

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

**March 12, 2004
2:00 pm CT**

- David Guntharp called meeting to order and welcomed Commissioners at 2:10 p.m. Guntharp cautioned Commissioners that the meeting would be held with open lines unless the noise becomes a problem, which at that time the lines would be muted. Guntharp then asked Don Blackburn to call the roll.
- Don Blackburn announced that the call was being recorded and took a roll call.

Alabama. – Not Present

Alaska. – Present (Lei Tupou – Tardy)

Arizona. – Present (Mary Schamer)

Arkansas. – Present (David Guntharp)

California. – Present (Sharon Jackson)

Colorado. – Present (Sally Skiver)

Connecticut. – Not Present

Delaware – Present (Alan Grinstead)

District of Columbia. – Present (Paul Quander)

Florida – Present (Barry Groves)

Georgia – Present (Joe Kuebler)

Hawaii. – Present (Ron Hajime)

Idaho. – Present (Dave Nelson)

Illinois. – Present (Vivian Williams)

Indiana. – Present (Jane Seigel)

Iowa. – Present (Lowell Brandt)
Kansas – Present (Robert Sanders)
Kentucky – Present (John Rees)
Louisiana – Present (Genie Powers)
Maine – Present (Wayne Theriault)
Maryland – Present (Judith Sachwald)
Michigan – Present (Dennis Schrantz)
Minnesota – Present (Ken Merz)
Missouri – Present (Denis Agniel)
Montana – Present (Mike Ferriter)
Nebraska – Not Present
Nevada – Present (Amy Wright)
New Hampshire – Present (Kathleen McCormack)
New Jersey – Present (John D’Amico)
New Mexico – (Edward Gonzales)
New York – Present (Ed Mruczek)
North Carolina – Present (Sherry Pilkington)
North Dakota – Present (Warren Emmer)
Ohio – Present (Harry Hageman)
Oklahoma – Present (Milt Gilliam)
Oregon – Present (Ginger Martin)
Pennsylvania – Present (Ben Martinez)
Rhode Island – Present (A.T Wall)
South Carolina – Present (Ann Hyde)
South Dakota – Present (Ed Ligtenberg)
Tennessee – Present (Jim Cosby)
Texas – Present (Kathie Winckler)
Utah – Present (Leo Lucey)
Vermont – Present (Jackie Kotkin)
Washington – Present (Doreen Geiger)

West Virginia – Present (Henry Lowery)

Wisconsin – Present (Bill Rankin)

Wyoming – Present (Les Pozsgi)

- The roll call ascertained 44 states present, establishing a quorum.
- David Guntharp advised the commission that Virginia passed the legislation leaving two states that are not in the Compact at this time. Guntharp established some rules of what would be accomplished. Explaining that the Ad Hoc Committee was appointed because of a split in terms on the Misdemeanor Rule. Guntharp asked Jim Cosby from Tennessee to explain in terms of Ad Hoc Committee and the work that they did, and then for Commissioner Martinez to explain the minority report. Guntharp indicated the three options possible from this meeting; passing the rule with the understanding that it can be tweaked in the fall, postpone the rule until the fall or to table.
- Harry Hageman from Ohio asked to be recognized and put a motion out that the debate on the amendment would be limited to 30 minutes. Judith Sachwald, MD seconded.
- Martinez from Pennsylvania asked to be recognized and opposed the motion, not seeing the purpose of it. Thinking it could possibly inhibit proper deliberation and proper discussion of such a monumental rule.
- Doreen Geiger from Washington State asked to be recognized. Cautioning the Commission that conversation tends to go in a circular process in which nothing moves forward, and she therefore supported the motion to limit debate to 30 minutes.
- Ben Martinez from PA asked to be recognized again, Harry Hageman stated that he was out of order. Rick Masters said that it is within the discretion of the Chair to ask for all other comments from other commissioners before returning to Commissioner Martinez.
- Ed Mruczek, NY spoke against the motion stating the issue was too controversial and sensitive and it would be unfair and unethical to limit discussion to only 30 minutes.
- Dennis Schrantz, MI spoke for the motion stating that if the Commission can't get issues discussed intelligently in 30 minutes, then a motion needs to be made to take another approach.
- John Rees, KY agreed with the motion, and seconded the sentiment just put forward.

- Guntharp recognized Martinez again. Martinez thought the concerns expressed by Washington were legitimate. But felt that Guntharp, as Chair and Moderator of this process, could determine if conversation became circular in the arguments, or even crossed into personal bounds.
- Vivian Williams, IL supported the amendment for the 30-minute limitation.
- Rick Masters advised Guntharp that this will take a two-third vote of the majority to adopt. Guntharp asked D. Blackburn to do a roll call.

Alaska -

Arizona - No.

Arkansas - Yes.

California – Yes.

Colorado –

Connecticut –

Delaware – No.

District of Columbia - Yes.

Florida - Yes.

Georgia - Yes.

Hawaii - Yes.

Idaho - Yes.

Illinois - Yes.

Indiana - Yes.

Iowa - Yes.

Kansas - Yes.

Kentucky - Yes.

Louisiana - Yes.

Maine – No.

Maryland - Yes.

Michigan - Yes.

Minnesota - Yes.

Missouri - Yes.

Montana - Yes.

Nebraska - Yes.

Nevada - Yes.

New Hampshire - Yes.

New Jersey - No.

New Mexico - No.

New York - No.

North Carolina - Yes.

North Dakota - Yes.

Ohio - Yes.

Oklahoma - Yes.

Oregon - Yes.

Pennsylvania - No.

Rhode Island - Yes.

South Carolina - Yes.

South Dakota - Yes.

Tennessee - Yes.

Texas - No.

Utah - Yes.

Vermont - Yes.

Washington - Yes.

West Virginia - No.

Wisconsin - Yes.

Wyoming – Yes.

- Rick Masters announced 36, “Yes” and 9 “No’s.” The motion carried.
- Kathie Winckler, TX asked for a point of clarification if the total debate would be limited to 30 minutes or just the debate on each issue to 30 minutes. Guntharp clarified that it was for the motion.

- Jim Cosby, TN gave his report from the Ad Hoc committee. The Ad Hoc Committee met three times to produce the compromise language for the “misdemeanor rule”. In addition to that, a survey was conducted and results were made available on the Web Compact site. The Ad Hoc Committee also discussed the compliance issues regarding the misdemeanor rule. And then it was unanimous agreement that among the committee members that the Executive Committee should adopt the position that includes individual states efforts to comply misdemeanor rule. And that should be taken into consideration when those compliance issues are discussed, or when those issues are raised. The committee also approved and recommended that the Executive Committee use an expedited action to take on this proposed rule.
- Benjamin Martinez, PA gave his report from the minority. Stating Pennsylvania’s position that convening the Commission body for the promulgation of one general provision is both impractical and could establish dangers and unintended precedent. Another concern was that the recommendation that came out of the Ad Hoc Committee was basically gleaned from the Misdemeanor survey results. The minority reports’ main opposition is to the process by which the commission is going about this amendment.
- Kathie Winckler, TX gave a report of the public hearing. The public hearing was held in Lexington, Kentucky, Winckler presided over that hearing by telephone from Houston. The hearing had no speakers at it and no comments received - or no persons appeared in person to make any comments. The meeting convened at 12 o’clock Eastern, and adjourned at 12:15 Eastern without having had anyone come to speak. In addition to the public hearing the Commission solicited public comments. The first was received from the PPCAA President which was more in the line of an explanatory letter to the Compact Administrators and Deputy Compact Administrators. The next comment was received from Mary Achilles who is the Victim’s Advocate for the Commonwealth of Pennsylvania. The next remarks were received from Ben Martinez speaking for the State Council of the Commonwealth of Pennsylvania. Comments were also received from the Victim’s Representative to the Interstate Commission, Pat Tuthill. Finally, Michigan recommended amendment to the rules that are proposed for amendment.

- Warren Emmer, ND made a motion to close the mics and follow the procedures that were first planned to do. Harry Hageman, OH seconded. Martinez, PA asked for clarification on process with muted lines. Don Blackburn outlined the procedure for using the phone system with muted lines. Guntharp brought it to a vote and asked for a roll call.

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Arizona - No.

Arkansas – No.

California - Yes.

Colorado – No.

Delaware - Yes.

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Georgia - No.

Hawaii - Yes.

Idaho - Yes.

Illinois - No.

Indiana - No.

Iowa - No.

Kansas – Yes.

Kentucky - Yes.

Louisiana - Yes.

Maine - No.

Maryland - Yes.

Michigan – Yes

Minnesota - Yes.

Missouri - No.

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Nebraska - Yes.

Nevada - Yes.

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New Jersey - No.

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Ohio - Yes.

Oklahoma - Yes.

Oregon - Yes.

Pennsylvania - No.

Rhode Island - No.

South Carolina - No.

South Dakota - Yes.

Tennessee - Yes.

Texas - Yes.

Utah - No.

Vermont -

Washington - Yes.

West Virginia - No.

Wisconsin - Yes.

Wyoming - Yes.

- D. Blackburn announced to the Chairman the votes, 23 “Yes”, 22 “No”. Guntharp called for the lines to be muted.
- Guntharp asked Commissioner. Winckler to read the rule?
- Benjamin Martinez, PA asked for a point of clarification as to why we needed two-thirds for the other motion and majority for this motion. R. Masters answered that rules specified that the motion dilemma to debate requires a two-thirds majority. This is a manner in which the debate will be conducted, and there’s no indication of a 2/3 majority.

- Kathie Winckler, TX read the rule. Section 2.105: Misdemeanants: A) An offender who has been sentenced for a misdemeanor offense in the (sending) State shall be eligible for transfer under the Compact provided that all other criteria for transfer as specified in Section 3.101 have been satisfied. And provided further that the offender: one, is subject to one year or more supervision; two, is subject to a sentence greater than six months of incarceration upon revocation of probation or other community supervision; and three, has not been convicted of or placed under supervision for a minor offense. B) In this section, minor offense does not include: 1) An offense in which a person - a victim has incurred bodily injury; 2) A second or a subsequent misdemeanor offense of driving while impaired by drug or alcohol; and 3) A sexual offense. A - in this section, sexual offense means an offense which requires that a person register as a sex offender in a (sending) State.
- David Guntharp asked for a motion for the rule as the commissioner read it.
- Benjamin Martinez, PA asked for clarification, if ex-officio members, specifically Pat Tuthill, would have an opportunity to provide verbal input during the meeting. Guntharp responded that she's not a commissioner and she had an opportunity at the public hearing and sent comments in writing.
- Warren Emmer, ND made the motion to adopt the rule. Lowell Brandt, IA seconded. Guntharp asked for anyone to speak for or against.
- Ginger Martin, OR spoke in favor of the amendment. Oregon has just reduced funding for felons by 19% in the coming fiscal year. Misdemeanants are not funded, and they aren't going to be supervised. Unsupervised, Oregon misdemeanants will travel to other States because there's no supervision to transfer. Misdemeanants from other States will not be supervised in Oregon. The only thing that's transferred is the liability.
- Benjamin Martinez, PA was recognized and stated for the record, his with not having Pat Tuthill available, one of our ex-officio member, but also the other ex-official members Judge - Chief Justice (Van Dewalt). Guntharp reminded Martinez that would be contrary to the procedure set up in Little Rock to have anyone other than commissioners at the table.

- Ann Hyde, SC asked to make an amendment stating her concern for victims. Hyde and her state have big problems with this rule. She proposed in the spirit of compromise an amendment, in (b1) that we strike the two words, bodily injury, and insert direct or threaten to physical or psychological harm. In this instance, including that there could be a possibility of direct or threatened. Not just physical, a mental-emotional, because there are those types of offenses.
- Judith Sachwald, MD seconded the motion for the amendments from South Carolina. Guntharp asked for anyone to speak for or against amendment.
- John D' Amico spoke that this would make a terrible rule somewhat less terrible and supported the amendment.
- Vivian Williams, IL stated she was adamantly opposed to excluding any misdemeanor for supervision and having given this serious consideration, she supported the amendment as proposed by Commissioner Hyde.
- Dennis Schrantz, call the question. Rick Masters advised that the body would have to vote on the question to see if they are ready to vote. There's no debate on a motion to "Call the Question," and if it's approved, then the second - then the amendment will be considered.
- Ed Ligtenburg, SD supported the motion. Guntharp called the vote clarifying that it was a vote to bring the amendment to a vote.

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Missouri - Yes.

Montana - Yes.

Nebraska - Yes.

Nevada - Yes.

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New Jersey - Yes.

New Mexico - Yes.

New York - Yes.

North Carolina - Yes.

North Dakota - Yes.

Ohio - Yes.

Oklahoma - Yes.

Oregon - Yes.

Pennsylvania - Yes.

Rhode Island - Yes.

South Carolina - Yes.

South Dakota - Yes.

Tennessee - Yes.

Texas - Yes.

Utah - Yes.

Vermont -

Washington - Yes.

West Virginia - Yes.

Wisconsin - Yes.

Wyoming - Yes

- Guntharp asked for a roll call voting on the amendments.

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Wyoming - Yes.

- Donald Blackburn announced that the amendment carries; back to the main motion. Guntharp asked for discussion on the main motion.
- Kathie Winckler, TX was recognized to speak on the motion and rectified an error she made neglecting to read comments submitted by New York. New York State opposes the proposed rule change, and it says that the change is the though or indirect contravention to the spirit and intent of the language of the new Compact at - that was to ensure improved tracking offenders and that - and to address enforcement issues experienced with the old Compact.

- Kathie Winckler, TX asked to be recognized again and speak against the motion stating that it is the opinion of the majority of the chief and of the Compact administrator that Texas support the supervision of all misdemeanants without exclusion. Also stating that it is troubling that there may be misdemeanants who are domestic violence offenders or who have had previous DWIs that are not noted allowing for the possibility of not having under supervision people who are inherently dangerous and should be under supervision. Jurisdiction has a right to know which offenders are in its jurisdiction, the only way to know that is for the transfer to come through the Interstate Compact Office.
- Jim Cosby, TN was recognized and stated that the commission must consider the actual ability of this Compact to function. Putting something in place that a majority of states can live with and can comply with. Cosby believed that the amendment made by South Carolina was an effective amendment.
- Harry Hageman, OH was recognized and agreed with Tennessee. Hageman included that those who oppose the amendment have stated their case in the strongest possible way, and that it was also true for those who are in favor of the amendment.
- Edward Mruczek, NY was recognized and thanked Commissioner Winckler for correcting the over cite. He also reminded the other commissioners that they ought to take into consideration that certain media - certain misdemeanor cases become media cases. And if states were willing to deal with those, they would be in the much better position having an individual under supervision, and exercising some control over those cases.
- David Guntharp recognized Pat Tuthill and allowed her to speak.
- Pat Tuthill stated that she understood the issue of compliance, budget and financial constraint. Tuthill included that this rule on misdemeanors is one that has been very contemptuous and debatable. Tuthill included that there are many offenders who are not going to be included and many potential victims as the result of this rule. Tuthill strongly believed in waiting until October.
- Benjamin Martinez, PA asked for a point of clarification on if the rule as proposed to be amended only includes the instant offense not taking into consideration any prior arrest history. Ann Hyde, SC clarified that the amendment is talking of the instant offense.

- David Guntharp called for the vote on the rule as it was amendment stating that if it's a yes vote, then the rule will pass.

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Tennessee - Yes.

Texas - No.

Utah - Yes.

Vermont -

Washington -

West Virginia - Yes.

Wisconsin - No.

Wyoming -

- Motion carried 25 to 15.
- David Guntharp asked K. Winckler to read the Supervision Rule. Section 1.101: Definitions. Kathie Winckler read, as used in these rules, unless the context clearly requires a different construction. (Double A) supervision, means the authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community.

- Judith Sachwald, MD seconded the motion stating that this was an issue she raised at the close of the meeting in November, including that these proposed changes address all of our concerns and the concerns that she heard from some of the other commissioner.
- David Guntharp clarified that was a motion from Maryland.
- Warren Emmer, ND seconded Maryland's motion.
- Guntharp called for a vote on the motion of the supervision rule definition.

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Tennessee - Yes.

Texas - No.

Utah - Yes.

Vermont -

Washington - Yes.

West Virginia - Yes.

Wisconsin - Yes.

Wyoming -

- Motion carried 35 “yes” 5 “no”.
- At the direction of the Chair, K. Winckler read the third motion for rule Section 2.106: Offenders Subject to Deferred Sentences. Offenders subject to deferred sentences are eligible for transfer of supervision under the same eligibility requirement, terms and conditions applicable to all other offenders under this Compact. Person subject to supervision pursuant to a pre-trial intervention program, bail or similar program or who

are under supervision for a minor misdemeanor offense as defined in Section 2.105B are not eligible for transfer under the terms and conditions of this Compact.

- William Rankin moved for approval of the amendment or of the motion. Barry Groves, FL seconded.
- John Rees, KY moved to amend the wordings modified to say “or”, “similar”. Lowell Brandt, IA seconded.
- Kathie Winckler, TX was recognized to speak against the amendment stating that the addition of the word “similar”, does not offer a lot to clear up this subject. In the process of drafting and passing the rules that the deferred sentences are - means something different in many different states. It was her belief that it would be a bad idea at this point to entertain a change like this that wasn't fully thought through to see how it fits in with other terminologies.
- Guntharp called for a vote on the amendment.

Alaska - No.

Arizona - No.

Arkansas - No.

California -

Colorado - No.

Delaware - No.

District of Columbia - No.

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Georgia - No.

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Idaho - No.

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South Carolina - No.

South Dakota - No.

Tennessee - No.

Texas - No.

Utah - No.

Vermont -

Washington -

West Virginia - No.

Wisconsin - No.

Wyoming - No.

- Motion lost 41 to 1.

- David Guntharp called for a roll call on the motion on the offender subject to deferred sentences.

Alaska - Yes

Arizona - No.

Arkansas - Yes.

California -

Colorado - No.

Delaware - Yes.

District of Columbia - Yes.

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Oklahoma - Yes.

Oregon - Yes.

Pennsylvania - No.

Rhode Island - Yes.

South Carolina - No.

South Dakota - Yes.

Tennessee - Yes.

Texas - Yes.

Utah - No.

Vermont -

Washington State -

West Virginia - Yes.

Wisconsin - Yes.

Wyoming - Yes.

- Motion carried 29 to 13.
- David Guntharp asked if there was any other business. Motion was made to adjourn. Guntharp thanked everyone for their outstanding job. Winckler seconded motion to adjourn.