commissioner Reinhardt-Stewart.

**Present:**

Jacey Rader, Sally Reinhardt-Stewart, Layne Gissler, Jeff Davis, Andi Hart, Wendy Elston, Judge Ryan Post, Senator George Dungan, Elizabeth McQueen.

Also in attendance: Susan Barnard and Sharon Wilkens.

**Not Present:**

Gene Cotter, Judge Julie Smith, Athena Sherman, Dawn Renee Smith.

A quorum was established.

**Minutes:**

Gene Cotter moved to approve the minutes of the October 7, 2022, meeting; Andi Hart seconded. The motion passed.

Layne Gissler abstained from voting as he was not at the last meeting.

Commissioner Reinhardt-Stewart reviewed the items in the folder – in addition to the agenda and minutes from the October 7, 2022 meeting, there was included the member terms and roster.

**Old Business:**

**NE Training Updates**

DCA Rader shared that in Probation there are 9 to 12 cycles a year of new probation officer trainings on the Interstate Compact Rules, both adult and juvenile, which are live trainings. They also do refresher training, as needed, if they are contacted by the Districts on specific topics. She stated that Susan Barnard and Abby Christian do a great job of doing probation officer training in person. DCA Rader did state that some of their probation officer trainings are virtual. She stated they are going to start to lean more on the Documentary “The Road Home” as a training tool since it demonstrates how the Interstate Compact impacts the people that we serve. Ms. Barnard stated she is using that video for some staff for training hours and shared it has given staff a better understanding of the Interstate Compact and how it works. It will also help staff who have to gather arrest reports and court documents to learn their job as they work on Interstate cases.

Commissioner Reinhardt-Stewart shared that Parole has been doing a combination of both in person and virtual, depending on who is being trained. She stated there have been a couple of trainings since our last meeting and another is scheduled for May 5th. In Parole, it is not a monthly occurrence; it is whenever we fill positions, and we do trainings at that time. Ms. Elston asked if sessions are recorded. Commissioner Reinhardt-Stewart responded that some training sessions are recorded and shared that information. In response to Ms. Elston’s question about where trainings can be located, DCA Rader shared the ICAOS website has training for everybody. If there is a specific interest, for instance, from a County Attorney perspective, where you would want to include certain things, she stated something could be put together and could be recorded. DCA Rader stated they do in person judges training as well, which includes bench books and bench cards on both adult and juvenile Compact. Commissioner Reinhardt-Stewart added there is a training for Parole Board Members as well. It was reiterated there is a lot of training on the Commission’s website and everyone is welcome to check that out.

Ms. Hart shared she is scheduled to go to a Sex Offender Registry (SOR) short presentation for new probation officers on the 17th and asked if it would be helpful if she incorporated a couple of slides about interstate probation as they just had a couple in the last month. She stated they don’t think they have to register before they go to the next state. DCA Rader suggested she say, “I’m not going to train you on Interstate Compact, but you have to register before you go to the other state.” Ms. Hart provided further comment about making sure the probationer registers before they move to the next state as they do not get the notice report until sometimes a week later.

Commissioner Reinhardt-Stewart shared that she was contacted about a case by Ms. Hart inquiring about someone who had registered and when a review of the case was done didn’t know anything about the individual at all. As it turned out the individual left that state, came to Nebraska thinking he had permission to come; however, upon contacting the sending state he was ordered back. If Ms. Hart hadn’t checked about the case, Commissioner Reinhardt-Stewart stated she wouldn’t have known anything about it. Ms. Barnard also shared she contacts Ms. Hart to inquire whether an offender is going to need to register in Nebraska. She stated these offenders need to know up front that if they come to Nebraska they will be required to register, and some will change their mind.

**American Probation and Parole Association Winter Regional Training Institute, Omaha – “Connecting Across Borders: Adult Interstate Compact Roundtable”:**

Commissioner Reinhardt-Stewart indicated next is an update on the roundtable for the Interstate Compact during the American Probation and Parole Association Winter Regional Training Institute. She stated this was the first time this organization had conducted Regional Training Institutes and that there were four across the country. The one for this region was held February 5th.

DCA Rader stated that Gene Cotter, Deputy Administrator for Probation, was the Program Manager for the APPA session that was held in Omaha and shared how it came about and that the focus was on having conversations with other states and what Interstate issues look like in the states of those represented. States from the Midwest were represented as were a few tribes as well. It was very interesting to hear from Iowa, South Dakota, Minnesota. Nebraska talked about its Custodial Sanctions on the probation and parole side. Sex offender supervision was another issue. Iowa requires they live in a specific residential sex offender facility. We have had situations where Nebraska clients will change their minds as they don’t want to live in a sex offender supervision facility. DCA Rader concluded it was a nice discussion and we were pleased with the turnout. The Juvenile Compact roundtable was much smaller so appears to have been impacted by the Tour of Boys Town which was scheduled at the same time.

Regarding the discussion about people going to a different state, Sheriff Davis brought up the issue of someone who shops, for example, and may say they don’t want to go once they learn of the restrictions. DCA Jacey responded for the most part they are not that well researched although there will be some that are that say it feels like they might have an easier time if they go to that state but will kind of depend on the makeup of the client and how manipulative they are. Mr. Gissler added that from the Parole side, as he understands, the receiving state has to accept them and generally they have to have family there. They can’t just say I want to go to Hawaii. There is a really strict criteria. He stated he doesn’t know if that would eliminate some of that shopping type thing but knows they have to have some stability there too before they will be accepted. Commissioner Reinhardt-Stewart shared there is an investigation and even if there is family in that state or they are residents of that state, there may be valid reasons to deny plans. If they don’t meet the mandatory criteria, they can always put in for what is called a discretionary Transfer Request.

Commissioner Reinhardt-Stewart shared another topic during the Training Institute on the Parole side was the Domestic Violence Protocol. Parole requires offenders to have completed domestic violence programming before they can reside with anybody that could be a potential victim so quite a few have been denied based on that, but Parole provides alternative places that they can submit to go to if that is the case since a lot of them do have family in Nebraska. The states that Nebraska works closely with are starting to include in their Transfer Requests the domestic violence programming that the offenders have had. Iowa has a specific program that they have their offenders attend.

Ms. Barnard shared that they have a number of individuals in the western part of the state that have marijuana charges. There are judges out west that have in the probation order that if you go to another state where it is legal you are not going to do it there because we are testing for it. DCA Rader stated that the issue that Colorado has is that they are not testing them because they do not test their own. Transfer is a privilege not a right so talks about that a lot.

**New Business**

**2023 Rule Amendment Proposals**

Commissioner Reinhardt-Stewart stated there is only one 2023 Rule Amendment Proposal and it pertains to Rule 5.108 *Probable Cause Hearing in Receiving State*. She reviewed the change being proposed in section F and the justification for the change. She stated she had spoken with DCA Rader that week who expressed concern with the “shall” being changed to “may” and asked her to speak to that.

DCA Rader commented that anytime that probable cause hearings are held there are going to be jails, whether it is a Nebraska jail or another jail, who says now that you held the hearing, we are not going to hold them because this gives the opportunity not to. She stated she thinks we are going to have a harder time returning folks who need to be returned, holding folks for other people without it, but understands that they are concerned and understands it is in contrast with the Supreme Court decision.

Commissioner Reinhardt-Stewart commented that on the Parole side if it is changed to “may” there might be additional problems with jails continuing to hold some of Parole’s offenders if they thought the word was “may” instead of “shall”. She stated occasionally Parole has had some issues with jails holding offenders and have actually released them. It doesn’t happen often, but thinks it could lead to more of that.

There was considerable discussion regarding the proposal. Senator Dungan’s comments included that based on the justification provided he understands the concern that if you don’t have the statutory authority to hold somebody but you are being told to by virtue of being part of this Compact, that is going to put you in conflict and opens up a host of liability issues. Commissioner Reinhardt-Stewart shared she thinks the concern is, it says that they can’t so they’re not. She thinks they’re not doing it. Senator Dungan then commented about it putting them in violation. Commissioner Reinhardt-Stewart also stated that at the Midwest Region Meeting the week before that the Ohio Commissioner was the one that raised the issue about the concern for the shall being changed to may for the very reason that states may not hold. Judge Post asked about the possibility of providing information on the Transfer Request, such as including that this is a state that is not going to hold the violator as that might matter. DCA Rader stated we will probably find out who those states are at the end of the Annual Business Meeting. Judge Post commented he might speculate that there might be some states that choose to vote no violators, regardless of statutory authority based on finances. Ms. Elston stated it might be county to county or jurisdiction to jurisdiction.

Commissioner Reinhardt-Stewart stated there is an opportunity to submit comments to a forum for Commissioners by June 1st to get people’s perspective on the proposal. Those comments are then used to determine whether or not to make any changes before the final rule proposal is posted (30 days prior to the business meeting).

Sheriff Davis raised the issue that jails are full and someone is arrested, who makes the decision on the may or shall, the jail director, an attorney or a situation where there is a trial where we don’t have to hold you. DCA Rader commented there are jails that are going to say they absolutely cannot, and this gives them the ability to say “may” and then what happens, the offender gets out, something bad happens and then it comes back on the whole state.

Commissioner Reinhardt-Stewart remarked that on the Parole side there is a parole hold and is what holds them in custody by authority of state statute. It complicates things if it gets changed to “may”. Parole is the one that determines the “shall”. Parole is the one that says the jail is going to continue to hold the person in custody because this person has a new felony, may be a risk to public safety—there are various reasons why the offenders are being held in custody. Parole does the Probable Cause Hearing up front. When Parole submits its Violation Report to the other state, that information is included and mandatory retaking is requested. If it is behavior requiring retaking, they can choose to order return instead of issuing a warrant. Commissioner Reinhardt-Stewart further stated if it changed to a “may” and states weren’t doing that, if decided not to have these people in custody, they do issue a warrant, then you would have to find the offender.

Ms. McQueen asked if there is statutory language that says “shall”. DCA Rader stated Compact rule and Federal law supersedes state law. Judge Post asked with that explanation, why it matters if the states don’t have a state statute. Commissioner Reinhardt-Stewart shared the state statute referenced in Parole’s Apprehension/ Detention Request is 83-1,119. Ms. McQueen commented if they don’t have a state law, that doesn’t enforce it? DCA Rader stated she thinks they just don’t. There are instances, they say their statute says they don’t have to hold them.

Sheriff Davis suggested rewording it: *Except in those cases where the state may not have statutory authority to hold the person, they shall hold them.*

Further discussion centered on the issue of Federal law superseding state statute, including information that Senator Dungan shared that it might be different if you have state statute in conflict with Compact rule vs. a state statute that is silent. DCA Rader responded that Nebraska doesn’t have state statute that is in conflict. Senator Dungan offered further comment that the may allows discretion when jails are full or where the other state says we are going to work with Nebraska and not put you in jail whereas the shall language means you have to sit in custody. Judge Post shared a situation where something happened and the state chose not to do something because of a staff situation/resource issues. They didn’t notify Nebraska until many years later.

It was decided the comments will be brought back to the Council so a meeting will be scheduled in late August so there can be discussion on the final proposal. Ms. McQueen remarked maybe Sheriff Davis’ idea is the best course of action if it is the question of whether it can supersede or not supersede and having the option. They “shall” unless they don’t have the authority to do so. Sheriff Davis commented he trusts the decision to decide Probation or Parole. Then it is a done deal. The question is who the “may” applies to. Commissioner Reinhardt-Stewart shared from experience she thinks the “may” is referring to Parole and Probation. She asked the Council if we should submit some comments or see what other states say and bring those back. Ms. Elston remarked that we should submit, that it is our role because we are the Nebraska representatives, that we should at least say some comments and that we have some issues with it. Ms. Rader recapped the comments are to address who determines the shall and the may and is it only applying to those state statutes that are in conflict.

Commissioner Reinhardt-Stewart concluded stating that some comments will be submitted based on the conversation at the meeting. Further, that a Doodle Poll will go out to schedule a meeting for late August.

**Annual Business Meeting, Norfolk, Virginia, September 18-20, 2023**

Commissioner Reinhardt shared the Annual Business Meeting is September 18 – 20 in Norfolk, Virginia. Although this is a rule making year there will be opportunities for other topics to be talked about during that time and shared what those are.

DCA Rader thanked Ms. Elston for the opportunity at the County Attorneys Association as she helped us to be able to train there. If there are other opportunities that members see they could use some kind of training to let us know. She stated there haven’t been many individual invitations from County Attorney Offices but that they had met with Dodge County the week before and appreciated that. Ms. Elston commented she got really good feedback.

**Next Meeting - Adjourn**

There being no further business, there was a motion to adjourn the meeting (inaudible on recording); motion was seconded by Ms. McQueen.

The meeting was adjourned at approximately 9:55 a.m.

Submitted by: Sharon Wilkens