



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

January 28, 2019

WebEx

Members in Attendance:

1. Doug Clark (SD), Chair
2. Dori Littler (AZ), Vice chair
3. Jenny Nimer (FL)
4. Chris Moore (GA)
5. Brody Burks (TX)
6. Joselyn Lopez (WI)
7. Tracy Hudrlik (MN), Ex-Officio
8. Margaret Thompson (PA), Ex-Officio
9. Pat Odell (WY), Ex-Officio
10. Rick Masters, Legal Counsel

Members not in Attendance:

1. Robert Maccarone (NY)
2. Linda Rosenberg (PA)
3. Tim Strickland (FL), Ex-Officio

Guests:

1. Matt Charton (NY)
2. Heather Clark (TX)
3. Tina Balandran (TX)

Staff:

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Policy and Operations Director
3. Barno Saturday, Logistics and Administrative Coordinator
4. Mindy Spring, Administrative and Training Coordinator
5. Xavier Donnelly, ICOTS Project Manager
6. Kevin Terry, Website Analyst

Call to Order

Chair D. Clark (SD) called the meeting to order at 2:00 pm ET. Six voting members were present, constituting a quorum.

Approval of Agenda and Minutes

Chair D. Clark (SD) suggested tabling a discussion on Rules 5.102 (b) & 5.103-1 (a) proposed by the Midwest Region. The region will meet on Wednesday to discuss unintended consequences of these amendments.

Commissioner J. Nimer (FL) moved to approve the agenda as amended. Commissioner B. Burks (TX) seconded. Agenda approved.

Commissioner D. Littler (AZ) moved to approve the minutes from the November 27, 2018 meeting as presented. Commissioner J. Nimer (FL) seconded. Minutes approved.

Discussion

The committee reviewed an amendment to Rule 3.101-1 (a) (1) & (a) (2) proposed by the West Region. Executive Director A. Lippert informed the committee that this proposal was drafted as a result of a disagreement between two West Region states on interpretation of Rule 3.101-1, in particular the definition of deployed versus stationed. Based on the discussion in other regions, states have not experienced issues with the interpretation of this part of rule. However, the East Region suggested proceeding with a rule change because deployed and stationed had different meanings. The West Region put together a proposal replacing ‘deployed by the military’ with ‘under orders.’

Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, 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 is under orders in ~~has been deployed by the military to~~ another state, shall be eligible for reporting instructions and transfer of supervision. A copy of the military orders ~~or other proof of deployment for the military member~~ shall be provided at the time of the request.
 - (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 is under orders in ~~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. A copy of the military orders ~~or other proof of deployment for the military member~~ shall be provided at the time of the request.

Commissioner D. Littler (AZ) moved to forward and recommend the approval of proposal to Rule 3.101-1(a)(1)&(a)(2) submitted by the West Region. Commissioner B. Burks (TX) seconded. Motion passed.

The committee reviewed an amendment to Rule 3.101-1 (a) (5) proposed by the West Region. Commissioner D. Littler (AZ) noted that the amendment adds clarity to the rule.

Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, 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:
- (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 or acceptance; and

Commissioner D. Littler (AZ) moved to forward and recommend the approval of proposal to Rule 3.101-1 (a) (5) submitted by the West Region. Commissioner J. Nimer (FL) seconded. Motion passed.

The committee reviewed an amendment to Rule 3.103 (a) proposed by the West Region. Chair D. Clark (SD) stated that the Midwest Region referred a concept of the same rule change. The amendment addresses the Midwest Region's concerns.

Commissioner C. Moore (GA) agreed that there was a problem with interpretation of this rule. He spoke against the West Region proposal stating that every state utilized its own procedures for handling a parole or probation violation and the Commission should not mandate the states to specifically use the revocation hearing.

Commissioner D. Littler (AZ) noted that the West Region's intent was to narrow down the offenders who *automatically* qualified to return to the receiving state. She added that states did not have to use this rule and this language was meant to narrow the scope for automatically qualified offenders.

Commissioner B. Burks (TX) inquired about possible unintended consequences of the proposal.

DCA P. Odell (WY) spoke for the West Region proposal stating that it has been a chronic problem and states need to be aware of how they address these violation.

DCA T. Hudrlik (MN) expressed her concern that specifying "only revocation" would inhibit some states that might use different terminology.

The committee removed ~~violation or~~ from Rule 3.103 (a)(1) as recorded in red below for the purpose of consistency.

Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a ~~violation or~~ revocation proceeding by a court, paroling authority or other criminal justice agency following the retaking of the offender from the receiving state

(a)

- (1) A request for reporting instructions for an offender who was living in the receiving state at the time of initial sentencing or after disposition of a ~~violation or~~ revocation proceeding by a court, paroling authority or other criminal justice agency following the retaking of the offender from the receiving state, shall be submitted by the sending state within 7 business days of the initial sentencing date, disposition of violation, revocation proceeding or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of initial sentencing or disposition of ~~violation or~~ revocation proceeding. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

Commissioner D. Littler (AZ) moved to forward and recommend the approval of proposal to Rule 3.103 submitted by the West Region. Commissioner D. Clark (SD) seconded. Motion passed with three states voting for the amendment (AZ, FL & SD) and two voting against (TX & WI). Georgia abstained from the vote.

The committee reviewed an amendment to Rule 4.109(c)(3) proposed by the West Region. Commissioner D. Littler (AZ) stated that the amendment codifies what many states had already been doing. She noted the importance of providing a copy of the sending state's warrant to the receiving state.

Chair D. Clark (SD) noted that this amendment affected violation reports requiring retaking and necessitated an ICOTS change.

Commissioner D. Littler (AZ) stated that the West Region only anticipated changes to the training curriculum and not to ICOTS. She added that the functionality was already in the system and people had already been attaching warrants to their responses.

Executive Director A. Lippert stated that without the ICOTS enhancement there would be no way to audit the rule. She recommended proceeding with the proposal in a measurable form.

DCA T. Hudrlik (MN) cautioned the committee that keeping a copy of a warrant in ICOTS system could lead to unintended consequences.

Rule 4.109 Violation report(s) requiring retaking

(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 by the receiving state.
- (2) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion date.
- (3) The sending state shall provide a copy of the warrant, when one is issued or required, to the receiving state per Rule 2.104 (a.)

Commissioner B. Burks (TX) moved to forward and recommend the approval of proposal to Rule 4.109 (c)(3) submitted by the West Region and request a statement of work from Appriss for ICOTS modification. Commissioner D. Littler (AZ) seconded. Motion passed.

The committee reviewed an amendment to Rule 4.111 (a) proposed by the Midwest Region. DCA T. Hudrlik (MN) stated that this rule amendment aligns Rule 4.111(a) and Rule 5.101-1 to match the eligible returns language. She noted that Rule 4.111 was not amended when Rule 5.101-1 was adopted. The way rule 4.111(a) is currently written suggests that an offender cannot return to the sending state if charged with any new offense, not just felonies and violent crimes. This interpretation leads to confusion when requesting and responding to reporting instructions.

Rule 4.111 Offenders returning to the sending state

- (a) For an offender returning to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent ~~criminal offense~~ felony or violent crime in the receiving state. The receiving state shall provide the sending state with the reason(s) for the offender's return. The offender shall remain in the receiving state until receipt of reporting instructions.

Commissioner D. Littler (AZ) moved to forward and recommend for approval of proposal to Rule 4.111 (a) submitted by the Midwest Region. Commissioner C. Moore (GA) seconded. Motion passed.

The committee reviewed an amendment to Rule 5.103 (d) proposed by the West Region. Commissioner D. Littler (AZ) informed the committee that the proposal clarified the receiving state's responsibility to serve warrants issued by the sending state for retaking. When offenders are not located, the receiving state must follow absconder protocol in Rule 4.109-2. She added that no impact to ICOTS was expected, the states should use addendums to communicate with other states and alleviate the delay.

Training Coordinator M. Spring stated that the receiving states should use existing addendums to report custody status when offenders are arrested for retaking.

Rule 5.103 Offender behavior requiring retaking

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

Commissioner D. Littler (AZ) moved to forward and recommend the approval of proposal to Rule 5.103 (d) submitted by the West Region. Commissioner C. Moore (GA) seconded. Motion passed.

The committee reviewed an amendment to Rule 5.103-1 (a) proposed by the West Region. The amendment establishes a timeframe to issue a warrant for an absconder within 15 business days of Violation Report receipt. Commissioner D. Littler (AZ) noted that the current language of "upon receipt" was a mandate that was difficult to comply with, especially with probation cases. She suggested establishing a set timeframe.

Commissioner B. Burks (TX) supported the amendment to the rule. He expressed his concern whether the 15 business day timeframe worked the best for this amendment. He looks forward to Commission's comments on this matter.

Rule 5.103-1 Mandatory retaking for offenders who abscond

- (a) ~~Upon~~ Within 15 business days of receipt of an absconder violation report and case closure, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

The committee amended the proposal by adding s to day as recorded in red above.

Commissioner B. Burks (TX) moved to forward and recommend the proposal to Rule 5.103-1 (a) as amended. Commissioner J. Lopez (WI) seconded. Motion passed.

Old Business

The committee finalized its 2019 committee goals:

- Incorporate evidenced based practices into rule making and decision making.
- Present rule proposals for managing sex offender transfers based on national feedback
- Prepare rule proposals for the Annual Business Meetings.
- Evaluate effectiveness of rules related to victim notification per ABM motion

The committee will meet via teleconferences in February and March prior to its face-to-face meeting on April 9, 2019.

Chair D. Clark (SD) stated that the Sex-Offender Rules workgroup met in January and finalized its draft of Rule 3.101-3. He added that the workgroup's version was drafted to address the specific concerns provided to the Rules Committee by the Executive Committee and the regions earlier this year. The committee will discuss the proposal at its face-to face meeting in April.

Chair D. Clark (SD) added that the committee will discuss the effectiveness of rules on victim notification at its March or April meeting.

Adjourn

Commissioner B. Burks (TX) moved to adjourn. Commissioner C. Moore (GA) seconded.
The meeting adjourned at 3:32 pm ET.