



Interstate Commission for Adult Offender Supervision  

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Ensuring Public Safety for the 21st Century

## ICAOS White Papers

2019  
Edition



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**Revised: 1/21/2026**

## **Executive Summary**

The Interstate Compact for Adult Offender Supervision (ICAOS) provides the legal framework for the transfer and supervision of individuals on probation or parole across state lines. It ensures public safety, accountability, and effective management of supervised individuals who move between states. To maintain uniform application and integrity, ICAOS includes enforcement mechanisms, most notably, the authority to sanction member states that fail to comply with the Compact or its rules. This paper outlines the legal basis, process, and rationale for imposing sanctions, as well as the types of violations that can trigger enforcement action.

### **1. LEGAL AUTHORITY FOR SANCTIONS**

#### **1.1 Constitutional Foundation**

ICAOS is a formal interstate compact enacted by all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, and carries the force of federal law once consented to by Congress. As such, member states are legally bound to comply with Compact rules and procedures.

#### **1.2 Compact Statute**

Article XI of the ICAOS statute provides the Interstate Commission with the authority to:

- Enforce compliance through rulemaking and adjudicatory procedures.
- Impose sanctions on member states in violation of the Compact, which may include remedial training, fines, suspension, or termination of membership.

#### **1.3. Rule-based Authority**

ICAOS Rule 6.102 explicitly authorizes the Commission to take corrective action when a state fails to comply with the Compact, rules, or bylaws. Sanctions are intended not as punishment, but as a means to ensure uniform and lawful application of the Compact nationwide.

### **2. CONDITIONS THAT MAY LEAD TO SANCTIONS**

Sanctions may result from substantial or persistent noncompliance that undermines Compact operations or public safety. Examples include:

#### **2.1 Systemic Rule Violations**

Failure to adhere to established transfer and supervision procedures, such as:

- Repeatedly denying valid transfer requests.
- Failing to meet required timeframes under Compact rules.
- Courts authorizing supervised individuals to remain out of state beyond the 45-day rule limit for treatment, education, or employment.
- Sending states issuing warrants that do not have a nation wide pick-up radius.
- Sending states terminating supervision to avoid the retaking process.

## **2.2 Administrative Noncompliance**

- Not submitting required reports, audits, or data.
- Failure to pay dues, appoint a Commissioner or maintain an active state council.
- Ignoring Commission directives or corrective action plans.

## **2.3 Public Safety and Liability Concerns**

When a state ignores or fails to follow Compact rules and someone is harmed, for example, if an unsupervised person commits a new crime, it can lead to an investigation and possible sanctions. These situations put both the state and the Commission at legal and reputational risk.

## **3. Legal Foundation for State Accountability and Enforcement**

### **3.1 Binding Nature of the Compact**

By enacting the Interstate Compact for Adult Offender Supervision (ICAOS), each member state enters a binding contractual agreement that carries the force of federal law. Once adopted, the Compact and its duly promulgated rules supersede conflicting state laws and bind all branches of state government executive, legislative, and judicial to ensure compliance. Under long-standing Supreme Court precedent, including *Cuyler v. Adams* (1981) and *West Virginia ex rel. Dyer v. Sims* (1951), Congress's consent to an interstate compact elevates it to federal law. States cannot unilaterally modify, suspend, or reinterpret Compact obligations through local legislation, court orders, or administrative practice.

### **3.2 Limits of Immunity**

Judicial and qualified immunity protect individual judges and state officials from personal liability for actions taken in their official roles. However, these doctrines do not insulate the state itself from responsibility for Compact violations. Once a state enacts the Compact, it remains legally accountable for the actions or omissions of its agents that conflict with Compact requirements. The Supreme Court reaffirmed this principle in *Alabama v. North Carolina* (2010), holding that member states are subject to enforcement and sanction by a duly authorized interstate commission.

### **3.3 Delegated Authority and Rulemaking**

The Compact authorizes the Interstate Commission to adopt rules, establish procedures, and enforce compliance among member states. States have validly delegated this authority under the Compact Clause to ensure uniformity in interstate supervision. These rules, adopted through the Commission's established rulemaking process, have the same binding legal effect as the Compact itself. No state may disregard, reinterpret, or alter them unilaterally.

### **3.4 Enforcement and Remedies**

The Compact empowers the Commission to use a graduated approach to enforcement. When a state fails to comply, the Commission may require remedial training, impose fines, suspend or terminate membership, or initiate judicial enforcement in federal court. Article XII expressly authorizes the Commission to pursue injunctive relief and recover litigation costs, including attorney's fees, when necessary to compel compliance. Federal courts recognize and enforce these provisions. In *ICAOS v. Tennessee Board of Probation and Parole* (E.D. Ky. 2005), the court issued a permanent injunction and awarded attorney's fees, holding that Compact rules operate as federal law under the Supremacy Clause.

### **3.5 Federal Enforcement Authority**

Because Congress consented to ICAOS, federal courts have jurisdiction to interpret and enforce its terms. States cannot claim Eleventh Amendment immunity in actions brought by other states or the

Commission for Compact violations (*Kansas v. Colorado*, 2001). Remedies for breach may include injunctive relief or monetary damages. The Supreme Court has consistently affirmed that states are bound to honor Compact obligations and that courts must enforce the Compact as written, regardless of equitable considerations (*Texas v. New Mexico*, 1983; *New Jersey v. New York*, 1998\*).\*

### **3.6 Implications for State Officials**

Article I of the Compact charges state courts and executive agencies with enforcing its provisions and taking all necessary actions to fulfill its purposes [“shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent”].

Judges, prosecutors, and supervision authorities must understand and apply ICAOS rules as binding law. Noncompliance not only undermines uniformity and public safety but also exposes the state to investigation, corrective action, or sanctions under Rule 6.103.

## White Paper

### Discharge of Sentences in Lieu of Retaking is a Violation of the Compact and the ICAOS Rules

**Revised:** 1/21/2026

## EXECUTIVE SUMMARY

This paper addresses instances in which member states fail to comply with the mandatory retaking requirements of the ICAOS by discharging a supervised individual's sentence or terminating supervision rather than completing the retaking process as required under Chapter 5 of the Compact Rules. Discharging a sentence or ending supervision in place of retaking directly violates ICAOS Rules and the Compact's fundamental purpose to ensure accountability, public safety, and consistent supervision standards across all member states. The Compact and its rules carry the force and effect of federal law. States that disregard retaking obligations not only act outside the Compact's authority but also risk enforcement actions and sanctions under Articles V and XII. The Commission has the duty and authority to ensure compliance, impose corrective measures, and, when necessary, pursue judicial enforcement.

### 1. BACKGROUND AND LEGAL OBLIGATIONS UNDER THE COMPACT

The Interstate Compact for Adult Offender Supervision (the "Compact") establishes a uniform legal framework for the supervision of individuals transferred between states. It is a formal agreement between member states to promote public safety by systematically controlling the movement of qualifying individuals under supervision by virtue of their conviction for a criminal offense. Through the Compact, all 50 states, the District of Columbia, and two U.S. territories agree to follow standardized procedures for supervision, violation response, and retaking.

Importantly, as an interstate compact with congressional consent under the Compact Clause of the United States Constitution, the Compact carries the force and effect of federal law. *See Cuyler v. Adams*, 449 U.S. 433, 440 (1981); see also *M.F. v. State of N.Y., Exec. Dep't Div. of Parole*, 640 F.3d 491 (2d Cir. 2011) ("... the Compact, as a congressionally sanctioned interstate compact is federal as well as state law.") This further extends to the Commission's Rules. *See Carchman v. Nash*, 473 U.S. 716, 719 (1975) (a compact's adopted "administrative rules ... function as a law of the United States to the member states under the terms of the Compact and through operation of the Supremacy Clause.").

The Compact and its Rules are accordingly legally enforceable upon Compacting States and preempt conflicting substantive state law. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951). And this obligation is binding to all branches of state government, including state courts, corrections, and supervision authorities. *Id.*; see also *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). This legal obligation is further reflected in the text of the Compact itself. The "courts and executive agencies in each compacting state" are expressly required to enforce the Compact" and "take all actions necessary and appropriate to effectuate the Compact's purposes and intent." Compact, Article IX(A). Even clearer, "all lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the Compacting States." Compact, Article XIV(B).

### DISCHARGE OR TERMINATION IN LIEU OF RETAKING IS CONTRARY TO COMMISSION RULES

Chapter 5 of the Commission's Rules directly addresses retaking individuals under supervision in a receiving state. This set of rules establishes a sending states authority and *obligation* to retake individuals under certain conditions, such as new criminal convictions in the receiving state,

absconding, or other behavior “requiring retaking.” Mandatory retaking is an important component of the Compact and is the vehicle through which a sending state enforces its terms of supervision and ensures public safety.

Though the Commission’s rules also address instances where retaking may be discretionary, Rules 5.101 through 5.103-1 establish the sending state’s continued jurisdiction and legal responsibility to retake for cases involving mandatory retaking. And, in turn, those Rules further outline the procedures for warrants, probable cause hearings, and transfers of custody for these cases. These are required processes sending states are expected to follow when notified of an individual’s violation of the terms of his supervision and the necessity for retaking.

Despite the legal obligation to fully enforce the Compact and its Rules, in some instances where an individual is awaiting retaking in the receiving state, some sending states have terminated supervision and discharged the individual from probation in lieu of retaking. Sending states cannot bypass their retaking obligation simply by discharging supervision or terminating a sentence. This is contrary to the state’s continuing obligations under the Compact and the principle of reciprocal accountability between Compacting States. Substituting discharge for retaking eliminates accountability and erodes public safety. It further leaves the receiving state without lawful recourse while weakening the overall integrity of interstate supervision.

This practice is also contrary to established law, due to the statutory and contractual nature of interstate compacts. The United States Supreme Court has made clear that an interstate compact cannot be “... given final meaning by an organ of one of the contracting states.” *Sims*, 341 U.S. 22. Indeed, there is a long line of cases holding that member states to an interstate compact may not take unilateral actions, such as adopting conflicting legislation or issuing executive orders or court rules that circumvent the terms of the compact. Moreover, due to the contractual nature of interstate compacts, the Contracts Clause of the United States Constitution further precludes member states from adopting laws “impairing the obligation of contracts,” including a contract adopted through the Compact Clause. U.S. Const., art. I, § 10, cl. 1; *Sims*, 341 U.S. at 33.

Because of this, when retaking is mandatory under Commission Rules, no individual state may simply discharge supervision to circumvent its obligation to retake under the Rules.

## **2. THE COMMISSION MAY ENFORCE COMPLIANCE**

When a Compacting State fails to discharge its duties under the Compact, the Commission may impose sanctions for noncompliance, which may be judicially enforced. See *Alabama v. North Carolina*, 560 U.S. 330 (2010). This too is expressed in both the Compact and Commission Rules. Article V of the Compact provides that the Commission is empowered not only to adopt rules, but also to enforce their adherence by “all necessary and proper means.” This includes imposition of sanctions. See Compact, Article XII. Indeed, among the express purposes of the Compact is to “monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance.” Compact, Article I.

Consistent with this delegated authority, Rule 6.103 charges the Commission with the duty to determine whether “any state has at any time defaulted ... in the performance of any of its obligations or responsibilities.” And when default occurs, the Commission may impose a range of sanctions, including:

- Technical assistance or remedial training;
- Fines, fees, or costs;
- Suspension or termination of Compact membership; and
- Judicial enforcement in federal court, including recovery of attorney’s fees.

Each of these—and especially judicial enforcement—are powerful tools to secure compliance with the Compact and its Rules. Thus, sending states that disregard their legal obligation to carry out mandatory

retaking are subject to this spectrum (and escalating scale) of corrective action.

### **STATE LIABILITY AND JUDICIAL IMMUNITY**

While judicial and qualified immunity protect individual state officials from personal liability, they do not shield the state itself from responsibility for Compact violations. Once a state enacts the Compact into law, it assumes full legal and financial accountability for compliance.

The United States Supreme Court has repeatedly affirmed that states may be held liable for violating compact obligations. *Texas v. New Mexico*, 462 U.S. 554 (1983); *Kansas v. Colorado*, 533 U.S. 1 (2001). Retaking obligations therefore cannot be avoided through administrative or judicial discretion, nor by asserting immunity defenses.

### **3. CONCLUSION**

States must comply with the mandatory retaking requirements established under the ICAOS. Discharging a supervised individual's sentence or terminating supervision in place of retaking is contrary to the Compact and its rules. Retaking is required when mandated by law and this process is important to ensure accountability, uniform supervision, and public safety.

The Compact's provisions have the force and effect of federal law, and noncompliance may result in sanctions or judicial enforcement under Articles V and XII. As outlined in the ICAOS White Paper on State Liability and Enforcement, states cannot avoid responsibility for Compact violations through local administrative or judicial actions. To maintain consistency and uphold the Compact's integrity, states must ensure that all courts, correctional and supervision personnel, as well as compact offices understand and adhere to the established retaking procedures in every case requiring compliance.

## White Paper

### Legal Implications of the Interstate Compact Offender Tracking System (ICOTS)

Revised 1/21/2026

## Executive Summary

This paper explains the legal status and potential admissibility of records maintained in the ICAOS National Data System as official business records. The system serves as the central platform used by all member states to record, track, and share information on the interstate supervision of individuals who move through the Compact.

Because these records are contemporarily created and maintained in the regular course of Compact business by authorized personnel, they are considered business records and satisfy business records exception to the hearsay rule under the Federal Rules of Evidence<sup>1</sup>. Each state retains ownership and custodial responsibility for the data it enters, as outlined in ICAOS policy.

Because of this, and when properly certified, National Data System records may be introduced in court as reliable evidence of official Compact activity. Compact offices should accordingly maintain consistent data entry and recordkeeping practices to preserve the accuracy and integrity of these records.

<sup>1</sup>While this paper focuses on business records as understood in the Federal Rules of Evidence, this concept is similarly reflected in state-court evidentiary rules. Each jurisdiction may, however, have its own version of hearsay and its own exceptions to the rule against hearsay. Compact Administrators in each State should accordingly familiarize themselves with the rules particular to their jurisdiction with regard to properly introduction business records into evidence.

## 1. HEARSAY AND THE BUSINESS RECORDS EXCEPTION

### 1.1 Hearsay Overview

Hearsay generally refers to out-of-court statements—including statements in documents—offered to prove the truth of what they assert. Absent an exception, this evidence is inadmissible. The business records exception, recognized in Rule 803(6) of the Federal Rules of Evidence and similar state provisions, permits the admission of records made and kept in the ordinary course of business.

### 1.2 Criteria for Business Records

Under the Federal Rules of Evidence, to qualify under the exception, the proponent must show that:

1. The record was made by, or from information transmitted by, a person with knowledge;
2. The record was made at or near the time of the event;
3. The record was kept in the course of business or activity; and
4. Making the record was a regular practice of the organization.

ICOTS records may satisfy this criteria when properly authenticated by the state responsible for creating and maintaining the data.

## 2. NATURE AND CUSTODY OF ICOTS RECORDS

### 2.1 Description of ICOTS

The Commission established ICOTS as the national data system for tracking and managing the

movement of supervised individuals across state lines. All 53 member jurisdictions use ICOTS to transmit, approve, and monitor interstate compact cases. ICOTS serves as both a communication platform and a historical record repository, maintaining standardized data as required under Article VII of the Compact.

## **2.2 Data Ownership**

ICOTS data belongs to the member states that entered it, not to the Interstate Commission. ICAOS Administrative Policy 02-2009 (Record Retention and Destruction) confirms that each state retains ownership of its entries and attachments.

*“All offender records and case information entered in ICOTS by member states is the property of the member states and is maintained according to the laws and policies of the member states.”*

Accordingly, the Commission only manages the system infrastructure and does not alter or dispose of state-provided records without written consent.

## **2.3 Determining the Custodian of Records**

Because states own the information they submit, the custodian of record is typically the state that created or entered the data into ICOTS. That state is responsible for attesting to the record’s authenticity and reliability through a business records affidavit or witness testimony. A custodian’s affidavit should:

- Identify ICOTS as the official data system used under ICAOS;
- Confirm that entries were made at or near the time of the underlying event by authorized personnel; and
- Describe ICOTS as the routine and official method of recording and exchanging information between compact states.

## **3. RELIABILITY AND CHAIN OF DATA ENTRIES**

### **3.1 Record Creation and Updates**

When a user generates a Compact Activity PDF in ICOTS, the record reflects the data as it currently exists. Each user’s authorized account provides a traceable record of who made updates or edits. Compact offices should ensure each entry includes a timestamp and identifying information to establish a clear chain of data entries.

### **3.2 Maintaining Record Integrity**

Subsequent edits, such as correcting identifiers, adding aliases, or updating supervision details, should document who made the change and when. Maintaining a consistent edit history strengthens the record’s admissibility and supports the credibility of the business records affidavit.

*PRACTICE NOTE: COMPACT OFFICES SHOULD VERIFY THAT STAFF FOLLOW ESTABLISHED ICOTS DATA ENTRY STANDARDS, INCLUDING CONTEMPORANEOUS RECORDING, USER AUTHENTICATION, AND AUDIT DOCUMENTATION. THESE STEPS REINFORCE THE RECORD’S RELIABILITY FOR JUDICIAL USE.*

## **4. ESTABLISHING ICOTS AS A REGULAR BUSINESS RECORD**

#### **4.1 Regular Practice of Compact Offices**

Compact administrators should be prepared to testify, or certify via affidavit, that producing ICOTS records is a routine part of their official duties and that maintaining offender case records occurs in the regular course of business.

This demonstrates that ICOTS records are not created for litigation but as part of ongoing supervision and data-sharing under ICAOS.

#### **MODEL DESCRIPTION FOR AFFIDAVITS**

A CUSTODIAN AFFIDAVIT MAY STATE:

*"The Interstate Compact Offender Tracking System (ICOTS) is the official electronic system used by all states to record, track, and exchange information concerning offenders transferring supervision between states under ICAOS. The attached record was made at or near the time of the event by authorized personnel in the regular course of compact business."*

#### **5. LEGAL FRAMEWORK AND SUPPORTING AUTHORITY**

- Article I of the Compact assigns states the responsibility for interstate supervision and joint data collection.
- Article VII directs the Commission to collect standardized data concerning interstate movement.
- Administrative Policy 02-2009 confirms that states retain ownership of all data they enter.
- Under the Federal Rules of Evidence (803(6)), ICOTS records qualify as business records when these requirements are met.

## White Paper

### Legal Implications of Remote Hearings in Relation to ICAOS Rules

**Revised:** 11/19/2025

## Executive Summary

This white paper examines how remote or virtual hearings intersect with ICAOS Rules governing the transfer, supervision, and return of supervised individuals. While not a new practice, the COVID-19 pandemic accelerated the adoption of remote proceedings, prompting renewed questions concerning their compatibility with ICAOS Rules, particularly those regarding sentencing, violation hearings, and retaking obligations.

The Interstate Commission for Adult Offender Supervision (“ICAOS” or “the Commission”) recognizes that remote proceedings have become a lasting component of many state judicial systems. This paper provides analysis and guidance to assist member states in faithfully implementing ICAOS Rules in this evolving environment. Remote hearings are generally permissible and not inconsistent with ICAOS Rules, provided they do not conflict with mandatory retaking requirements under Rules 5.102, 5.103 and 5.103-1.

## I. BACKGROUND

Following stakeholder discussions and a formal request from the Executive Committee, the Commission undertook this review to clarify the implications of remote hearings under the Compact.

As a congressionally approved interstate compact, ICAOS carries the force and effect of federal law. *Cuyler v. Adams*, 449 U.S. 433 (1981). By entering the Compact, member states contractually agree to effectuate its provisions and abide by its rules, effectively superseding conflicting state law in matters governed by the Compact. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951). Accordingly, while states retain flexibility in implementing their own judicial and administrative procedures, ICAOS Rules take precedence where any conflict arises. The Compact’s purpose, promoting public safety, accountability, and cooperation among member states, remains paramount in evaluating the use of remote proceedings.

## II. ISSUES PRESENTED

Member states have identified questions about remote hearings in several contexts, most notably concerning:

1. Remote sentencing or deferred proceedings for individuals already residing in a receiving state; and
2. Violation and revocation hearings conducted remotely in lieu of physical retaking.

Both questions fundamentally concern whether a supervised individual must physically move across state lines, and whether facilitating remote proceedings creates unforeseen liability for receiving states.

## III. REMOTE HEARINGS INVOLVING SUPERVISED INDIVIDUALS ALREADY RESIDING IN THE RECEIVING STATE

ICAOS Rules recognize that some individuals may already be physically present in the receiving state before sentencing or a transfer request is approved. Specifically, Rule 3.101-3(f)\* directly permits reporting instructions for “sex offenders living in the receiving state at the time of sentencing” and cross-references Rules 3.101-1 and 3.103. These provisions indicate that, while additional requirements

such as registration or residence verification may apply, such individuals may remain in the receiving state if supervision is properly coordinated between both states.

Though Rule 3.101-3(a) also provides that a sex offender shall not leave the sending state before transfer approval, this general restriction applies only when the individual would otherwise depart from the sending state. If the person already resides in the receiving state and proceedings are conducted remotely, that provision is accordingly inapplicable. In such cases, Rule 3.101-3(f)\* governs, and the individual may remain in place while the sending state completes remote sentencing, provided all Compact procedures are followed.

This analysis extends beyond sex offenders and applies broadly to any supervised individual who already resides in the receiving. As with all transfers, the states must of course coordinate closely to ensure clarity on supervisory authority, victim notification, and compliance monitoring. But, it is not inconsistent with ICAOS Rules if states choose to implement remote hearings in cases involving individuals already residing in the receiving state.

*\*New 3.103-3 (after April 1, 2026)*

#### **IV. REMOTE VIOLATION HEARINGS AND RETAKING OBLIGATIONS**

Compacting states have similarly inquired as to the compatibility of remote hearings when an individual either violates supervision or absconds. More directly, the question presented is whether a sending state may address violations through remote hearings without invoking Rule 5.101 and physically retaking the individual. While again ICAOS Rules generally permit sending states this flexibility, that discretion limited only to circumstances in which retaking is not mandatory under the Rules.

##### **A. Remote Hearings Permitted Absent Mandatory Retaking**

Generally speaking, ICAOS Rules offer considerable latitude for states to implement their own preferred policies and procedures, subject to the clear limits expressed in the Rules. Particularly concerning potential violations and a sending state's discretionary retaking authority, the Commission has long understood that absent mandatory retaking Rules, "the decision to retake lies solely at the discretion of the sending state." ICAOS Bench Book § 4.3. This flows from the Commission's comity and respect for state laws and procedures so long as there is no direct conflict with ICAOS Rules. Thus, a sending state's flexibility to employ remote hearings (absent circumstances involving mandatory retaking) is supported by both these general principles and this flexibility is implicit in the Rules themselves.

Where the Rules do not otherwise mandate retaking, remote hearings may actually serve public safety and efficiency by avoiding unnecessary disruption to stable supervision and reducing transportation risks and costs.

ICAOS Rules provide textual distinctions between revocation (involving a legal process) and retaking (describing the physical act of returning the individual to the sending state). See Rule 1.101 (defining "retaking" and "revocation"). Revocation contemplates a "course of action" to rescind supervision, while retaking reflects the physical removal of the individual from the receiving state. Thus, a sending state may conduct remote revocation or violation proceedings remotely; however, when a specific Rule requires physical retaking, that obligation still applies regardless of the hearing's format. Other Rules further support this conclusion, confirming that retaking is the outcome or consequence of revocation.

See Rule 5.105\* ("After determining that violations require retaking ..."). Thus, the Rules—at least in discretionary cases—do not require a sending state to retake an individual to then evaluate whether to revoke supervision and order his return.

*\*New 5.105 (after April 1, 2026)*

Much more Rule 5.101-2 (revised in 2025) further bolsters this flexibility. This Rule helpfully codifies

this flexibility for matters within its scope by expressly permitting a sending state to hold proceedings “either electronically or in-person” to address new convictions or violations.[1] The Rule establishes clear outcomes, and logically presents how the remote-hearing process plays out:

- If the outcome results in supervision only, retaking is not required;
- If the remote proceeding results in incarceration or partial satisfaction of the sentence, retaking is required; and
- The sending state must notify the receiving state of the results within 10 business days.

Rule 5.101-2’s helpful framework further reinforces that physical removal is not required for a sending state to determine whether retaking is necessary. This further confirms the principle distinction between retaking and revocation under the Rules as two separate considerations. Thus, and consistent with the Commission’s longstanding guidance favoring comity with state law, the Compact permits remote hearings in discretionary cases provided they do not conflict with mandatory retaking obligations.

## **B. When Retaking Is Mandatory**

Though ICAOS Rules generally do not conflict with states using remote hearings without physical retaking, this practice must give way when the Rules mandate retaking. Three Rules identify situations in which a sending state must physically retake a supervised individual upon the receiving state’s request, regardless of hearing format or outcome:

- **Rule 5.102 - New Felony or Violent Crime Conviction:** A sending state shall retake a supervised individual convicted of a felony or violent crime in the receiving state. A receiving state’s request under this rule inherently reflects “behavior requiring retaking” under Rule 1.101. Retaking may occur only after the new charges are dismissed, the sentence is satisfied, or the individual is released to supervision for the new offense unless both states mutually agree to an earlier return (see Rule 5.101-1).
- **Rule 5.103 - Behavior Requiring Retaking:** When a receiving state provides documentation showing that an individual’s behavior constitutes serious or repetitive noncompliance that would trigger revocation under local standards, the sending state is obligated to retake. This rule ensures accountability for conduct that undermines supervision integrity, even when it does not involve a new criminal conviction.
- **5.103-1 - Absconding:** When a supervised individual is apprehended within 30 days of a warrant’s issuance, and both states mutually agree, the sending state is not required to retake the individual. In such cases, the receiving state must conduct a probable cause hearing under Rule 5.108, unless that right is waived by the individual. However, if the apprehension occurs more than 30 days after the warrant was issued, or if the states do not reach mutual agreement, probable cause must be formally established in accordance with Rule 5.108. Once probable cause is confirmed, the sending state is obligated to retake the individual.

In these cases, the use of remote hearings does not alter the sending state’s duty to retake the individual.

## **C. Due Process Considerations**

Nothing in ICAOS Rules abrogates a supervised individual’s constitutional right to due process of law in revocation or probable cause hearings. Compacting states choosing to use remote hearings are encouraged to ensure these proceedings meet their own procedural safeguards, including notice, representation, and a fair opportunity to be heard.

## **V. RECEIVING STATE COOPERATIVE FUNCTIONS**

States have also inquired whether a receiving state assumes liability when assisting a sending state with

remote hearings, such as witnessing signatures or facilitating communication during a remote sentencing or violation hearing.

ICAOS Rules do not impose liability on receiving states for providing such administrative support. Cooperation between states is an expected and essential element of Compact participation. The sending state remains solely responsible for ensuring its proceedings comply with due process and statutory requirements, while the receiving state's role is limited to facilitating communication and execution of Compact duties.

## **VII. CONCLUSION**

Remote hearings are not inconsistent with ICAOS Rules and the Commission allows flexibility for states to use technology in addressing violations and revocations without retaking, so long as this practice does not conflict with mandatory retaking provisions or undermine constitutional due process. But because Rules 5.102, 5.103, and 5.103-1 require retaking, the use of remote hearings has no bearing on the sending state's obligation under the Rules to retake these individuals.

*[1] To be clear, Rule 5.101-2 does have universal application, but applies to new crime convictions or violations "resulting in a sentence of incarceration or supervision outside of the sending state."*

