 <b>Interstate Commission for Adult Offender Supervision</b>	<b>Opinion Number</b> 1-2014	<b>Page Number:</b> 1
<p align="center"><b>ICAOS Advisory Opinion</b>  Issued by:  Executive Director-Harry E. Hageman and Chief Legal Counsel: Richard L. Masters</p>		
<b>State Requesting Opinion:</b> Vermont	<b>Dated:</b> 2/12/2014	
<b>Description:</b> Whether an offender under supervision in the receiving state, who is charged with a new criminal offense in the receiving state and arrested but released on bail on the new offense, may be subsequently arrested and detained for retaking by the sending state pending the resolution of the new criminal charge.		

**Background & History:**

The State of Vermont has reported that an offender under supervision in Vermont on behalf of Florida, is the subject of a Violation Report concerning a new criminal charge in Vermont to which Florida responded with an arrest warrant. However, by the time the warrant was received the offender had been released on bail on the new criminal charge. While the Vermont probation office has confirmed that the Florida warrant is ‘extraditable,’ Vermont has asked whether the offender may permissibly be arrested and detained for retaking until consent is given to Florida to retake the offender or until criminal charges have been dismissed, or the sentence has been satisfied, or the offender has been released on supervision for the commission of the subsequent offense.

Based upon the above facts and pursuant to Commission Rule 6.101(c) the State of Vermont has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

**Issue:**


**Whether an offender under supervision in the receiving state, who is charged with a new criminal offense in the receiving state and arrested but released on bail on the new offense, may be subsequently arrested and detained for retaking by the sending state pending the resolution of the new criminal charge.**

**Applicable Rules:**

Rule 4.109-1 provides:

**“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

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continued in custody by the receiving state.”

Rule 5.101 (c) in relevant part provides:

**“Rule 5.101 Retaking by the sending state**

(c) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.”


Rule 5.111 in relevant part provides:

**“Rule 5.111 Denial of bail or other release conditions to certain offenders**

An offender against whom retaking procedures have been instituted by a sending state or receiving state shall not be admitted to bail or other release conditions by any state.”

**Analysis and Conclusion:**

It is clear that ICAOS Rule 5.101 prohibits the retaking of a compact offender who has been charged with a subsequent criminal offense in the receiving state, until the occurrence of any one of four (4) separate events specified in the rule: 1) The receiving state consents to retaking by the sending state; 2) The receiving state has dismissed the subsequent criminal charge(s); 3) The subsequent charge against the offender has been adjudicated and sentenced by the receiving state and the sentence has been satisfied; or 4) The offender has been sentenced and released to supervision for the subsequent offense.


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ICAOS Rule 5.111 is equally clear that an offender against whom retaking procedures have been instituted shall not be released on bail or other release conditions by any state.

In this case application of the above referenced rules could be in conflict since the arrest on the new charge in Vermont resulted in an arrest warrant being issued and Florida apparently sought to retake the offender since the new criminal charge constitutes a violation of the terms and conditions of probation in the State of Florida. However, the Vermont court released the offender after being informed by the State of Florida that the warrant was not “extraditable,” although Florida subsequently clarified that the warrant is in fact “extraditable.”

Since the offender is not ‘available’ for retaking under ICAOS Rule 5.101(c), due to the fact that none of the four (4) events that would allow retaking of the offender by the State of Florida has occurred, Vermont asks whether it may permissibly arrest and detain the offender on the Florida arrest warrant.

As in other cases of statutory construction, the provisions of the Compact statute and rules should be interpreted in harmony with other sections of the statute, or in this case the above referenced ICAOS rules, and “plain meaning is examined by looking at the language and design of the statute as a whole.” See, Lockhart v. Napolitano, 573 F.3d 251 (6th Cir. 2009). Consistent with such a “harmonious” interpretation, a literal reading of Rule 5.101(c) and Rule 5.111 reveals a clear intent that the process of ‘retaking’ under 5.101(c) is not permitted to continue, even if such process has been instituted by the sending state, unless and until one of the prerequisites of Rule 5.101(c) has been satisfied. Moreover, since the time frame in which any of those prerequisites will be satisfied by Vermont cannot be determined, it seems inconsistent with the demands of due process that the offender should be detained indefinitely. See Morrissey v. Brewer, 408 U.S. 471, 481, 488 (1972)(“The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, as respondents suggest occurs in some cases, would not appear to be unreasonable”). See also, Doggett v. U.S., 505 U.S. 647, 651 (1992)(“delays of less than a year (between indictment and trial) are as a general matter constitutionally adequate . . .”) See also Barker v. Wingo, 407 U.S. 514, 530 (1972). For the same reason, it is also

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inconsistent with the above ICAOS rules for a sending state, such as Florida in this case, to issue a warrant for the arrest of the offender in this situation until available for retaking.

It is worth noting that circumstances such as the instant case prompted the Commission to amend ICAOS Rules by adding Rule 5.101-1 to clarify when such an offender is ‘available’ for retaking and an arrest warrant may be appropriately issued by the sending state.<sup>1</sup> Thus, upon the occurrence of one of the four (4) prerequisites to retaking contained in ICAOS Rule 5.101(c), arrest and detention of the offender on the Florida arrest warrant would clearly be justified consistent with the provisions of both the Compact and the above referenced rules. As the U.S. Supreme Court has held, "[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." Nixon v. Missouri Mun. League, 541 U.S. 125 (2004); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).

**Summary:**

**In summary, based upon the terms of the compact, the above referenced rules, and the legal authorities cited herein, since an offender under supervision in the receiving state who is charged with a new criminal offense cannot be retaken until one of the prerequisites of ICAOS Rule 5.101(c) has been satisfied, it is inconsistent with both the ICAOS rules and due process for a warrant to be issued by the sending state or for the offender to be arrested and detained indefinitely, if subsequently released to bail on a new criminal charge. However, once the provisions of Rule 5.101 (c) have been satisfied, both arrest and detention of the offender without bail on the compact warrant are required.**

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<sup>1</sup> ICAOS Rule 5.101-1 is effective March 1, 2014