



## Interstate Commission for Adult Offender Supervision

### Rules Committee Meeting MINUTES

April 9, 2019

The Brown Hotel, Louisville, KY

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#### **Members in Attendance:**

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

#### **Members not in Attendance:**

1. Joe Winkler (FL)
2. Linda Rosenberg (PA)
3. Brody Burks (TX)

#### **Guests:**

1. Nahale Kalfas (NC)

#### **Staff:**

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Policy and Operations Director
3. Mindy Spring, Administrative and Training Coordinator

#### **Call to Order**

Chair D. Clark (SD) called the meeting to order at 8:00 am ET. Five voting members were present, constituting a quorum.

#### **Approval of Agenda and Minutes**

**Commissioner D. Littler (AZ) moved to approve the agenda as presented. Commissioner R. Maccarone (NY) seconded. Agenda approved.**

**Commissioner J. Lopez (WI) moved to approve the minutes from the February 25, 2019 meeting as drafted. Commissioner C. Moore (GA) seconded. Minutes approved.**

#### **Discussion**

*Proposal to Rule 1.101 (new definition of reside) & 2.110 proposed by the Midwest Region:* DCA T. Hudrlik (MN) provided a summary of the Midwest's region discussion regarding the proposal. The proposal originated from a disagreement with the DCA from Kansas and a Kansas

attorney who interpreted the current rule of ‘relocate’ to mean that the Compact Rules only applied to offenders in the process of moving to another state, not those who had already been living in the receiving state.

Executive Director A. Lippert expressed concerns of the Commission drafting amendments to rules derived from a single instance or case as well as that the proposed language may result in more confusion and cause unintended rejections of transfer requests.

Legal Counsel R. Masters agreed indicating the current rules and definition of ‘relocate’ were sufficient and noting that adding a definition of ‘reside’ to the eligibility Rule 2.110 could cause issues, if the offender decides to move to a new ‘primary place of residence’ during the investigation or was under supervision in the receiving state.

Commission D. Littler (AZ) noted commissioners should be educated that it was bad practice to propose rules based on a single instance or one case.

DCA M. Thompson (PA) stated that confusion would likely occur with definition of ‘reside’ and ‘resident’ as defined in the rules.

**Commissioner D. Littler (AZ) moved to request the Midwest Region to withdraw its proposal to Rule 1.101 (new definition of reside) & 2.110 and request ICAOS Legal Counsel to draft a justification for such action. Commissioner C. Moore (GA) seconded. Motion carried unanimously.**

*Proposal to Rule 3.101-3 proposed by the Rules Committee’s Sex-offender Workgroup:* Chair D. Clark (SD) summarized the work the committee had done in the past year to craft this proposal and reminded the committee members that a new definition of ‘sex offender’ had already been approved in October 2018.

Commissioner D. Littler (AZ) noted the sex-offender workgroup considered and incorporated into proposal the input provided by Commission members. She added that the new proposal also provided clarity to how the transfer of sex offenders should be handled in the transfer process, reporting instructions, and when the offender was under supervision in the receiving state. The new definition approved by the Rules Committee in October 2018 will stop the debate states encounter when determining registration requirements in the receiving state, when not required to register in the sending state, as well as ensure states are treating incoming sex offenders like their own in regards to placement.

DCA T. Hudrlik (MN) indicated the proposal should streamline the current process and prevent transfer delays. It does not prevent the receiving state to require registration.

Commissioner R. Maccarone (NY) offered minor changes to the title of Rule 3.101-3. The committee decided to adjust as proposed.

Chair D. Clark (SD) indicated sections (b) and (c) were revised to distinguish what was needed for an investigation and what was needed for supervision of sex offenders.

Commissioner R. Maccarone (NY) inquired about the language ‘If available, unless distribution is prohibited by law’ and items noted in section (c).

DCA T. Hudrlik (MN) expressed concerns of states not providing law enforcement reports and risk and need assessments until potentially 30+ days after acceptance. She added that these factors may impact the level of supervision and registration requirements affecting the decision of offender’s transfer.

DCA T. Strickland (FL) noted that in Florida, offenders were subject to new charges for failing to register, if the home plan was not approved ahead of time.

DCA T. Hudrlik (MN) indicated the proposal was especially beneficial for those cases in which the sex offense was not the instant offense for which the offender was being supervised. Many times such records were old and unattainable.

Commissioner D. Littler (AZ) stated that the proposal helps receiving states to treat incoming sex offenders the same as their own and to conduct its own assessments. As far as imposed conditions of supervision, the application for transfer did not allude offenders would receive notice of upcoming imposed conditions prior to their transfer. Offenders can return to a sending state under Rule 4.111.

The committee discussed the sentence used in section (c) concerning ‘if available’ and R. Maccarone’s comments. The committee agreed on the language below and as Rule 3.107 uses the same language in the previous draft, Rule 3.107 (c) will also be amended as part of this proposal.

*If available, the sending state shall provide the documents within 30 calendar days from the date of the request unless distribution is prohibited by law.*

The committee made additional grammatical and syntactical changes to sections (e), (f), and (g).

**Commissioner J. Lopez (WI) moved to include modification to Rule 3.107 (c) as part of the Sex Offender proposal to be presented at the 2019 ABM for Commission vote. Commissioner D. Littler (AZ) seconded.**

**Commissioner R. Maccarone (NY) recommended grammatical changes to Rule 3.107 (a)(1).**

**Commissioner J. Lopez (WI) and D. Littler (AZ) accepted the changes. Motion carried.**

**Commissioner D. Littler (AZ) moved to finalize the proposal and recommend adoption of revised definition of ‘sex offender’ under Rule 1.101, Rule 3.101-3 and 3.107 in regards to the transfer processes for sex offenders. Commissioner C. Moore (GA) seconded. Motion approved.**

### ***Rule 1.101 Definitions***

**“Sex offender”** means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is registered or required to register as a sex offender either in the sending or receiving state or is under sex offender terms and conditions in the sending state and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

***Rule 3.101-3 Transfer of supervision of sex offenders: eligibility and reporting instructions, investigation, and supervision***

- (a) *Eligibility for Transfer*-At the discretion of the sending state a sex offender shall be eligible for transfer to a receiving state under the Compact rules. A sex offender shall not be allowed to leave the sending state until the sending state’s request for transfer of supervision has been approved, or reporting instructions have been issued, by the receiving state. In addition to the other provisions of Chapter 3 of these rules, the following criteria will apply.
- (b) *Application for Transfer and Investigation*-In addition to the information required in an application for transfer pursuant to Rule 3.107, ~~in an application for transfer of supervision of a sex offender~~ the sending state shall provide the following information, if available, to assist the receiving state in the investigation of the transfer request of a sex offender ~~supervising the offender:~~
- (1) ~~(1) All assessment information completed by the sending state; including sex offender specific assessments;~~
  - (2) ~~social history;~~
  - (3) ~~information relevant to the sex offender’s criminal sexual behavior;~~
  - (4) ~~law enforcement report that provides specific details of sex offense;~~
  - (5) ~~(2) victim information if distribution is not prohibited by law~~
    - (A) the name, sex, age and relationship to the offender;
    - (B) the statement of the victim or victim’s representative; and
  - (6) ~~(3) the sending state’s current or recommended supervision and treatment plan.~~
- (c) Additional documents necessary for supervision in the receiving state, such as a law enforcement report regarding the offender’s prior sex offense(s), sending state’s risk and needs score, or case plan may be requested from the sending state following acceptance of the offender. If available, the sending state shall provide the documents within 30 calendar days from the date of the request unless distribution is prohibited by law.
- (d) A sending state shall provide the following for reporting instructions requests submitted pursuant to this section:
- (1) A narrative description of the instant offense in sufficient detail to describe the circumstances, type and severity of offense and whether the charge was reduced at the time of imposition of sentence;
  - (2) Conditions of supervision;
  - (3) Any orders restricting the offender’s contact with victims or any other person; and
  - (4) Victim information to include the name, sex, age and relationship to the offender, if available and if distribution is not prohibited by law.
- (e) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state; except as provided in Rule 3.102 (c).
- (f) *Reporting instructions for sex offenders living in the receiving state at the time of sentencing, transfers of military members, families of military members, employment transfer of the*

*offender or family member, or veterans for medical or mental health services* - Rules 3.101-1 & 3.103 ~~and 3.106~~ apply to the transfer of sex offenders, as defined by the compact, except for the following:

- (1) The receiving state shall ~~have~~ issue reporting instructions no later than 5 business days following the receipt of such a request from the sending state unless similar sex offenders sentenced in the receiving state would not be permitted to live at the proposed residence. ~~to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instructions.~~
- (2) ~~If the proposed residence is invalid due to existing state law or policy, review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instructions.~~
- (3) ~~No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state; except for Rule 3.102 (e).~~

~~(g) Expedited reporting instructions for sex offenders – Rule 3.106 applies to the transfer of sex offenders, as defined by the compact; except, the receiving state shall provide a response to the sending state no later than 5 business days following receipt of such a request.~~

### **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) 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~~ was reduced at the time of imposition of sentence;
  - (2) photograph of offender;
  - (3) conditions of supervision;
  - (4) any orders restricting the offender's contact with victims or any other person;
  - (5) any known orders protecting the offender from contact with any other person;
  - (6) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
  - (7) pre-sentence investigation report, unless distribution is prohibited by law or it does not exist;
  - (8) information as to whether the offender has a known gang affiliation, and the gang with which the offender is known to be affiliated;
  - (9) supervision history, if the offender has been on supervision for more than 30 calendar days at the time the transfer request is submitted;
  - (10) information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.
  - (11) summary of prison discipline and mental health history during the last 2 years, if available, unless distribution is prohibited by law.
- (b) 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. If available, the sending state shall provide the documents within 30 calendar days from the date of the request unless distribution is prohibited by law. ~~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.~~

*Victim Notification Evaluation & Recommendations:* Chair D. Clark (SD) presented the Commission's charge to the committee in regard to victim notification.

At 2018 Annual Business Meeting (ABM), the Commission voted to discontinue use of IVINS and instructed the Rules Committee to evaluate the effectiveness of victim notification and recommend rule changes.

*2018 ABM Motion: Commissioner D. Crook (VT) moved to discontinue the IVINS agreement and instruct the Rules Committee to evaluate victim notification rules and look for other options and solutions needed for this Compact and present it at the next Annual Business Meeting. Commissioner P. Treseler (MA) seconded. Motion carried 42-5.*

DCA T. Strickland (FL) indicated there were inconsistencies in how states interpret the role of the Compact and their responsibility to notify crime victims.

Commissioner R. Maccarone (NY) concurred noting this committee should recommend whether the Commission should regulate notification of victims or clarify that such activities should be left up to each state in accordance with its statutes. He stated that the ABM's motion implied that states want to handle victim notifications within their own statutes and processes. He added that states should be able to use ICOTS to automate their own notifications.

Executive Director A. Lippert provided a summary of activities that occurred after the commission's vote at the ABM as the feasibility for New York, Virginia, and Florida to continue with IVINS or a similar system was explored. As confirmed by the vendor, Appriss, the system contains all states' data and each record has data entered from two or more states, it is not possible to link such a live notification system to data for single states as the data simply cannot be separated. Furthermore, the Commission would need to approve such an integration due to potential legal liabilities, if the data were to initiate inaccurate notifications. She noted that New York's request was a technical request and should not impact decisions made by the Rules Committee in this matter.

Commissioner D. Littler (AZ) provided a historical perspective as Rules 3.108 & 3.108-1 were drafted to assist the sending state with its own notification requirements, and not to establish what a victim is to be notified of or be automatically sent, as these rules were in effect many years before a database existed. Activities noted in current Rule 3.108 (b) already occur through states' use of ICOTS with the exception of (b) (1) (E), issuance of temporary travel permits. Travel permits are not captured in ICOTS as a defined data element. States use Compact Action Requests or fulfill this obligation outside of ICOTS, although there is no way to confirm or measure compliance.

Chair D. Clark (SD) noted Chief Justice R. Barajas, the Commission's Victim Advocate, attended the last Executive Committee and expressed concerns of the Compact absorbing the responsibility to notify victims and mandating specific notifications and methods from a national level.

Executive Director A. Lippert noted the survey conducted last fall clearly indicated states wanted to retain the management of victim notification.

Policy and Operations Director A. Eskridge added that states had access to external data to develop processes for victim notification.

DCA T. Strickland (FL) indicated Florida was only required to notify victims when offenders abscond.

Chair D. Clark (SD) noted it may be outside the scope of the Commission to impose additional requirements on states, but tools already exist within the system. For example, his DCA reviews all transfer requests labeled ‘victim sensitive.’ This committee should determine whether compliance needs to be measured at the level of the victim or at the level of the states and their communication requirements.

Legal Counsel R. Masters agreed the Commission was already complying with the victim notification rule with its use of ICOTS. As stated in the Compact legislation, the Compact’s role lies with controlling offender movement in its protection of victim’s rights. Requiring compact specific victim notifications extends responsibilities and creates a liability concern.

*It is the purpose of this Compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community.*

The committee discussed the misuse of the special status of ‘victim sensitive’ in ICOTS and whether the committee should recommend an enhancement to better explain the definition or recommend removing the victim sensitive indicator in ICOTS.

Commissioner D. Littler (AZ) recommended removing the definition and ICOTS indicator and ensuring section (c) ‘requests for offender information’ be retained as it covers not just direct victims, but anyone asking for information regarding compact offenders.

In addition, the committee reviewed Rule 4.111 that uses the term ‘victim sensitive’ and ways to ensure states notify each other when travel permits are issued. In that discussion, the committee looked at definitions for ‘temporary travel permits’ and ‘travel permits’ noting it was confusing to have both.

**Commissioner C. Moore (GA) moved to remove ‘victim sensitive’ definition and indicator in ICOTS. Commissioner D. Littler (AZ). Motion approved by vote four to one.**

The committee further discussed the inconsistent use of the indicator for ‘victim sensitive’ and liability considerations of implementing rules states cannot comply with. The committee decided the Victim’s Right to be Heard Rule should precede the notification rule.

**Commissioner D. Littler (AZ) moved to forward proposals to Rules 1.101, 3.108, 3.108-1, 3.110 and 4.111 to be presented for adoption as recommended by the Rules Committee. Commissioner C. Moore (GA) seconded. Motion approved unanimously.**

## **Rule 1.101 Definitions**

**"Temporary travel permit"** means, for the purposes of Rule 3.108 (b), the written permission granted to an offender, whose supervision has been designated a "victim sensitive" matter, to travel outside the supervising state for more than 24 hours but no more than 31 calendar days. A temporary travel permit shall include a starting and ending date for travel.

**"Victim sensitive"** means a designation made by the sending state in accordance with its definition of "crime victim" under the statutes governing the rights of crime victims in the sending state. The receiving state shall give notice of offender's movement to the sending state as specified in Rules 3.108 and 3.108-1.

## **Rule 3.108-1 Victims' right to be heard and comment**

(a) When an offender submits a request to transfer to a receiving state or a subsequent receiving state, or to return to a sending state, the victim notification authority in the sending state shall, ~~at the time of notification to the victim as required in Rule 3.108 (a),~~ inform victims of the offender of their right to be heard and comment. Victims of the offender have the right to be heard regarding their concerns relating to the transfer request for their safety and family members' safety. Victims have the right to contact the sending state's interstate compact office ~~at any time by telephone, telefax, or conventional or electronic mail~~ regarding their concerns relating to the transfer request for their safety and family members' safety. The victim notification authority in the sending state shall provide victims of the offender with information regarding how to respond and be heard if the victim chooses.

(b)

(1) Victims shall have 15 business days from receipt of notice required in Rule 3.108-1(a) to respond to the sending state. Receipt of notice shall be presumed to have occurred by the 5th business day following its sending.

(2) The receiving state shall continue to investigate the transfer request while awaiting response from the victim.

(c) ~~Upon receipt of the comments from victims of the offender, the sending state shall consider comments regarding their victim related concerns relating to the transfer request for their safety and family members' safety. Victims' comments shall be confidential and shall not be disclosed to the public. The sending state or receiving state may impose special conditions of supervision on the offender to address victim related concerns, if the safety of the offender's victims or family members of victims is deemed to be at risk by the approval of the offender's request for transfer.~~

(d) The sending state shall respond to the victim no later than 5 business days following receipt of victims' related concerns. ~~comments, indicating how victims' concerns will be addressed when transferring supervision of the offender.~~

## **Rule 3.108-1 Victim notification and requests for offender information**

(a) *Notification to victims upon transfer of offenders-* Within 1 business day of the issuance of reporting instructions or acceptance of transfer by the receiving state, the sending state shall initiate notification procedures to known victims of the transfer of supervision of the offender in accordance with its own laws ~~to known victims in the sending state, and the receiving state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to victims in the receiving state.~~



- (b) The receiving state shall respond to requests for offender information from the sending state no later than the 5th business day following the receipt of the request.
- (c) ~~Notification to victims upon violation by offender or other change in status~~
- (1) ~~The receiving state is responsible for reporting information to the sending state when an offender~~
- ~~(A) Engages in behavior requiring retaking;~~
  - ~~(B) Changes address;~~
  - ~~(C) Returns to the sending state where an offender's victim resides;~~
  - ~~(D) Departs the receiving state under an approved plan of supervision in a subsequent receiving state; or~~
  - ~~(E) Is issued a temporary travel permit where supervision of the offender has been designated a victim sensitive matter.~~
- (2) ~~Both the sending state and the receiving state shall notify known victims in their respective states of this information in accordance with their own laws or procedures.~~

### **New Rule 3.110 Travel Permits**

Notification of travel permits - The receiving state shall notify the sending state prior to the issuance of a travel permit for an offender traveling to the sending state.

### **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 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.
- (b) If the receiving state rejects the transfer request for an offender who has arrived in the receiving state with approved reporting instructions under Rules 3.101-1, 3.101-3, 3.103 or 3.106, the receiving state shall, upon submitting notice of rejection, submit a request for return reporting instructions within 7 business days, unless 3.104 (b) or (c) applies or if the location of the offender is unknown, conduct activities pursuant to Rule 4.109-2.
- (c) Except as provided in subsection (e), the sending state shall grant the request no later than 2 business days following receipt of the request for reporting instructions from the receiving state. The instructions shall direct the offender to return to the sending state within 15 business days from the date the request was received.
- (d) The receiving state shall provide the offender reporting instructions and determine the offender's intended departure date. If unable to locate the offender to provide the reporting instructions, the receiving state shall conduct activities pursuant to Rule 4.109-2.
- (e) ~~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.~~
- (f) 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 (a) and submit a case closure as required by Rule 4.112 (a)(5). The sending state shall notify the receiving state of the

offender's arrival or failure to arrive as required by Rule 4.105 (b) prior to validating the case closure notice.

- (g) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than 10 business days following the offender's failure to appear in the sending state.

Executive Director A. Lippert will provide the proposal to Victim Advocate Chief Justice R. Barajas for comment.

*Warrant Timeframes:* Chair D. Clark (SD) introduced existing rules with a timeframe for issuing warrants and rule proposals drafted by Commissioner D. Littler (AZ). The proposals illustrated ideas for how the rules could enforce such timeframes where one currently does not exist. He also reminded the committee about an idea introduced at the last committee meeting, for the Rules Committee to evaluate other rules where warrants were required, but no timeframe was established.

He indicated with the next two upcoming audits being focused on states' responsibilities and the fact states were starting to dedicate resources to track warrants, the discussion was timely and should provide a lot of useful information for the Rules Committee.

Executive Director A. Lippert described the FY2020 and FY2021 audits adding that what would be considered as 'failing' had not been determined. The Compliance Committee will evaluate the FY20 audit results to set such standards.

Commissioner B. Maccarone (NY) expressed concerns of using the term 'audit' in data collection and examination as well as the lack of resources his state had in managing and tracking warrants.

Executive Director A. Lippert will relay New York's concerns to the Executive Committee at its meeting in May.

Chair D. Clark (SD) inquired whether the Commission should consider various timeframes for different situations (e.g. absconders vs. retaking for behavior requiring retaking). He added that during the Midwest Region discussion, it was apparent that states were not complying with the current warrant rules, particularly on the probation side.

Commissioner D. Littler's proposals set a standard of 30 calendar days.

Commissioner R. Maccarone (NY) noted in New York, courts may take four months to issue and enter a warrant into NCIC.

DCA T. Strickland (FL) noted similar challenges in Florida.

At this time, the committee decided to ensure regions were aware of this discussion and continue to collect feedback on this matter.

*Domestic Violence Offender Concept forwarded by the West Region:* Commissioner D. Litter (AZ) introduced a draft concept on a domestic violence offender approved by the West Region.

The committee decided to request feedback from the other regions and form a workgroup, consisting of both probation and parole experts, to examine the issue in details.

The committee had a brief discussion on last year's topic of 'lifetime supervision' and challenges when similar sentencing did not exist in the receiving state and when such offenders could only be revoked if they committed a new crime.

*Calendar:* The committee decided to set the initial comment period from May 1 until July 1. The committee will schedule two WebEx meetings to finalize the proposals for the 2019 Annual Business Meeting.

### **New Business**

DCA T. Strickland (FL) stated Commissioner Joe Winkler (FL) apologized for his inability to attend due to the current legislative session.

Training Coordinator M. Spring will forward all proposals for the committee's review prior to posting for comments.

### **Adjourn**

**Commissioner C. Moore (GA) moved to adjourn. Commissioner J. Lopez (WI) seconded.**

The meeting adjourned at 4:25 pm ET.