



INTERSTATE COMMISSION FOR ADULT OFFENDER
SUPERVISION

2010 APPROVED RULE AMENDMENTS

San Antonio, Texas
October 13, 2010

Rule 1.101 Definitions

“Warrant” means a written order of the court or authorities of a sending or receiving state or other body of competent jurisdiction which is made on behalf of the state, or United States, issued pursuant to statute and/or rule and which commands law enforcement to arrest an offender. The warrant shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pick-up radius.

Justification:

Defines a term which is used in the rules, but not previously defined. The definition is necessary because there is no uniform language or standard for states issuing Violation Warrants. This definition creates a standard requirement that any warrant issued by a state pursuant to ICAOS rules will be listed and enforced nationwide. The term identifies the functional purpose of the warrant. The term, when used in concert with the ICAOS term “detainer”, will reduce miscommunications that arise between jurisdictions and which result in failure to either notify a holding facility or a failure on the part of a holding facility to recognize a state’s order.

“Violent crime” means any crime involving the unlawful exertion of physical force with the intent to cause injury or physical harm to a person; or an offense in which a person has incurred direct or threatened physical or psychological harm as defined by the criminal code of the state in which the crime occurred; or the use of a deadly weapon in the commission of a crime; or any sex offense requiring registration.

“Violent offender” means an offender under supervision for a violent crime.

JUSTIFICATION:

Definitions are necessary to promulgate retaking rules on violent offenders and offenders who are convicted of violent crimes.

Effective: March 1, 2011

Rule 3.107 Transfer Request

- (a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain:
- (1) transfer request form;
 - (2) A narrative description of the instant offense in sufficient detail to describe the circumstances, type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;
 - (3) photograph of offender;
 - (4) conditions of supervision;

- (5) any orders restricting the offender's contact with victims or any other person;
 - (6) any known orders protecting the offender from contact with any other person;
 - (7) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
 - (8) pre-sentence investigation report, ~~if available,~~ unless distribution is prohibited by law or it does not exist;
 - (9) supervision history, ~~if available,~~ unless it does not exist;
 - (10) information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.
- (b) The original signed Offender Application for Interstate Compact Transfer shall be maintained in the sending state. A copy of the signed Offender Application for Interstate Compact Transfer shall be attached to the transfer request.
 - (c) Additional documents, necessary for supervision in the receiving state, such as the Judgment and Commitment, ~~and any other information~~ may be requested from the sending state following acceptance of the offender. The sending state shall provide the documents ~~if available,~~ within no more than 30 calendar days from the date of the request, unless distribution is prohibited by law or a document does not exist.

Justification:

Clarifies the requirement to provide instant offense details and other documents in the transfer request and establishes the time period for responding to requests for information necessary for supervision, following acceptance.

Effective: March 1, 2011

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 ten business days following receipt by the sending state. Receipt of a violation report shall be presumed to have occurred by the fifth 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.
- ~~(3) A sending state shall, upon receipt of an absconder violation report and case closure, issue a warrant for the offender that is effective in all states without limit as to specific geographic area.~~
- ~~(4) 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~~

Justification:

The language is removed because it is determined to be beyond the scope of this rule and the concepts in the language have been carried forward in proposed new rules.

Effect on other rules, advisory opinions or dispute resolutions:

The concepts removed from this rule are incorporated in proposed new rules 4.109-2 and 5.103-1.

Effective: March 1, 2011

Rule 4.109-2 Absconding Violation

- (a) If there is reason to believe that an offender has absconded, the receiving state shall attempt to locate the offender. Such activities shall include, but are not limited to:
 - (1) Conducting a field contact at the last known place of residence;
 - (2) Contacting the last known place of employment, if applicable;
 - (3) Contacting known family members and collateral contacts.

(b) If the offender is not located, the receiving state shall submit a violation report pursuant to rule 4.109(b)(9).

Justification:

Proposed rule clarifies the receiving state's responsibility to determine that the offender absconded, prior to submitting a violation report.

Effect on other rules, advisory opinions or dispute resolutions:

4.109-2 has direct impact on 4.109 and proposed rule 5.103-1 because it specifies steps required before a state may issue an absconder violation report.

Effective: March 1, 2011

Rule 5.101 Retaking by the sending state

- (a) Except as required in Rules 5.102, ~~and 5.103~~, 5.103-1 and 5.103-2 at its sole discretion, a sending state may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.
- (b) Upon its determination to retake the offender, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility when the offender is in custody.
- (c) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.

Justification:

Clarifies responsibility of the sending state when the state, in its discretion, has determined that an offender will be retaken. Specifically identifying the functional requirements to issue a warrant and file a detainer will reduce miscommunications that arise between jurisdictions and which result in failure to either notify a holding facility or a failure on the part of a holding facility to recognize a state's order. The rule does not require the warrant and detainer to be separate documents or processes, as long as the functional requirements are met.

Effective: March 1, 2011

Rule 5.102 Mandatory retaking for a new felony conviction

~~(a) Upon a request from the receiving state, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state upon the offender's conviction for a new felony offense and:~~

- ~~(1) completion of a term of incarceration for that conviction; or~~
- ~~(2) placement under supervision for that felony offense.~~

(b) When a sending state is required to retake an offender, 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.

~~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 amendment eliminates the sending state's option to order the return of an offender subject to mandatory retaking. The new language clarifies responsibility of the sending state with regard to retaking. Specifically identifying the functional requirements to issue a warrant and file a detainer will reduce miscommunications that arise between jurisdictions and which result in failure to either notify a holding facility or a failure on the part of a holding facility to recognize a state's order. The rule does not require the warrant and detainer to be separate documents or processes, as long as the functional requirements are met.

Effective: March 1, 2011

Rule 5.103-1 Mandatory retaking for offenders who abscond

(a) Upon 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).

Justification:

Clarifies responsibility of the sending state with regard to retaking absconders.

Effect on other rules, advisory opinions or dispute resolutions:

The rule incorporates concepts removed by the proposed amendment to 4.109.

Effective: March 1, 2011

Rule 5.103-2 Mandatory retaking for violent offenders and violent crimes

- (A) Upon a request from the receiving state, a sending state shall retake a violent offender who has committed a significant violation.
- (B) Upon a request from the receiving state, a sending state shall retake an offender who is convicted of a violent crime.
- (C) When a sending state is required to retake an offender, 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.

Justification: Creates a rule to retake violent offenders and offenders who commit violent crimes. Specifically identifying the functional requirements to issue a warrant and file a detainer will reduce miscommunications that arise between jurisdictions and which result in failure to either notify a holding facility or a failure on the part of a holding facility to recognize a state's order. The rule does not require the warrant and detainer to be separate documents or processes, as long as the functional requirements are met.

Effect on other rules, advisory opinions or dispute resolutions:

Gives effect to the definitions of violent crime and violent offender.

Effective: March 1, 2011