



## **INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION ANNUAL BUSINESS MEETING MINUTES**

**August 28, 2013**

**Renaissance Boston Waterfront Hotel, Boston, Massachusetts**

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### **Call to Order**

The meeting was called to order by Chairman M. Gilliam (OK) at 8:06 a.m. EDT. Massachusetts Color Guard presented the flags.

Chairman M. Gilliam (OK) welcomed everyone to the 2013 Annual Business Meeting in Boston, MA.

### **Roll Call**

Roll was called by Executive Director H. Hageman. Fifty-two out of fifty-three members were present, thereby constituting a quorum.

- |                         |                                  |
|-------------------------|----------------------------------|
| 1. Alabama              | Christopher Norman, Commissioner |
| 2. Alaska               | Carrie Belden, Commissioner      |
| 3. Arizona              | Dori Ege, Commissioner           |
| 4. Arkansas             | Sheila Sharp, Commissioner       |
| 5. California           | Mario Fox, Commissioner          |
| 6. Colorado             | Steve Hager, Commissioner        |
| 7. Connecticut          | Gary Roberge, Commissioner       |
| 8. Delaware             | Karl Hines, Commissioner         |
| 9. District of Columbia | Nancy Ware, Commissioner         |
| 10. Florida             | Jenny Nimer, Commissioner        |
| 11. Georgia             | Chris Moore, Commissioner        |
| 12. Hawaii              | Cheryl Marlow, Commissioner      |
| 13. Idaho               | Denton Darrington, Commissioner  |
| 14. Illinois            | Michelle Buscher, Commissioner   |
| 15. Indiana             | Jane Seigel, Commissioner        |
| 16. Iowa                | Charles Lauterbach, Commissioner |
| 17. Kansas              | Kathleen Graves, Commissioner    |
| 18. Kentucky            | Steve Turner, Designee           |

19. Louisiana	Genie Powers, Commissioner
20. Maine	Scott McCaffery, Commissioner
21. Massachusetts	Josh Wall, Commissioner
22. Maryland	Patricia Vale, Commissioner
23. Michigan	Don Matson, Designee
24. Minnesota	Jill Carlson, Commissioner
25. Mississippi	Jerry Williams, Designee
26. Missouri	Ellis McSwain, Commissioner
27. Montana	Cathy Gordon, Designee
28. Nebraska	Cathy Gibson-Beltz, Commissioner
29. Nevada	Shawn Arruti, Designee
30. New Hampshire	Mike McAlister, Commissioner
31. New Jersey	James Plousis, Commissioner
32. New Mexico	Edward Gonzales, Commissioner
33. New York	Andrea Evans, Commissioner
34. North Carolina	Ann Precythe, Designee
35. North Dakota	Charles Placek, Commissioner
36. Ohio	Sara Andrews, Commissioner
37. Oklahoma	Milton Gilliam, Commissioner
38. Oregon	Jeremiah Stromberg, Commissioner
39. Pennsylvania	Michael Potteiger, Commissioner
40. Puerto Rico	Raquel Colon, Commissioner
41. Rhode Island	Laura Queenan, Designee
42. South Carolina	Kela Thomas, Commissioner
43. South Dakota	Ed Ligtenberg, Commissioner
44. Tennessee	Bobby Straughter, Commissioner
45. Texas	Kathie Winckler, Commissioner
46. Utah	Jim Ingle, Designee
47. Vermont	Dale Crook, Commissioner
48. Virginia	James Parks, Commissioner
49. Virgin Islands	<i>Not in attendance</i>
50. Washington	Anmarie Aylward, Commissioner
51. West Virginia	Karen Nichols, Commissioner
52. Wisconsin	Tracy Hudrlik, Commissioner
53. Wyoming	Dawn Sides, Commissioner

Executive Director H. Hageman recognized Ex-Officio members:

- National Governor Association - *Not in attendance*
- National Conference Of State Legislatures - Alison Lawrence
- National Organization of State Chief Justices - *Not in attendance*
- National Association of Attorneys General - *Not in attendance*
- National Organization of Crime Victims - Patricia Tuthill
- National Institute of Corrections - Jim Cosby
- American Probation and Parole Association – Carl Wicklund
- Association of Paroling Authorities International - Keith Hardison

- Interstate Commission for Juveniles – Ashley Lippert
- Conference Of State Court Administrators - Sally Holewa

### **Welcome & Overview**

Commissioner J. Wall (MA) welcomed the Commission to Boston, MA. He introduced Andrea Cabral, Executive Secretary of Public Safety for Massachusetts, who gave a welcoming speech.

Chairman M. Gilliam (OK) instructed the Commission on the rules and procedures of the meeting.

### **Approval of Agenda**

**Commissioner E. Ligtenberg (SD) moved to approve the agenda as drafted. Commissioner S. Andrews (OH) seconded.**

**Agenda approved as drafted.**

### **Approval Minutes**

**Commissioner E. Ligtenberg (SD) moved to approve the minutes as drafted. Commissioner S. Andrews (OH) seconded.**

**Minutes approved as drafted.**

### **Training, Education & Public Relations Committee Report**

Commissioner D. Ege (AZ), Training Committee Chair, expressed her gratitude towards the Committees members Shawn Arruti (NV), Devon Whitefield (CO), Edward Gonzales (NM), Rose Ann Bisch (MN), Kari Rumbaugh (NE), Margaret Thompson (PA), Karen Tucker (FL), and Kathleen Graves (KS). She also thanked the national office staff for their work throughout the year.

The Committee's mission is to develop curriculum for use in member states and assist in delivering curriculum in person or via WebEx (ICOTS Training and Technical Assistance Policy).

The Committee met three times in the past year – October 15, 2012, December 10, 2012 and April 3, 2013.

The Training Committee revised rules training curriculum (March 1, 2013), updated and developed new on-demand modules using new software, and developed new topic-based trainings – Mandatory Retaking of Violent Offenders, Offenders who commit a New Violent Crime, Absconders and Eligibility for Reporting Instructions & Transfer.

The Training Committee introduced new training curriculums and guides for interested agencies: Jail Administrator Training and Parole Board Member Training.

In conjunction with a major ICOTS enhancement to the Violation reporting process, training was provided to approximately 4,000 ICOTS users in May 2013.

The WebEx Software was updated to accommodate larger training groups.

On-site trainings provided: Judicial Training (Nov 2012), Prosecutor Training (April 2013), and ICAOS workshops at the National Sherriff's Association (July 2013) and American Probation and Parole Association (January & July 2013).

**Commissioner D. Ege (AZ) moved to accept the Training, Education and Public Relations Committee reports. Commissioner K. Winckler (TX) seconded.**

**Report accepted.**

### **Information Technology Report**

Commissioner K. Winckler (TX), Technology Committee Chair, thanked the national office staff and the Technology Committee members for their service to the Committee: Chris Norman (AL), Patricia Vale (MD), Jill Carlson (MN), and Karen Nichols (WV). Ex officio members during the year have included Joe Kuebler (GA), Julie Lohman (VA), John Gusz (NJ), and Don Matson (MI).

The Information Technology Committee met by telephone and WebEx conference five times since last year's Annual Business Meeting.

The Committee has been working on the following projects: Fusion Center Data Exchange Project, ICOTS Violation Enhancement, Rule Proposals, ICOTS Helpdesk Support, External Reports, Victim Notification Project, and ICAOS Website.

*Fusion Center Data Exchange Project:* After an initial pilot with a New York State Fusion Center last year, the American Probation and Parole Association (APPA) contracted with SEARCH, the national information management and sharing organization, to provide technical assistance with automating the process of sharing ICOTS data with state fusion centers in New York. The exchange is currently running, but there are some small technical issues, which are being worked out.

APPA is preparing webinar presentations with other fusion centers to gauge interest in the program. SEARCH and the Bureau of Justice Assistance (BJA) see the project as an innovative example of what is possible with cloud computing and shared infrastructures.

*ICOTS Violation Enhancement:* After a year of cooperative effort by Appriss, the Commission's ICOTS system vendor, staff from the national office, and the Joint Application Development (JAD) group, the ICOTS Violation enhancement was launched, on schedule, on May 22, 2013. The enhancement completely redesigned how the violation process functions within ICOTS.

The JAD group, comprised of a variety of commissioners, DCAs and national office staff, met four times in June 2012 to review and approve the design of the new functionality. User acceptance testing (UAT) started on April 22, 2013, and lasted two weeks, during which 32 bugs were identified and subsequently addressed by Appriss before the May 22 release.

State compact offices received notification of any pending violation report and violation response activities leading up to the enhancement launch. Appriss withdrew any pending violation reports or responses on the morning of the launch.

The new software logic has improved report quality and will reduce administrative burdens over the long term. For example, since ICOTS launched, at least 60,000 inappropriate violation reports or responses were submitted. Those inappropriate activities are no longer possible.

*Rule Proposals:* The Information Technology Committee submitted three proposed rule amendments to the Rules Committee this year. After discussions with the Rules Committee, one proposal was withdrawn prior to the Annual Business Meeting.

*ICOTS Helpdesk Support:* The ICOTS helpdesk received over 2,200 ICOTS support tickets during the 2013 fiscal year. This is a decrease of more than 15 percent from the 2012 fiscal year.

*External Reports:* Usage of the external reports rose from over 5,600 page views in FY2012 to over 12,400 page views in FY2013, an increase of 118 percent.

The ICOTS violation enhancement upgrade also provided expanded data elements and tables to which the national office did not previously have access. These additional data fields will allow the development of detailed reports regarding the violation process.

*Victim Notification Project:* The integration of victim notification in ICOTS involves using the VINE system to notify a registered victim if there has been a status change involving a compact offender of interest. A victim notification workgroup, composed of commissioners and victims' representatives, met several times during the past year to advise how the victim notification process should function. The workgroup also finalized the details of the voice scripts to be used when victims receive notification via email and telephone. This service is scheduled to launch in September 2013.

*ICAOS Website:* The Commission made several improvements to the ICAOS website during the past year. These changes include a new "Training Resources" page with resources grouped by topic, topic-specific training resources on applicable Rule Step-By-Step pages, and an improved on-demand training page. Behind the scenes, the platform or operating system running the website was upgraded for increased security and new features.

**Commissioner K. Winckler (TX) moved to accept the Information Technology Committee report. Commissioner M. Potteiger (PA) seconded.**

**Report accepted.**

**DCA Liaison Committee Report**

Official Designee S. Arruti (NV) presented the DCA Liaison Committee Report to the Commission. On behalf of DCA Liaison Committee Chair Madris, he thanked all the committee members: Commissioner Kim Madris, Chair (NV), Commissioner Charles Placek, Vice Chair (ND), DCA Sheryl Cudney (AZ Parole), DCA Karen Tucker (FL Parole & Probation), DCA Sidney Nakamoto (HI Probation), DCA Kari Rumbaugh (NE Probation), DCA John Gusz (NJ Probation), DCA Dawn Persels (OR Parole & Probation), and Commissioner Kela Thomas (SC Parole & Probation).

The DCA Liaison Committee mission is to ensure that Deputy Compact Administrators continue to have an active voice in the affairs of the Compact.

The Committee goal is to ensure that all DCAs are properly trained and have an understanding of the Compact and to establish a proactive atmosphere to utilize the committee to resolve issues and conflicts within the “Spirit of the Compact”.

Official Designee S. Arruti emphasized the importance of commissioner’s involvement in the Committee as means to show support for the important work performed by DCAs and Compact Offices.

During the past year, the Committee formalized the DCA Mentoring Program adopted by the Executive Committee in May, 2013; worked towards the further development of quarterly Regional DCA meetings and the creation of a selection process to establish the expectations of a DCA serving in the position of a DCA Liaison Committee Regional Chair; and adopted a DCA training day at the ABM starting in 2014.

The DCA Mentoring Program is designed to coach, train and counsel new Deputy Compact Administrators on the operations of a compact office and to provide guidance to a DCA who needs assistance to resolve difficult compliance issues in their state.

**Official Designee S. Arruti (NV) moved to accept the DCA Liaison Committee report. Commissioner S. Andrews (OH) seconded.**

**Report accepted.**

**Compliance Committee Report**

Commissioner M. McAlister (NH), Compliance Committee Chair, thanked the Committee members for their work: Chris Norman, Vice Chair (AL), Karl Hines (DE), Jane Seigel (IN), Genie Powers (LA), John Rubitschun (MI), Pam Bunke (MT), Catherine Gibson-Beltz (NE), Ashbel Wall (RI), Mike Mayer (UT), Pat Tuthill, Ex-officio, Sally Holewa, Ex-officio, and Victoria Jakes, Ex-officio.

The Compliance Committee is responsible for monitoring compliance of member states with the terms of the Compact and the Commission's rules, and for developing appropriate enforcement procedures for the Commission's consideration.

Commissioner M. McAlister (NH) reported that the Compliance Committee met four times during the past year.

The Committee met on August 7, 2012 to find Puerto Rico and the U.S. Virgin Islands in default for their failure to convene a state council.

The Committee met on December 19, 2012 to review and accept a corrective action plan submitted by Georgia. The Committee also reviewed a complaint filed by Pennsylvania against Georgia; and discussed concerns regarding some confusion about the meaning of Rules 5.101, 5.103, 5.105, and 5.111. The Committee agreed to refer these concerns to the Rules Committee for their review.

The Committee met on April 2, 2013 and reviewed a complaint filed by Washington against Kansas. The Committee approved a motion to recommend that Kansas be found in default for failure to issue a nationwide warrant and deferred a recommendation to the Executive Committee pending further investigation regarding Rule 5.103-2.

The Committee met on May 29, 2013 and further reviewed the complaint filed by Washington against Kansas and the results from the subsequent investigation. The Committee approved a motion to recommend to the Executive Committee that Kansas be fined for its default of Rule 5.103-2 and levied a fine to be held in abeyance upon successful completion of an approved corrective action.

Commissioner M. McAlister (NH) stated that the national office audited all states on 21 standards in FY 2011. In FY 2012, the national office audited 14 states that received 5 or more "C's" in the FY2011 audit. And in FY 2013, the national office audited all states on 9 standards with a random schedule. The results of the latest audit as follows:

- 15 states have 4 or more "C's"
- 23 states have 3 or more "C's"
- Only 12 of 53 states passed 4.106 Standard (submission of annual progress reports)

After reviewing the FY2013 Compliance Audit, the Executive Committee decided that in FY2014 the national office would re-audit only states that were found to have four or more standards that were in compliance less than 80% of the time (category "C".) States subject to re-audit in FY2014 will receive a notification the month prior to their audit.

**Commissioner M. McAlister (NH) motioned to accept the Compliance Committee report. Commissioner S. Andrews (OH) seconded.**

**Report accepted.**

**Finance Committee Report**

Commissioner C. Lauterbach (IA), Finance Committee Chair and Treasurer, presented the Finance Committee report to the Commission.

Commissioner C. Lauterbach (IA) stated that the Commission continues to maintain a strong financial base for its operations. . The national office staff continues to work diligently to keep the commission expenditures within its budget constraints.

The Commission has finished its fiscal year at 4% under budget.

In the upcoming months the Executive Committee will need to determine whether and how much to continue to invest into the Council of State Governments long term investment portfolio.

Commissioner C. Lauterbach (IA) stated that all but five states and territories have paid their annual dues.

Commissioner C. Lauterbach (IA) stated that there are no dues increases in the presented FY2015 budget.

**Commissioner C. Lauterbach (IA) moved to accept the proposed FY 2015 budget. Commissioner C. Gibson-Beltz (NE) seconded.**

**Motion passed unanimously.**

Commissioner C. Lauterbach (IA) thanked the Finance Committee members for their service.

**Commissioner C. Lauterbach (IA) moved to accept the Finance Committee report. Commissioner S. Andrews (OH) seconded.**

**Motion passed unanimously.**

**Victims' Advocate Report**

Victims' Advocate P. Tuthill (NOCV) thanked the Commission for their support towards the ICOTS victims' notification project.

*Automated Victim Notification System* is scheduled to be implemented in August 2013.

The system was built in response to 2011 survey of Victim Advocates/Representatives related to victim concerns for information regarding offender status and notification.

The system will offer notifications either by email or phone voice messages. Text messages not an option at this time.

Victims' Advocate P. Tuthill informed the Commission about events that will trigger notification to victims:

- Registration Confirmation
- Transfer Request Submitted Request for Reporting Instructions Transmitted; Transfer Request Transmitted; and Return to Sending State Transmitted)
- If Transfer Request has been Approved
- Approval for Transfer Request Sent
- Address Change(Limited to changes in 'primary address' only)
- Supervision Violation
- Departure
- Successful Arrival
- Failure to Arrive
- Abscond
- Transfer Request Withdrawn
- Case Closed (Successful Case Closure Reply Transmitted)

In the past year Victims' Advocate P. Tuthill assisted victims with concerns and explanations on how to request assistance and have opportunity to be heard.

Victims' Advocate P. Tuthill informed the Commission about the Office of Victims of Crime (OVC) Initiative – Vision 21:

- Stakeholder member for this project addressed concern from victim advocacy groups that growing number of victims being turned away for lack of funding or the ability to provide appropriate services
- Advocates detailed the additional challenges in reaching and serving victims of emergent crimes such as human trafficking, child commercial sexual exploitation, and financial fraud.

Victims' Advocate P. Tuthill informed the Commission about the BJA/IJIS SAVIN Information Exchange Committee Advisory Group.

**Vision:** Create a national information sharing standards; any state or local jurisdiction can adopt the standard for victim information and notification. National Information Exchange Model (Information Exchange Package Documentation) NIEM/IEPD is the model used for information sharing.

Opportunity for states to adopt national standards for automated victim notification that would include Interstate Compact transfers.

Defined events triggering notification throughout the entire criminal justice process to protect victims and enhance public safety, which includes ICAOS notification events.

Upcoming Request for Interest (RFI) process will determine future notification sites/projects under *SAVIN Technology Assistance Project (S-TAP)*.

In the past year Victims' Advocate P. Tuthill made the following presentations: Colorado - National Day of Remembrance (September 2012) and Trauma Informed Care *Instilling Hope* (March 2013).

The Peyton Tuthill Foundation *Hearts of Hope Scholarships* has awarded \$30,000 through 2013 to young homicide survivors. January 2014 applications will be accepted for 2014-15. Recipients are from: NM, AR, SC, CA, VA, OH, PA, FL, CT, NY.

Victims' Advocate P. Tuthill (NOCV) thanked the Executive Committee for its cooperation.

Chairman M. Gilliam (OK) accepted the Victims' Advocate's Report.

### **General Counsel Report**

General Counsel R. Masters presented his report to the Commission.

Throughout the year, General Counsel R. Masters assisted the Commission with interpretation, application and enforcement of the Compact provisions and Rules.

General Counsel R. Masters assisted the Compliance Committee, Executive Committee and Rules Committee in several matters pertaining to investigation, compliance, and enforcement responsibilities under the compact.

General Counsel R. Masters emphasized the importance of the continuing education for the states.

General Counsel R. Masters in conjunction with the Executive Director has issued two advisory opinions concerning the interpretation and application of various provisions of the Compact and its administrative rules and assisted with a number of informal requests for legal guidance from member states. The advisory opinions are public record and are available at the website of the Commission.

General Counsel R. Masters provided judicial training concerning the Compact and its administrative rules in a number of states and assisted in the updates to the 'On-Demand' Judicial Training Modules, ICAOS Bench Book, Judicial training, and Parole and Probation Officer legal and liability training modules.

General Counsel R. Masters informed the Commission about the state council's appointment matter in Alaska, Puerto Rico and the US Virgin Islands. As of right now,

Alaska and Puerto Rico appointed their State Council. The US Virgin Islands are working on their appointments.

General Counsel R. Masters informed the Commission about the Kansas notice of default for failure to issue a nationwide warrant as required. Kansas took the notice very serious and is working on its correction action plan.

General Counsel R. Masters suggested going into the executive session to discuss Commission's legal matters.

**Commissioner S. Andrews (OH) moved to go to the executive session to discuss Commission's legal matters. Commissioner J. Plouisis (NJ) seconded.**

**Motion passed.**

**Commissioner S. Andrews (OH) moved to exit the executive session. Commissioner J. Plouisis (NJ) seconded.**

**Motion passed.**

Chairman M. Gilliam (OK) accepted General Counsel's report.

#### **Rules Committee Report**

Commissioner J. Seigel (IN), Rules Committee Chair, presented her report to the Commission. She thanked the Rules Committee members and the national office staff for their hard work.

**Commissioner C. Norman (AL) moved to suspend Rule 2.109 for the limited time of allowing the Commission to vote on the following motion. Commissioner M. Potteiger (PA) seconded. Motion passed unanimously.**

Any rule that has a time requirement for action of less than 30 days shall be amended to reflect that those days are business days; any time requirement of 30 days or more shall be amended to reflect that those days are calendar days.

**Commissioner J. Seigel (IN) moved to change calendar to business days (as noted above) for all timelines less than 30 days with ICOTS cost of \$17,580. Commissioner E. Ligtenberg (SD) seconded.**

Commissioner K. Winckler (TX) stated that this rule amendment will expand the number of days from two to three weeks. She argued that given the reliability of the electronic information system, this time extension is unnecessary.

Ex-Officio P. Tuthill (FL) spoke against the Rule expressing her concerns with the victims' issues.

**Motion passed by vote of 46 to 6.**

Commissioner J. Seigel (IN) stated that Midwest withdrew its proposal 2013-MIDWEST-3.\_ (new rule concerning mandatory reporting instructions for offenders released to a detainer in the receiving state) at its yesterday's meeting.

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-WEST-1.101-Abscond proposed by the West Region. Commissioner S. Andrews (OH) seconded.**

**Motion passed by vote 50 to 2.****2013-WEST-1\_101abscond*****Rule 1.101 Definitions***

“**Abscond**” means to be absent from the offender’s approved place of residence or employment ~~with the intent of~~ and avoiding supervision.

**Justification:**

Proposal to delete the language clarifies the definition of abscond as used in Rule 4.109-2 which still requires action on the part of the receiving state to determine if the absence is to avoid supervision.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-WEST-1.101-Warrant proposed by the West Region. Commissioner S. Andrews (OH) seconded.**

**Motion passed unanimously.****2013-WEST-1\_101warrant*****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 with no bond amount set.

**Justification:**

Proposal to clarify that the issuance of warrants for compact offenders should not allow for a bond to be set.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-2.105 proposed by the Rules Committee. Commissioner S. Andrews (OH) seconded.**

Commissioner D. Ege (AZ) spoke in favor of the adoption of this rule. She noted that this amendment will help to capture high risk misdemeanors and will help to promote public safety.

Commissioner K. Winckler (TX) spoke in opposition to the amendment stating that this amendment will eliminate large number of dangerous offenders.

Ex-Officio S. Holewa (COSCA) stated that COSCA by unanimous consent is in support of this amendment.

Commissioner M. Potteiger (PA) spoke against the amendment.

Commissioner K. Hines (DE) spoke against the amendment.

Commissioner J. Wall (MA) spoke against the amendment. He urged the Commission think of the offender who originally were charged with felony that is resulted in misdemeanor.

Ex-Officio P. Tuthill (NOCV) spoke in opposition to the rule amendment.

Designee A. Precythe (NC) stated that North Carolina is opposed to the amendment.

**Motion failed by vote 15 to 37.**

**2013-RULES-2.105**

***Rule 2.105 Misdemeanants***

- (a) Only those A misdemeanor offenders who are initially charged with a felony and whose sentence includes 1 year or more of supervision shall, be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes 1 or more of the following—

- (1) an offense in which a person has incurred direct or threatened physical or psychological harm;
- (2) an offense that involves the use or possession of a firearm;
- (3) a 2nd or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;
- (4) a sexual offense that requires the offender to register as a sex offender in the sending state.

(b) A misdemeanor offender who is not initially charged with a felony and whose sentence includes 1 year or more of supervision and is convicted of 1 of the above offenses may, at the discretion of the sending state, be eligible for discretionary transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied.

**Justification:**

The Rules Committee received a request from the West Region to make misdemeanor offenses ineligible for transfer under the Compact, or in the alternative, to focus on more serious misdemeanor offenses to be eligible for transfer. The Rules Committee decided that it was time to review the misdemeanor rule since it has been in use for 8 years. The Committee engaged in a lengthy discussion, trying to strike a balance between public safety concerns and the reality that a number of states do not supervise misdemeanor offenders. The Committee members were concerned that the rule could put the entire Commission at risk of liability for non-supervision and that the Commission cannot “promise more than it can deliver”. Therefore, the Committee proposes amending the rule to include only serious misdemeanors that were originally charged as felonies and resulted in misdemeanor convictions, with the four categories of serious offenses remaining as eligibility criteria. A sending state may still seek discretionary transfer of a misdemeanor offender not originally charged as a felon if the offense falls into one of the four categories and all other requirements for transfer are satisfied.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-3.101-1 and associated ICOTS cost of \$21,160 proposed by the Rules Committee. Commissioner C. Norman (AL) seconded.**

**Motion passed by vote 36 to 6.**

**2013-RULES-3.101\_1**

**Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, and employment transfer, and veterans for medical or mental health services**

- (a) At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer for:
- (1) *Transfers of military members-* An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision. ~~The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.~~
  - (2) *Transfer of offenders who live with family who are members of the military-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who has been deployed to another state, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state. ~~The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.~~
  - (3) *Employment transfer of family member to another state-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state. ~~The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.~~
  - (4) *Employment transfer of the offender to another state –* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of supervision. ~~The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.~~
  - (5) *Transfers of veterans for medical or mental health services-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:
    - (A) the sending state provides documentation to the receiving state of the medical and/or mental health referral; and
    - (B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.

- (b) The receiving state shall issue reporting instructions no later than 2 business day following receipt of such a request from the sending state.

**Justification:**

Creates a new mandatory reason for transfer and reporting instructions for veterans, in light of the regional nature of VA facilities used to help and treat veterans on community supervision and the increasing use of “Veterans Treatment Courts.”

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

None

**ICOTS impact:**

Create new reason for Reporting Instructions and Transfer Request: \$21,160

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-3.102 proposed by the Rules Committee. Commissioner S. Andrews (OH) seconded.**

Commissioner M. Buscher (IL) stated that this rule amendment covers gaps in instruction for day-to-day compact office operations.

**Motion passed by vote 43 to 9.**

**2013-RULES-3.102**

***Rule 3.102 - Submission of transfer request to a receiving state***

(a) Except as provided in sections (c) & (d), and subject to the exceptions in Rule 3.103 and 3.106, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.

(b) Except as provided in sections (c) & (d), and subject to the exceptions in Rule 3.103 and 3.106, the sending state shall not allow the offender to travel to the receiving state until the receiving state has replied to the transfer request.

(c) An offender who is employed in the receiving state at the time the transfer request is submitted and has been permitted to travel to the receiving state for the employment may be permitted to continue to travel to the receiving state for the employment while the transfer request is being investigated, provided that the following conditions are met:

(1) Travel is limited to what is necessary to report to work, perform the duties of the job and return to the sending state.

(2) The offender shall return to the sending state daily during non-working hours, and

(3) The Transfer Request shall include notice that the offender has permission to travel to and from the receiving state, pursuant to this rule, while the transfer request is investigated.

(d) When a sending state verifies an offender is released from incarceration in a receiving state and the offender requests to relocate there and the offender meets the eligibility requirements of Rule 3.101 (a), (b) & (c), the sending state shall request expedited reporting instructions within 2 business days of the notification of the offender's release. The receiving state shall issue the reporting instructions no later than 2 business days. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.

(1) The receiving state shall assist the sending state in acquiring the offender's signature on the "Application for Interstate Compact Transfer" and any other forms that may be required under Rule 3.107, and shall transmit these forms to the sending state within 7 business days and mail the original to the sending state.

(2) The provisions of Rule 3.106 (b), (c) & (d) apply.

**Justification:**

This provides alternate language drafted by the Rules Committee in response to the Midwest Proposal for an exception for offenders released in a receiving state on a parole detainer. Upon subsequent review and lengthy discussion, the rules committee decided to offer a proposal to amend Rule 3.102. By referring to the provisions of Rule 3.106, this eliminates the need for an ICOTS enhancement. Based on comments received this is a simpler approach to address this issue. To be clear, the rules committee would note that if the offender is released from a federal facility exclusively for a federal crime this rule would not apply.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-TECH-3.103 proposed by the Technology Committee. Commissioner C. Norman (AL) seconded.**

Commissioner K. Winckler (TX) spoke in favor of this amendment.

Commissioner D. Ege (AZ) is in favor of this idea of an amendment, but urged not to vote for citing that the amendment needs more work before it is ready for voting.

Commissioner J. Seigel (IN) spoke in favor of this amendment.

**Motion failed by vote 25 to 27.**

**2013-TECH-3103**

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing**

- (a)
- (1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 ~~calendar~~ business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a seven day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.
  - (2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
  - (3) The sending state shall ensure that the offender sign all forms requiring the offender's signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.
  - (4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.
  - (5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.
- (b) The sending state retains supervisory responsibility until the offender's arrival in the receiving state.
- (c) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender's arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.
- (d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 ~~calendar~~ business days following the granting to the offender of the reporting instructions.
- (e) ~~If the receiving state rejects. Upon rejection of the transfer request for an offender granted reporting instructions, or if sending state fails to send a completed transfer request by the 15<sup>th</sup> calendar business day following the granting of reporting instructions, the receiving state shall request reporting instructions for the offender to return, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 calendar days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant.~~
- (f) Except as provided in subsection (g), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.
- (g) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.

- (h) The offender shall remain in the receiving state until the directed departure date. 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 and submit a case closure as required by 4.112.
- (i) If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant ~~that is effective in all states without limitation as to specific geographic area,~~ no later than 10 calendar business days following the offender's failure to appear in the sending state.

**Justification:**

Since the receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant, the receiving states should have a more uniform and controlled procedure to complete the return process. A request for returning reporting instructions would uniformly coordinate all member states with a consistent manner for obtaining, documenting, issuing and monitoring the offender with a "directed departure date" almost immediately since reporting instructions have a 2-day turnaround. If it is necessary to coordinate and monitor the movement of offenders when their cases originate to the receiving state, it is within reason to expect the same concern for public safety, by uniformly coordinating and monitoring their return.

Currently, the process for directing an offender to return varies, and is as random as issuing directions by word of mouth between the sending and the offender, to random courtesies of receiving states requesting return reporting instructions via ICOTS. The goal of the compact has always been a more structured and smooth process for monitoring the movement of offenders while under supervision and that goal should not be compromised just because a case is rejected for supervision. The use of reporting instructions and notices of departure and arrival back to the sending state provide necessary structure especially when accountability and liability are the essence of why the compact exists in the first place.

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

None

**ICOTS impact:**

Change calendar to business days for all timelines less than 30 days  
Update all reports, priority model (Compact Workload) and notifications  
Cost \$17, 580 (all Rule proposals)

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-3.104-1 proposed by the Rules Committee. Commissioner C. Norman (AL) seconded.**

**Motion passed by vote 41 to 11.**

**2013-RULES-3.104-1*****Rule 3.104-1 Acceptance of offender; issuance of reporting instructions***

- (a) If a receiving state accepts transfer of the offender, the receiving state's acceptance shall include reporting instructions.
- (b) Upon notice of acceptance of transfer by the receiving state, the sending state shall issue a travel permit to the offender and notify the receiving state of the offender's departure as required under Rule 4.105.
- (c) A receiving state shall assume responsibility for supervision of an offender upon the offender's arrival in the receiving state and shall submit notification of arrival as required under Rule 4.105.
- (d) An acceptance by the receiving state shall be valid for 120 calendar days. If the sending state has not sent a Departure Notice to the receiving state in that time frame, the receiving state may withdraw its acceptance and close interest in the case.
- (e) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the 5th business day following transmission of notice of departure and shall provide immediate notice of such withdrawal to the sending state.

**Justification:**

This language appears in Rule 3.105 (c) which allows receiving states to withdraw acceptances when a pre-release transfer is accepted but the offender fails to report following the submission of an NOD. However, Rule 3.104-1 does not include this language which suggests that states cannot withdraw their acceptances when offenders fail to report following the submission of an NOD. The current language of 3.104-1 only provides for the withdrawal of an acceptance if the sending state fails to submit an NOD within the 120 day time frame.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-TECH-3.106 proposed by the Technology Committee. Commissioner S. Andrews (OH) seconded.**

Commissioner K. Winckler (TX) spoke for the amendment.

Commissioner D. Ege (AZ) spoke against the amendment stating that it needs more work before it is ready for voting.

**Motion failed by vote 24 to 28.****2013-TECH-3106****Rule 3.106 Request for expedited reporting instructions**

- (a)
- (1) A sending state may request that a receiving state agree to expedited reporting instructions for an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination. If the receiving state does not agree with that determination, the offender shall not proceed to the receiving state until an acceptance is received under Rule 3.104-1.
  - (2)
    - (A) A receiving state shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender's departure.
    - (B) The sending state shall ensure that the offender signs all forms requiring the offender's signature under Rule 3.107 prior to granting reporting instructions to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.
- (b) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender's plan of supervision upon the offender's arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.
- (c) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the 7<sup>th</sup> ~~calendar~~ business day following the granting to the offender of the reporting instructions.
- (j) ~~If the receiving state rejects. Upon rejection of the transfer request for an offender granted reporting instructions, or if sending state fails to send a completed transfer request by the 7<sup>th</sup> calendar business day following the granting of reporting instructions, the receiving state shall request reporting instructions for the offender to return. the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 calendar days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant~~
- (e) Except as provided in subsection (f), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.
- (f) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.

- (g) The offender shall remain in the receiving state until the directed departure date. 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 and submit a case closure as required by 4.112.
- (h) If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant ~~that is effective in all states without limitation as to specific geographic area,~~ no later than 10 calendar business days following the offender's failure to appear in the sending state.

**Justification:**

Since the receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant, the receiving states should have a more uniform and controlled procedure to complete the return process. A request for returning reporting instructions would uniformly coordinate all member states with a consistent manner for obtaining, documenting, issuing and monitoring the offender with a "directed departure date" almost immediately since reporting instructions have a 2-day turnaround. If it is necessary to coordinate and monitor the movement of offenders when their cases originate to the receiving state, it is within reason to expect the same concern for public safety, by uniformly coordinating and monitoring their return.

Currently, the process for directing an offender to return varies, and is as random as issuing directions by word of mouth between the sending and the offender, to random courtesies of receiving states requesting return reporting instructions via ICOTS. The goal of the compact has always been a more structured and smooth process for monitoring the movement of offenders while under supervision and that goal should not be compromised just because a case is rejected for supervision. The use of reporting instructions and notices of departure and arrival back to the sending state provide necessary structure especially when accountability and liability are the essence of why the compact exists in the first place.

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

None

**ICOTS impact:**

Change calendar to business days for all timelines less than 30 days  
Update all reports, priority model (Compact Workload) and notifications  
Cost \$17, 580 (all Rule proposals)

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-SOUTH-3.107(a)(12) and associated ICOTS cost of \$8,560 proposed by the South Region. Commissioner M. Potteiger (PA) seconded.**

Designee A. Precythe (NC) encouraged commissioners to vote in favor of the amendment stating that this information is crucial for transfer process.

Ex-Officio P. Tuthill (NOCV) spoke for the amendment.

**Motion passed by vote 42 to 10.**

**2013-SOUTH-3.107a12**

***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, unless distribution is prohibited by law or it does not exist;
  - (9) information as to whether the offender has a known gang affiliation, and the gang with which the offender is known to be affiliated;
  - (10) supervision history, if the offender has been on supervision for more than 30 calendar days at the time the transfer request is submitted;
  - (11) 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;
  - (12) summary of prison discipline and mental health history during the last 2 years, if available, unless distribution is prohibited by law.
- (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, may be requested from the sending state following acceptance of the offender. The sending state shall provide the documents 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:**

Institutional history provides additional information regarding incarcerated offenders when requesting transfer. PSI's typically include only offender information prior to incarceration.

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

None

**ICOTS impact:**

Add attachment function to institutional history section on the Transfer Request - \$8,560

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-4.109 proposed by the Rules Committee. Commissioner S. Andrews (OH) seconded.**

**Motion passed unanimously.**

**2013-RULES-4.109*****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 10 business days following transmission receipt by the sending receiving state. ~~Receipt of a violation report shall be presumed to have occurred by the 5th 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.

**Justification:**

With the advent of ICOTS there is no need for this language which has been construed to add 5 business days to the time limit for responses and is inconsistent with other rules which have already had this type of language removed after ICOTS. "Transmission" is the language used by ICOTS.

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

None

**ICOTS impact:**

None.

**Effective date:**

March 1, 2014

**Commissioner C. Norman (AL) moved to adopt the proposal 2013-EAST-4.112 and associated ICOTS cost of \$4,840 proposed by the East Region. Commissioner E. McSwain (MO) seconded.**

**Motion passed by vote 27 to 24.**

**2013-EAST-4.112**

***Rule 4.112 Closing of supervision by the receiving state***

(a) The receiving state may close its supervision of an offender and cease supervision upon-

- (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
- (2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;
- (3) Notification to the sending state that the offender has been sentenced to incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender's location;
- (4) Notification of death; or
- (5) Return to sending state.

(b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender under Rule 5.101.

(c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment. The receiving state shall transmit a case closure notice within 10 business days after the maximum expiration date.

(d) The sending state shall submit the case closure notice reply to the receiving state within 10 business days of receipt.

**Justification:**

There should be a timeframe for submitting the case closure notice as there is for replying to one. If an offender is on supervision until the end of the last day of supervision, it is unreasonable to expect that the CCN would be provided that same day. Not all agents are in the office every day to review cases for closure.

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

None

**ICOTS impact:**

Modify due date for CCN to be 10 business days after supervision end date: \$4,840

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-4.112 proposed by the Rules Committee. Commissioner S. Andrews (OH) seconded.**

**Motion passed by vote 49 to 2.**

**2013-RULES-4.112**

***Rule 4.112 Closing of supervision by the receiving state***

(a) The receiving state may close its supervision of an offender and cease supervision upon-

- (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
- (2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;
- (3) Notification to the sending state that the offender has been sentenced to incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender's location;
- (4) Notification of death; or
- (5) Return to sending state.

(b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender. ~~under Rule 5.101~~

(c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment.

(d) The sending state shall submit the case closure notice reply to the receiving state within 10 business days of receipt.

**Justification:**

Strike "Under Rule 5.101" in section (b) to eliminate confusion regarding when a case closure notice can be submitted following retaking.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-5.101 & 2013-RULES-5.101-1 proposed by the Rules Committee. Commissioner S. Andrews (OH) seconded.**

Commissioner J. Seigel (IN) stated that these amendments were referred by the Compliance Committee.

Commissioner D. Ege (AZ) stated that these amendments will significantly help in trainings.

Designee S. Arruti (NV) spoke against the amendments.

**Motion passed by vote 41 to 11.**

**2013-RULES-5.101\_5.101\_1**

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

- (a) Except as required in Rules 5.102, 5.101-1, 5.103, and 5.103-1 ~~5.103-2~~ at its sole discretion, a sending state may retake or order the return of 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 file a detainer with the holding facility when the offender is in custody.~~
- (b) If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant no later than 10 business days following the offender's failure to appear in the sending state.
- (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.~~

**Rule 5.101-1 Pending felony or violent crime charges**

Notwithstanding any other rule, if an offender is charged with a subsequent felony or violent crime, the offender shall not be retaken or ordered to return until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense, unless the sending and receiving states mutually agree to the retaking or return.

**Justification:**

Rule 5.101 as it is currently written is confusing because it combines the absolute authority of the sending state to retake an offender with the obligation of the receiving state to resolve all pending charges for a subsequent criminal offense prior to retaking by the sending state. The rewrite of Rule 5.101 and the creation of Rule 5.101-1 separate these two issues into two separate rules which clarifies how states resolve retaking issues while protecting the public and victims.

Rule 5.101 outlines the absolute authority of the sending state to retake an offender at the state's sole discretion.

Rule 5.101-1 outlines the process the receiving state must follow to allow the sending state to retake an offender who has committed a subsequent felony or violent crime in the receiving state.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-5.102 and associated ICOTS cost of \$5,255 proposed by the Rules Committee. Commissioner M. Potteiger (PA) seconded.**

Commissioner D. Ege (AZ) stated that AZ State Council voted against the amendment.

Commissioner C. Moore (GA) stated that Georgia strongly supports the amendment.

Ex-Officio P. Tuthill (NOCV) spoke in opposition of this amendment citing the public safety reasons.

Designee J. Ingle (UT) spoke against the amendment stating that retaking does not mean re-incarceration.

**Motion passed by vote 46 to 6.**

**2013-RULES-5.102**

***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 ~~upon~~ 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 and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

**~~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.~~

**Rule 1.101 Definitions**

~~“Violent Offender” means an offender under supervision for a violent crime committed in the sending state.~~

**Justification:**

In its present form, 5.103-2 (a) prompts recommendations based on the nature of the instant offense or history of offenses instead of recommendations based on nature of the violation committed. Violations that are insignificant and would go unreported in many instances are treated as significant based on the classification “violent offender”. 5.103 already addresses significant violations of conditions of supervision and 5.102 addresses new felony convictions. Originally, the recommendation was to strike (a) from 5.103-2 for reasons previously stated. Now the recommendation is to strike 5.103-2 in its entirety and address new violent crime convictions in a revised version of 5.102. This moves the Compact in the direction of Evidence Based Practices and away from imprudent practices.

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

Requires an editorial change to Rule 5.101 referencing Rule 5.103-2 which is proposed to be eliminated.

**ICOTS impact:**

Remove Violent Offender-significant violation option from the Offender Violation Report functions: \$5,255

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-5.103 proposed by the Rules Committee. Commissioner C. Norman (AL) seconded.**

**Motion passed by vote 44 to 7.**

**2013-RULES-5.103**

***Rule 5.103 Mandatory retaking for violation of conditions of supervision***

(a) Upon a request by the receiving state and a showing that the offender has committed 3 or more significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, 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 request by the receiving state.

(b) 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~~ business days following the offender's failure to appear in the sending state.

**Justification:**

The current verbiage in this rule is silent regarding how long a sending state has to order the return of the offender or issue a warrant for an offender. This has caused the delay in returning some offenders to the sending state and this can pose a risk to public safety. For these reasons, the additional language in (a) is being proposed to establish a time frame for sending states to affect the return of their offender under this rule.

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

Two proposals exist for Rule 5.103 but they are not in conflict. Language could be merged if both versions pass.

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner K. Winckler (TX) moved to adopt the proposal 2013-TECH-5.103 proposed by the Technology Committee. Commissioner K. Thomas (SC) seconded.**

Commissioner K. Winckler (TX) spoke for the amendment.

Commissioner D. Ege (AZ) spoke against the amendment.

Ex-Officio P. Tuthill (NOCV) spoke for the amendment citing the victims' sensitive cases.

**Motion failed by vote 15 to 37.**

**2013-TECH-5.103**

***Rule 5.103 Mandatory retaking for violation of conditions of supervision***

(a) Upon a request by the receiving state and a showing that the offender has committed 3 or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state.

- (b) Upon notice by the sending state that the offender will be ordered to return, the receiving state shall request reporting instructions.
- (c) Except as provided in subsection (d), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.
- (d) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.
- (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. The receiving state shall notify the sending state as required in Rule 4.105 and submit a case closure as required by 4.112.
- (f) 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:**

Currently the procedures exist in ICOTS to request reporting instructions for offenders being returned to the sending state under Rules 3.103, 3.106, and 5.103. However, the rules of the Interstate Commission do not include an explicit direction that the receiving state request reporting instructions, issue departure notices or that the sending state issue an arrival notice. This leaves the states in the position of following the procedures without any basis in the rules, a practice that is inconsistent with our expressed position that the technology should be driven by the rules and not vice-versa. Some states may fail to follow the ICOTS procedures, creating a patchwork of practices and uncertainty about the right course to follow.

The Technology Committee proposes that these rules be amended to require that states request reporting instructions for these classes of offenders in the same manner as is required under Rule 4.111 for offenders returning to the sending state. Doing so would make Rules 3.103, 3.106, and 5.103 consistent with the practices we use when offenders cross state borders to transfer their supervision under approved reporting instructions.

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

Two proposals exist for Rule 5.103 but they are not in conflict. Language could be merged if both versions pass.

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-5.105 proposed by the Rules Committee. Designee J. Ingle (UT) seconded.**

**Motion passed by vote 49 to 3.**

**2013-RULES-5.105**

***Rule 5.105 Time allowed for retaking an offender***

A sending state shall retake an offender within 30 calendar days after the offender has been taken into custody on the sending state's warrant and the offender is being held solely on the sending state's warrant. ~~the decision to retake has been made or upon release of the offender from incarceration in the receiving state.~~

**Justification:**

The "decision to retake" is not defined and causes confusion; the proposed language helps to clarify what triggers the 30 calendar day time frame for retaking.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-5.108 proposed by the Rules Committee. Commissioner M. Potteiger (PA) seconded.**

**Motion passed by vote 51 to 1.**

**2013-RULES-5.108**

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

- (a) An offender subject to retaking for violation of conditions of supervision 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 one or more significant violations of the terms or conditions of supervision.
- (c) A copy of a judgment of conviction regarding the conviction of a new ~~felony~~ 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, 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:**

A judgment of conviction of any criminal offense is sufficient evidence of probable cause, so no further proceedings or a probable cause hearing would be needed.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Commissioner J. Seigel (IN) moved to adopt the proposal 2013-RULES-6.103 proposed by the Rules Committee. Commissioner S. Andrews (OH) seconded.**

**Motion passed unanimously.**

**2013-RULES-6.103**

***Rule 6.103 Enforcement actions against a defaulting state***

- (a) If the Interstate Commission determines that any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Interstate Commission may impose any or all of the following penalties-
- (1) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;
  - (2) Remedial training and technical assistance as directed by the Interstate Commission;
  - (3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state; the majority and minority leaders of the defaulting state’s legislature, and the state council.
- (b) The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the ~~penalty~~ potential penalties that may be imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension.
- (c) Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state’s legislature and the state council of such termination.
- (d) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
- (e) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state.
- (f) Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

**Justification:**

Provides discretion for penalties to be imposed for a defaulting state and allow for time to cure defaults if appropriate.

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

None

**ICOTS impact:**

None

**Effective date:**

March 1, 2014

**Prosecutors' Panel**

General Counsel and Panel Moderator R. Masters introduced panelists to the Commission.

Moderator Rick Masters received his Juris Doctorate from the Brandeis School of Law of the University of Louisville and his B.A. from Asbury University. He is a former Assistant Attorney General for the Commonwealth of Kentucky and also served as General Counsel to the Council of State Governments. He was appointed by the Governor in November 2012 to serve as a Commissioner on the Executive Branch Ethics Commission. Rick Masters is General Counsel to the Interstate Commission for Adult Offender Supervision providing legal guidance concerning the compact. R. Masters is an expert in the field of interstate compacts and provides legal advice to several other compact governing boards and agencies.

Panelist Thomas B. Wine was elected as the Commonwealth's Attorney for the 30th Judicial Circuit in November 2012. His six year term of office began on January 1, 2013. Prior to being elected Commonwealth's Attorney, Tom served in the Justice system as both a prosecutor and a judge. From 1980 through 1990, he served as an assistant Commonwealth's Attorney and Assistant Attorney General. In 1992 Tom began a 15 year stint as a Jefferson County Circuit Court Judge. In September 2006 he was appointed to the Kentucky Court of Appeals where he served until January 2012. Tom has been a Master in the American Inns of Court, Louis D. Brandeis Inn and had served as the President of the Inn for 2 years.

Panelist Michael Salloum completed its undergraduate degree in College of the Holy Cross, Worcester, MA. He received the Law Degree from Columbus School of Law at Catholic University of America, Washington D.C. Michael served in District Attorney's Office, Worcester, MA for 27 years with five years in the Fugitive Unit. Over the 27 year time in the District Attorney's Office, Michael has prosecuted a variety of criminal cases at both the Superior Court and District Court level. Michael was once the supervisor of the Child Abuse Unit in his office and was, for a number of years, the supervisor of 10 district courts within this office's district.

Panelist Larry A. Landis graduated for IU School of Law-Indianapolis in 1973. His first job as a lawyer was as a deputy state public defender. He was appointed the training director of the Indiana Public Defender Council when it was created in 1977. He has been the Executive Director since 1980. He has conducted over 250 seminars and workshops, published six manuals and numerous articles on criminal defense and has lectured extensively nationally on a variety of criminal justice topics. Larry drafted the legislation

that created the Indiana Public Defender Commission in 1989 and serves as an advisor to the Commission.

Panelists shared their experiences with the Interstate Compact for Adult Offender.

### **Award Presentations**

*Executive Chair Award* presented to Commissioner Jane Seigel (IN) by Chairman M. Gilliam (OK).

*Executive Director Award* presented to DCA John Gusz (NJ) by Executive Director H. Hageman.

*Peyton Tuthill Award* presented to Victims' Advocate Suzanne Elwell (MN) in recognition of her service and commitment to victims by Commissioner J. Carlson (MN) and Ex-Officio P. Tuthill (NOCV).

Chairman M. Gilliam (OK) recognized those who preserve the *Spirit of the Compact* and expressed appreciation for their work: Heather Fowler (OR), Jim Warren (OR), Leslie Lee (CO), Mary Scott (AR), and Brian Spence (MI).

### **Region Chairs Recognition**

Chairman M. Gilliam (OK) recognized region chairs for their service and dedication: Commissioner Scott McCaffery (ME) as the East Region Chair, Commissioner Chris Norman (AL) as the South Region Chair, Commissioner Cheryl Marlow (HI) as the West Region Chair, and Commissioner Cathy Gibson-Beltz (NE) as the Midwest Region Chair.

Chairman M. Gilliam (OK) announced that the next Annual Business Meeting would take place on August 25-27, 2014 in Oklahoma City, OK.

### **Oath of Region Chairs**

Chairman M. Gilliam (OK) administered the Oath of Chairs to newly elected chairs: Commissioner E. Gonzales (West Region Chair) and Commissioner M. Potteiger (East Region Chair).

### **Call to the Public**

Chairman M. Gilliam (OK) opened floor to the public comments. No comments received.

### **Adjourn**

**Commissioner E. Gonzales (NM) made a motion to adjourn. Commissioner S. Andrews (OH) seconded.**

**Motion passed.**

The Commission adjourned at 4:15 pm EDT.