



## INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

### ANNUAL BUSINESS MEETING

October 4-5, 2006

Pointe South Mountain Resort  
7777 South Pointe Parkway  
Phoenix, Arizona

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#### Wednesday, October 4, 2006

##### Call to Order

- The meeting was called to order by Chairman D. Guntharp (AR) at 8:00 a.m. MST. Chairman D. Guntharp (AR) gave welcoming remarks and an overview of the agenda.

##### Roll Call

- Executive Director D. Blackburn instructed the Commission on the Audience Response System (ARS) to be used during voting.
- Roll was called by Executive Director D. Blackburn. 52 of 53 members were present, thereby constituting a quorum.

1. Alabama	Robert Oakes
2. Alaska	Leitoni Tupou
3. Arizona	Dori Ege
4. Arkansas	David Guntharp
5. California	Marilyn Kalvelage
6. Colorado	Jeanene Miller
7. Connecticut	Theresa Lantz
8. Delaware	Karl Hines
9. District of Columbia	Paul Quander, Jr.
10. Florida	R. Beth Atchison

11. Georgia	Joe Kuebler
12. Hawaii	Ronald Hajime
13. Idaho	Kevin Kempf
14. Illinois	Michelle Bushcher
15. Indiana	Jane Seigel
16. Iowa	Jeanette Bucklew
17. Kansas	Jerry Bauer
18. Kentucky	Lelia VanHoose
19. Louisiana	Genie Powers
20. Maine	Wayne Theriault
21. Maryland	Judith Sachwald
22. Massachusetts	Maureen Walsh
23. Michigan	John Rubitschun
24. Minnesota	Ken Merz
25. Mississippi	Lora Cole
26. Missouri	Wanda LaCour
27. Montana	Mike Ferriter
28. Nebraska	James McKenzie
29. Nevada	John Allan Gonska
30. New Hampshire	Mike McAlister
31. New Jersey	John D'Amico
32. New Mexico	Edward Gonzales
33. New York	Francis G. Herman
34. North Carolina	Robert Lee Guy
35. North Dakota	Warren Emmer
36. Ohio	Harry Hageman
37. Oklahoma	Milton Gilliam
38. Oregon	Scott Taylor
39. Pennsylvania	Benjamin Martinez
40. Puerto Rico	Did Not Attend
41. Rhode Island	A. T. Wall
42. South Carolina	D. Ann Clarke
43. South Dakota	Ed Ligtenberg
44. Tennessee	Gary Tullock
45. Texas	Kathie Winckler
46. Utah	Leo Lucey
47. Vermont	Jacqueline Kotkin
48. Virginia	James Camache
49. Virgin Islands	Arline Swan
50. Washington	Doreen Geiger
51. West Virginia	Henry Lowery
52. Wisconsin	William Rankin
53. Wyoming	Les Pozsgi

➤ After roll call Executive Director D. Blackburn recognized ex-officio members:

- Pat Tuthill *Victim's Representative*
- Gerald Vandewalle *Conference of Chief Justices*
- Dave Byers *Conference of State Court Administrators*

- The Commissioners introduced their DCAs and guests:
- |                         |   |
|-------------------------|---|
| 1. Alabama              | Rich Pierce   |
| 2. Arizona              | Mary Schamer  |
| 3. Arkansas             | Linda Strong, David Eberhart and<br>Ann Gedding                         |
| 4. California           | Nancy Sears   |
| 5. Colorado             | Sally Skiver  |
| 6. Connecticut          | Pam Mason   |
| 7. Delaware             | Alan Kerrigan   |
| 8. District of Columbia | Jody Tracey   |
| 9. Florida              | Karen Tucker  |
| 10. Georgia             | Kimberly Jones  |
| 11. Hawaii              | Sid Nakamoto, Max Otani and Miki McGarvey                               |
| 12. Idaho               | Judy Mesick   |
| 13. Indiana             | Robert Champion   |
| 14. Iowa                | Charles Lauterbach  |
| 15. Kentucky            | Angela Tolley and Amanda Burt   |
| 16. Louisiana           | Gregg Smith   |
| 17. Maryland            | Melanie Brock   |
| 18. Massachusetts       | Edward McDermott, Patrick Bradley, John<br>Talbot and Donald Giancioppo |
| 19. Michigan            | Cynthia Johnson   |
| 20. Minnesota           | Rose Ann Bisch  |
| 21. Mississippi         | Jackie Brunson-Cage and Richie Spears                                   |
| 22. Montana             | Cathy Gordon  |
| 23. Nebraska            | Kari Rumbaugh and Joan Fabian   |
| 24. Nevada              | Christopher Grebb and Kim Madras  |
| 25. New Jersey          | Debra Alt and John Gusz   |
| 26. New Mexico          | Roberta Cohen   |
| 27. New York            | Rich Bitel, Sandra Layton, Linda Valenti                                |
| 28. North Carolina      | Anne Precythe   |
| 29. North Dakota        | Chuck Placek  |
| 30. Ohio                | Katrina Ransom  |
| 31. Oregon              | Denise Stitler  |
| 32. Pennsylvania        | Colleen Fickle, Margaret Thompson                                       |
| 33. Puerto Rico         | Carmen Ayala  |
| 34. Tennessee           | Bobby Haliburton  |
| 35. Texas               | Regina Grimes and Bryan Collier   |
| 36. Utah                | Barbara Longmore  |
| 37. Virginia            | Walter Pulliam, Jr. and James Sisk                                      |
- Executive Director D. Blackburn introduced the staff of the National Office.

**Approval of Minutes**

- Motion to approve the January 2006, November 2002 and September 13-14, 2005 meeting minutes made by Commissioner K. Merz (MN), seconded by Vice-Chairman H. Hageman (OH). Kathy Winckler (TX) proposed changes to the minutes. Minutes were approved with the changes proposed.

**Approval of Agenda**

- Agenda approved without objection.

**By-Law Amendment**

- R. Masters, Legal Counsel, presented the proposed By-law amendment to call for making the outgoing Executive Chair an ex-officio member of the Executive Committee. 2/3<sup>rd</sup>'s vote of the Commission is needed to approve the amendment.
- Motion to amend Article VII, Section 3 of the By-Laws made by Commissioner Wayne Theriault (ME), seconded by Commissioner K. Merz (MN). Motion carried fifty-one (51) votes to one (1).

**Sex Offender Ad Hoc Committee**

- Commissioner D. Ege (AZ) gave a summary of the Sex Offender Ad Hoc Committee's activities over the year and encouraged Commissioners to participate on the committee in the coming year.
- Chairman D. Guntharp (AR) announced the meeting between the Information and Technology Committee and representatives from Softscape, Inc. to take place on Wednesday, October 4, 2006.

**Rules Committee Report**

- Commissioner M. Gilliam (OK) recognized the members of the Rules Committee. He then outlined the process for determining the rule amendments to be voted on during the Annual Business Meeting. He reviewed the public hearing held on Tuesday, October 3, 2006 and outlined the process to address comments made during that hearing.
- Motion to approve the orders of the day to include the immediate adoption of Rule 2.109 made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.
- Motion to approve Rule 2.109 to be effective immediately made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried by vote of fifty-one (51) to one (1).

***RULE 2.109 Adoption of rules; amendment***

**Proposed new rules or amendments to the rules shall be adopted by majority vote of the members of the Interstate Commission in the following manner.**

**(a) Proposed new rules and amendments to existing rules shall be submitted to the Interstate Commission office for referral to the Rules Committee in the following manner:**

- (1) Any Commissioner may submit a proposed rule or rule amendment for referral to the Rules Committee during the annual Commission meeting. This proposal would be made in the form of a motion and would have to be approved by a majority vote of a quorum of the Commission members present at the meeting.**
- (2) Standing ICAOS Committees may propose rules or rule amendments by a majority vote of that committee.**
- (3) ICAOS Regions may propose rules or rule amendments by a majority vote of members of that region.**

**(b) The Rules Committee shall prepare a draft of all proposed rules and provide the draft to all Commissioners for review and comments. All written comments received by the Rules Committee on proposed rules shall be posted on the Commission's website upon receipt. Based on the comments made by the Commissioners the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the Commission not later than the next annual meeting.**

**(c) Prior to the Commission voting on any proposed rule or amendment, the text of the proposed rule or amendment shall be published by the Rules Committee not later than 30 days prior to the meeting at which vote on the rule is scheduled, on the official web site of the Interstate Commission and in any other official publication that may be designated by the Interstate Commission for the publication of its rules. In addition to the text of the proposed rule or amendment, the reason for the proposed rule shall be provided.**

**(d) Each proposed rule or amendment shall state—**

- (1) The place, time, and date of the scheduled public hearing;**
- (2) The manner in which interested persons may submit notice to the Interstate Commission of their intention to attend the public hearing and any written comments; and**
- (3) The name, position, physical and electronic mail address, telephone, and telefax number of the person to whom interested persons may respond with notice of their attendance and written comments.**

- (e) Every public hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Interstate Commission from making a transcript or recording of the public hearing if it so chooses.
- (f) Nothing in this section shall be construed as requiring a separate public hearing on each rule. Rules may be grouped for the convenience of the Interstate Commission at public hearings required by this section.
- (g) Following the scheduled public hearing date, the Interstate Commission shall consider all written and oral comments received.
- (h) The Interstate Commission shall, by majority vote ~~of a quorum~~ of the commissioners, take final action on the proposed rule or amendment by a vote of yes or no. ~~or by referring the rule back to the Rules Committee for further action.~~ The Commission shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- (i) Not later than sixty days after a rule is adopted, any interested person may file a petition for judicial review of the rule in the United States District Court of the District of Columbia or in the federal district court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence, as defined in the federal Administrative Procedures Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. In the event that a petition for judicial review of a rule is filed against the Interstate Commission by a state, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.
- (j) Upon determination that an emergency exists, the Interstate Commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. An emergency rule is one that must be made effective immediately in order to--
- (1) Meet an imminent threat to public health, safety, or welfare;
  - (2) Prevent a loss of federal or state funds;
  - (3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
  - (4) Protect human health and the environment.

## PASSED: Effective October 4, 2006

- Commissioner Kathy Winckler (TX) asked Commissioner M. Gilliam (OK) to cite in Rule 2.109 the provision for referring back to the Rules Committee.
- R. Masters, Legal Counsel, responded that according to Roberts Rules of Order anyone in the body may table or bring up an issue. Chairman D. Guntharp (AR) noted that the topic needed to be shifted to New Business.
- Commissioner M. Gilliam (OK) reviewed the Rules that the Committee decided not to bring for a vote at the Annual Business Meeting.
  - Definition of “Special condition”;
  - Definition of “warrant”;
  - Rule 3.108-1;
  - Rule 4.111;
  - Rule 5.106.

### **Rule 1.101**

- Relocate: Motion to adopt the proposed definition made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D’Amico (NJ). Motion carried.
  - Discussion of “90 days”.
  - Discussion of consecutive vs non-consecutive days.

**“Relocate” means to remain in another state for more than 90 45 consecutive days in any 12 month period.**

## PASSED: Effective January 1, 2007

- Commissioner J. Sachwald (MD): point of order. The previous year the voting system showed how each Commissioner voted. Executive Director D. Blackburn disputed this claim and reviewed how the automatic voting system functioned. Commissioner J. Sachwald (MD) asked if the Commission would keep a record of how each Commissioner voted and D. Blackburn noted that it would.

### **Rule 2.110**

- Motion to accept the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D’Amico (NJ). Motion failed.
  - Discussion of definition of “formal”.
  - Discussion of enforcement avenues if rule passed.

### **RULE 2.101 Involvement of interstate compact offices**

- (a) Acceptance, rejection or termination of supervision of an offender under this compact shall be made only with the involvement and concurrence of a state's compact administrator or the compact administrator's designated deputies.
- (b) All **formal** written, electronic, and oral communication regarding an offender under this compact shall be made only through the office of a state's compact administrator or the compact administrator's designated deputies.
- (c) Transfer, modification or termination of supervision authority for an offender under this compact may be authorized only with the involvement and concurrence of a state's compact administrator or the compact administrator's designated deputies.
- (d) Violation reports or other notices regarding offenders under this compact shall be transmitted only through direct communication of the compact offices of the sending and receiving states.

## **FAILED**

### ***Rule 2.105***

- Motion to accept the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion failed.
  - Discussion of "due to its seriousness".
  - Discussion of felony classifications among the states.
  - Discussion that language is difficult for interpretation and enforcement.

### ***RULE 2.105 Misdemeanants***

- (a) A misdemeanor offender whose sentence includes one 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 one 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 second 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.
  - (5) **a drug offense which due to its seriousness originated as a felony and was amended to a misdemeanor.**



**FAILED****Rule 3.101**

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

**RULE 3.101 Mandatory transfer of supervision**

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, if the offender:

- (a) has more than 90 days or an indefinite period of supervision remaining; and
- (b) has a valid plan of supervision; and
- (c) is in substantial compliance with the terms of supervision in the sending state; and
- (d) is a resident of the receiving state; or
- (e) (1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
- (2) can obtain employment in the receiving state or has a **visible** means of support.

**PASSED: Effective January 1, 2007****Rule 3.101**

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

***RULE 3.101-1 Mandatory Transfers of Military, Families of Military, and Family Members Employed;***

- (a) *Transfer of Military members-* An offender who is a member of the military and has been deployed by the military to another state, shall be immediately eligible for reporting instructions and transfer of supervision.
- (b) *Transfer of Offenders who live with family who are members of the military-* An offender who meets the **other** criteria specified in Rules 3.101 **(a), (b), &** (c) and **3-101** (e)(2) and who lives with a family member who

has been deployed to another state, shall be immediately eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state.

- (c) *Employment transfer of family member to another state-* An offender who meets the ~~other~~ criteria specified in Rules 3.101(a), (b), & (c) and 3.101(e)(2), and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, shall be immediately eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state.

**PASSED: Effective January 1, 2007**

*Rule 3.103*

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

***RULE 3.103 ~~Acceptance of the offender by receiving state; exception~~ Reporting Instructions; Probation Exception to Rule 2.110***

~~(a) A sending state shall not allow an offender under supervision in the sending state to relocate to a receiving state without the receiving state's acceptance of the transfer of supervision.~~

~~(b) Exception—~~

~~(a)(1)(A) A sending state may grant a travel permit to an offender who was living in the receiving state at the time of sentencing.~~

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 seven calendar 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.

~~(B) This exception is not applicable to offenders released to supervision from prison.~~

(2) The receiving state shall issue reporting instructions no later than two 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. Signed forms shall be maintained in the sending state until termination of compact supervision. 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 exception 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)(3) 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.**

**(d)(4) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 calendar days following the granting to the offender of the reporting instructions.**

**(e)(1) If the receiving state rejects the transfer request for an offender granted a travel permit reporting instructions, or if the sending state fails to send a completed transfer request by the 15th calendar day following the granting of a travel permit reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request from the receiving state, direct the offender to return to the sending state immediately by a date specified by the sending state and the supervision responsibility shall revert to the sending state.**

**(2) 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 compact member states without limitation as to specific geographic area, or an order to return no later than 10 calendar days following the offender's failure to appear in the sending state.**

**(C) The receiving state shall continue to supervise the offender until a warrant is issued or notice is given by the sending state as required under Rule 4.105.**

**PASSED: Effective January 1, 2007****Rule 3.104-1**

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

**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) 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. ~~This does not apply to paroling offenders. See Rule 3.105 (e)(1).~~

**PASSED: Effective January 1, 2007****Rule 3.106**

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

**RULE 3.106 Request for expedited reporting instructions**

- (a)(1) A sending state may request that a receiving state agree to expedited transfer 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 that agrees to expedited transfer reporting instructions for an offender shall immediately issue reporting instructions for the offender, and a sending state shall immediately ~~issue a travel permit~~ transmit a departure notice.

(B) The sending state shall ensure that the offender signs all forms requiring the offender's signature under Rule 3.107 prior to granting a travel permit reporting instructions to the offender. ~~The sending state shall immediately transmit the signed forms electronically or by telefax to the receiving state~~ Signed forms shall be maintained in the sending state until termination of compact supervision. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

~~(C) At the time of transmission of the signed forms, the sending state shall provide the receiving state with a copy of the offender's orders and conditions, documentation of the offender's residency, copy of any available pre-sentence report, copy of any order of protection, where applicable, and whether the offender is subject to sex offender registration in the sending state.~~

(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 a travel permit reporting instructions no later than the seventh calendar day following the granting to the offender of the travel permit reporting instructions.

(d)(1) If the receiving state rejects the transfer request for an offender granted a travel permit reporting instructions, or if the sending state fails to send a completed transfer request by the ~~7th~~ seventh calendar day following the granting of a travel permit reporting instructions, 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 immediately and the supervision responsibility shall revert to the sending state. by a date specified by the sending state

(2) 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 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.

~~(3) The receiving state shall continue to supervise the offender until a warrant is issued or notice is given by the sending state as required under Rule 4.105.~~

**PASSED: Effective January 1, 2007*****Rule 4.103-1***

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

***RULE ~~5.112~~ 4.103-1 Effect of special conditions or requirements***

For purposes of revocation or other punitive action against an offender, the probation or paroling authority of a sending state shall give the same effect to a violation of special conditions or requirement imposed by a receiving state as if those conditions or requirement had been imposed by the sending state. Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state. For purposes of this rule, the original plan of supervision shall include, but not be limited to, any court orders setting forth the terms and conditions of probation, any orders incorporating a plan of supervision by reference, or any orders or directives of the paroling or probation authority.

**PASSED: Effective January 1, 2007*****Rule 4.109-1***

- Motion to approve the proposed new rule made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

***RULE 4.109-1 Authority to arrest and detain***

**An offender in violation of the terms and conditions of supervision may be taken into custody or continued in custody by the receiving state.**

**PASSED: Effective January 1, 2007*****Rule 5.102***

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

***RULE 5.102 ~~New felony offense~~ Mandatory retaking for a new felony conviction.***

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

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

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.

**PASSED: Effective January 1, 2007**

*Rule 5.103*

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

**RULE 5.103** Mandatory retaking for *violations of conditions of supervision*

**(a)** Upon a request by the receiving state and a showing that the offender has committed three 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)** 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.

**PASSED: Effective January 1, 2007**

*Rule 5.108*

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

**RULE 5.108** ~~Opportunity for~~ 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 in the receiving state consistent with due process requirements.
- (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 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 30 calendar 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 notify the receiving state of the decision to retake or other action to be taken within 30 calendar days of receipt of the hearing officer's report and determination.
- (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.**

**PASSED: Effective January 1, 2007**

*Rule 5.111*

- Motion to approve the proposed amendment made by Commissioner M. Gilliam (OK), seconded by Commissioner J. D'Amico (NJ). Motion carried.

*RULE 5.111 Denial of bail to certain offenders*

*An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted to bail or other release conditions in any state ~~where the offender is found.~~*

**PASSED: Effective January 1, 2007**

- Commissioner M. Gilliam (OK) made a motion to give all rules approved today (with the exception of Rule 2.109) an effective date of January 1, 2007. Seconded by Commissioner J. D'Amico (NJ). Motion carried.
- The Commission recessed for the lunch at 11:30 a.m. MST.
- The Commission reconvened at 1:00 p.m. MST.

**Information & Technology Report**

- Commissioner J. Kuebler (GA), Technology Committee Chair, presented the Committee's report. The presentation recognized the Committee members & technical assistants, goals & accomplishments of the Committee, provided an overview of the ICAOS website statistics, changes and additions and reviewed the status of HelpDesk Software.
- Commissioner J. Kuebler (GA) updated the Commission on the status of NACIS and negotiations with Softscape, Inc.
- Legal Counsel R. Masters explained the contract's arbitration clause and the details of the steps necessary to invoke the clause. He then reviewed the remedies that will be pursued.
- Chairman D. Guntharp (AR) opened the floor to questions. There was discussion of arbitration and remedies as well as alternatives for vendors in the event of contract cancellation and the authority of the Executive Committee to do so. Discussion of time periods.

### Compliance Committee

- Compliance Chair W. Emmer (ND) presented the Compliance Committee report which was handed out to the Commission at the meeting. Commissioner W. Emmer (ND) gave an overview of the Committee's mission and legal actions and noted that the majority of focus for the past year had been on Rule 2.110.
- Commissioner W. Emmer (ND) gave an overview the case of Ohio v. Texas (Complaint 2-2006) and noted that Commissioner W. Emmer (ND) had been assigned to lead the investigation. Commissioner W. Emmer (ND) described the process for investigation and corrective action and outlined the Committee's recommendations to be read to record.
  - The Committee found that the state of Texas was at fault by violating Rule 2.110. A \$10,000 fine was assessed pending the implementation of a Corrective Action Plan. The fine was vacated with the completion of the Corrective Action Plan.
  - Texas submitted its Corrective Action Plan to the Committee which outlined steps for Harris County, Texas to come into compliance within one (1) year.
  - **Commissioner W. Theriault (ME) made motion to adopt the recommendations and Commissioner R. Oakes (AL) seconded. Motion carried.**
  - Commissioner D. Ege (AZ) noted that one year is an unreasonably long period for one county to have to comply and urged the Committee to make its expectations more clear.
  - Commissioner J. D'Amico (NJ) recommended that the Committee impose fines to give their recommendations teeth.
  - There was discussion about how the Committee determined the amount for the fine.
- Commissioner W. Emmer (ND) gave an overview of the case of Ohio v. Pennsylvania (Complaint 3-2006) and noted that Commissioner L. Lucey (UT) had been assigned to lead the investigation. Commissioner W. Emmer (ND) outlined the Committee's recommendations to be read to record.
  - The Committee found that the state of Pennsylvania was at fault by violating Rule 2.110. A \$10,000 fine was assessed pending the implementation of a Corrective Action Plan. The fine is to be vacated with the completion of the Corrective Action Plan.
  - W. Emmer defined the term "reasonable audit" to mean the same for Pennsylvania as for Texas.
  - **Commissioner W. Rankin (WI) made motion to adopt the recommendations and Commissioner J. Kotkin (VT) seconded. Motion carried.**
- **Motion to accept the Compliance Committee report made by Commissioner W. Theriault (ME). Commissioner J. Sachwald (MD) seconded. Report was adopted.**

- Chairman D. Guntharp (AR) made a motion to amend the agenda to allow the Finance Committee and Training Committee to make their reports today. Commissioner H. Lowery (WV) seconded. Motion carried.
- Commissioner H. Lowery (WV) made a motion to amend the agenda to change the agenda to allow for the Finance and Training Committee presentations to take place immediately following the Information and Technology Committee presentation. Commissioner J. Miller (CO) seconded. Motion carried.

### **Finance Committee Report**

- Treasurer G. Powers (LA) presented the FY 08 budget to the Commission. She also discussed the Council for State Governments' recommendation regarding cash flows in the budget. Commissioner G. Powers (LA) made a motion to adopt the FY 08 budget. Commissioner S. Taylor (OR) seconded. Motion carried.
  - Discussion of delay of NACIS and its effect on cash flows.
  - Discussion of fines against Texas and Pennsylvania vacated by Compliance Committee and the effect it has on the budget.
  - Commissioner K. Winckler (TX) asked why a line-item budget is not presented at the Annual Business Meeting. Chairman D. Guntharp (AR) noted that the National Office provides line-item budgets to Commissioners upon request.

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

- Chairman A. Clarke (SC) gave a summary of WebEx and usage statistics and also encouraged all Commissioners and DCAs to take advantage of them. She then discussed PO recorded sessions and how to register for live sessions. Finally she reviewed the curriculum and publications available on the website and reviewed the new bench book policy and cost. Commissioner E. Ligtenberg (SD) made a motion to accept the Training Committee report and Commissioner W. Emmer (ND) seconded. Motion passed.
- Commissioner M. Ferriter (MT) made a motion to amend the agenda to allow for regional breakouts to happen immediately. Commissioner D. Ege (AZ) seconded. Motion carried.
- The Commission reconvened as a whole at 3:25 p.m. MST. Commissioner R. Oakes (AL) made motion to recess. Commissioner W. Theriault (ME) seconded. Motion passed. Commission recessed at 3:30 p.m. MST.

### **Thursday, October 5, 2006**

#### **Call to Order**

- The meeting reconvened and was called to order by Chairman D. Guntharp at 8:06 a.m. MST.

**Roll Call**

- Roll was called by Executive Director D. Blackburn. 52 of 53 members were present, thereby constituting a quorum.

1. Alabama	Robert Oakes
2. Alaska	Leitoni Tupou
3. Arizona	Dori Ege
4. Arkansas	David Guntharp
5. California	Marilyn Kalvelage
6. Colorado	Jeaneene Miller
7. Connecticut	Theresa Lantz
8. Delaware	Karl Hines
9. District of Columbia	Paul Quander, Jr.
10. Florida	R. Beth Atchison
11. Georgia	Joe Kuebler
12. Hawaii	Ronald Hajime
13. Idaho	Kevin Kempf
14. Illinois	Michelle Bushcher
15. Indiana	Jane Seigel
16. Iowa	Jeanette Bucklew
17. Kansas	Jerry Bauer
18. Kentucky	Lelia VanHoose
19. Louisiana	Genie Powers
20. Maine	Wayne Theriault
21. Maryland	Judith Sachwald
22. Massachusetts	Maureen Walsh
23. Michigan	John Rubitschun
24. Minnesota	Ken Merz
25. Mississippi	Lora Cole
26. Missouri	Wanda LaCour
27. Montana	Mike Ferriter
28. Nebraska	James McKenzie
29. Nevada	John Allan Gonska
30. New Hampshire	Mike McAlister
31. New Jersey	John D'Amico
32. New Mexico	Edward Gonzales
33. New York	Francis G. Herman
34. North Carolina	Robert Lee Guy
35. North Dakota	Warren Emmer
36. Ohio	Harry Hageman
37. Oklahoma	Milton Gilliam
38. Oregon	Scott Taylor
39. Pennsylvania	Benjamin Martinez
40. Puerto Rico	Did Not Attend
41. Rhode Island	A. T. Wall

42. South Carolina	D. Ann Clarke
43. South Dakota	Ed Ligtenberg
44. Tennessee	Gary Tullock
45. Texas	Kathie Winckler
46. Utah	Leo Lucey
47. Vermont	Jacqueline Kotkin
48. Virginia	James Camache
49. Virgin Islands	Arline Swan
50. Washington	Doreen Geiger
51. West Virginia	Henry Lowery
52. Wisconsin	William Rankin
53. Wyoming	Les Pozsgi

### **Elections**

- Commissioner K. Merz (MN) as Chairman of the Nomination Committee introduced the two (2) candidates for Executive Chair: Commissioner W. Emmer (ND) and Commissioner M. Gilliam (OK). Commissioner D. Guntharp made a motion to close the nominations and Commissioner W. Theriault (ME) seconded. Motion passed with a voice vote.
- Both candidates gave speeches. Commissioner W. Emmer (ND) was voted in as new Executive Chair.
- Nomination Committee Chair Commissioner K. Merz then introduced the only candidate for Vice-Chair as Commissioner G. Powers (LA). Commissioner D. Guntharp (AR) made a motion to close the nominations and Commissioner G. Tullock (TN) seconded. Nomination Committee Chair Commissioner K. Merz then moved for the Commission to accept Commissioner G. Powers (LA) as Vice Chair and Commissioner W. Emmer (ND) seconded. Motion passed unanimously by voice vote. Commissioner G. Powers (LA) then spoke briefly.
- Nomination Committee Chair Commissioner K. Merz then introduced Commissioner S. Taylor (OR) and Commissioner A. Clarke (SC) as the Candidates for Treasurer. Commissioner K. Merz (MN) made a motion to close the nominations and Commissioner D. Ege (AZ) seconded. Motion passed with a voice vote.
- Both candidates gave speeches. Commissioner S. Taylor was elected as the Commission's new Treasurer.

### **Award Presentations**

- Executive Chair Award was presented to Commissioner D. Ege (AZ) by Chairman D. Guntharp (AR).
- Executive Director Award was presented to Gregg Smith (LA) by Executive Director D. Blackburn.
- Peyton Tuthill Award was presented to State Senator Robert O'Leary of Massachusetts.

- Recognition was given to the outgoing Committee Chairs for their service to the Commission.

### **New Business**

- Commissioner K. Winckler (TX) made a motion that Rule 3.103 be referred back to the Rules Committee. Commissioner J. Sachwald (MD) seconded. Motion passed.
- Commissioner K. Winckler (TX) made a motion that Rule 3.106 be referred back to the Rules Committee. Commissioner J. Sachwald (MD) seconded. Motion passed.
  - Commissioner J. McKenzie (NE) also requested that the Rules Committee reinstate paragraph A (2) (c) when the Rule was revisited.
- Commissioner K. Winckler (TX) made a motion that Rule 5.108 be referred back to the Rules Committee. Commissioner J. Sachwald (MD) seconded. Motion failed.
  - Counsel R. Masters noted that this was an alternative motion and therefore would need a 2/3 majority to reopen. He asked that Commissioner K. Winckler (TX) clarify whether the motion was to review or to reconsider.
  - Commissioner D. Ege (AZ) stated that she was against referring back as the Training Committee will be training on these rules and it will be hard to revise the materials again in three (3) months.
  - Commissioner J. McKenzie (NE) also stated that he was against referring the rule back as *Morrisey v. Brewer* trumps everything.
  - Commissioner F. Herman (NY) expressed his support to the comments made by Commissioners D. Ege (AZ) and J. McKenzie (NE).
- Commissioner J. Kuebler (GA) moved to ask the Rules Committee to refer back to the Rules Committee Rule 3.107 to remove sections (r) and (s). Commissioner H. Hageman (OH) seconded. Motion passed.
- Commissioner W. Theriault (ME) proposed a motion to instruct the Executive Committee to reconsider the FY 2008 budget to consider a dues increase to allow DCAs to attend meetings and trainings. Commissioner E. Gonzales (NM) seconded. Motion failed.
  - Commissioner H. Hageman (OH) stated that he was in favor of the motion but would like to offer a friendly amendment that the Executive Committee find money in the budget for the DCAs airfare only.
  - Commissioner A. Wall (RI) stated that he supports the motion.
  - Commissioner A. Swan (VI) stated that she opposed any increase of dues.
  - Commissioner S. Taylor (OR) asked if it was possible to make the motion an advisory motion.
  - Commissioner J. Sachwald (MD) stated that she opposed the motion and charged each Commissioner to find the money in their state budgets.
  - Commissioner M. Kalvalledge (CA) stated that while she supported the DCAs being at the Annual Business meeting, she is concerned that states will not pay.
  - Commissioner W. Emmer (ND) also expressed concern that states would not pay if the choice was left up to them.

- Commissioner J. Miller (CO) noted that she concurs with the Commissioners from California and Oregon and asked that the Executive Committee put out a policy statement encouraging states to send DCAs. Executive Committee Chair D. Guntharp (AR) noted that such a statement had gone out prior to the Annual Business Meeting.
  - Commissioner D. Ege (AZ) noted that the motion was not calling for a blanket dues increase but instead called for the Executive Committee research possible funding and expressed her support.
  - Executive Committee Chair D. Guntharp (AR) restated that the motion on the floor is to have the Executive Committee research the budget and possibly increase dues in FY 2008 to allow DCAs to attend the Annual Business Meeting.
  - Commissioner P. Quander, Jr. (DC): is a 2/3 majority needed or just a majority to pass the motion? Counsel R. Masters answered that only a majority was needed because the motion was to reconsider the budget that the Commissioner from Maine had already voted to approve.
  - Commissioner J. Kotkin (VT) made a motion to direct the Executive Committee to look for existing money in the FY 2008 budget to allow for the DCAs to attend the Annual Business Meeting. Commissioner K. Winckler (TX) seconded. Motion passed.
  - Commissioner D. Ege (AZ) made a motion to refer the Sex Offender Predispositional Rule to the Rules Committee. Commissioner J. Miller (CO) seconded. Motion passed.
  - Commissioner J. Siegel (IN) made a motion to have the Rules Committee look at a procedure for bifurcation of the vote on Rules when they have multiple changes in them. Motion passed.
    - Commissioner D. Ege (AZ) offered a friendly amendment to ask the Rules Committee to amend Rule 2.109.
    - Counsel R. Masters noted that a procedure could be devised in the Rules Committee.
    - Commissioner J. Siegel declined the friendly amendment.
  - Commissioner G. Tullock (TN) made a motion to send Rule 2.109 back to the Rules Committee to allow for amendments from the floor. W. Emmer (ND) seconded. Motion failed.
    - Commissioners K. Merz (MN), R. Oakes (AL) and J. McKenzie (NE) all voiced opposition.
  - T. Lantz (CT) made a motion to approve the Technology Committee report. H. Hageman (OH) seconded. Motion passed.
  - Commissioner B. Martinez (PA) made a motion to refer Rule 4.111 to the Rules Committee to look at the discrepancy between Rules 3.108 and 4.111. Commissioner J. Miller (CO) seconded. Motion passed.
- The new Executive Committee members were sworn in by Counsel R. Masters.

- Motion to adjourn made by Commissioner B. Martinez (PA), seconded by Commissioner T. Lantz. Meeting adjourned at 10:10 a.m. MST.