

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ADVISORY OPINION

At Issue

When a supervised individual is reported as an absconder and the receiving state closes the case under Rule 4.112(a)(2), questions arise if the individual is apprehended in the receiving state. The Commission specifically seeks clarification on four discrete issues:Whether Rule 4.112(b) applies when absconders subject to retaking, or whether these should be treated as non-compact matters. If the sending state withdraws its warrant or the individual is released whether the receiving state must resume supervision?Whether Rule 5.101-1 governs cases involving new charges in the receiving state.Whether prosecuto other authorities may use discretion in deciding whether to hold absconders without bond for retaking or to set bond for new charges.What legal-liability considerations apply when reopening a compact case in the national data system after the absconder is apprehended.

Requesting State: Executive

Issued By:

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When a supervised individual is reported as an absconder and the receiving state closes the case under Rule 4.112(a)(2), questions arise if the individual is later apprehended in the receiving state. The Commission specifically seeks clarification on four discrete issues:

1. Whether Rule 4.112(b) applies when absconders are subject to retaking, or whether these should be treated as non-compact matters.
2. If the sending state withdraws its warrant or the individual is released, whether the receiving state must resume supervision?
3. Whether Rule 5.101-1 governs cases involving new charges in the receiving state.
4. Whether prosecutors and other authorities may use discretion in deciding whether to hold absconders without bond for retaking or to set bond for new charges.
5. What legal-liability considerations apply when reopening a compact case in the national data system after the absconder is apprehended.

Issued by: Ashley H. Lippert, Executive Director & Richard L. Masters, Legal Counsel

Background

When a supervised individual absconds, the receiving state must submit a violation report requiring retaking and close supervision under Rule 4.112(a)(2) due to the individual's unknown whereabouts. If the individual is later apprehended, Rule 5.103-1 governs whether supervision may resume in the receiving state and outlines requirements for a probable-cause determination prior to retaking.

States vary in their practices regarding whether to reopen cases in the national data system following apprehension. Some reopen cases to document the individual's location, provide correspondence, submit probable-cause materials, or report new charges. These variations prompted the need for clarification on whether case reopening is required and how the relevant rules apply.

Applicable Rules and Statutes

***Rule 1.101 Definitions*:**

‘Abscond’ means:

(a) Supervision personnel are unable to establish contact or locate the supervised individual; and

(b) The supervised individual took action to make themselves unavailable for supervision and failed to comply with reporting requirements.

‘Supervision’ means the oversight exercised by authorities of a sending or receiving state over a supervised individual for a period of time determined by a court or releasing authority, during which time the supervised individual is required to report to or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the supervised individual at the time of release to the community or during the period of supervision in the community.

Rule 2.104 Forms

(a) States shall use the forms or electronic information system authorized by the commission.
(b) Section (a) shall not be construed to prohibit written, electronic or oral communication between compact offices.

Rule 4.112 Closing Supervision by the Receiving State

(a) The receiving state may close and cease supervision upon–

1. Discharge of supervision as determined by the sending state;
2. Notification to the sending state of the supervised individual's absconding from supervision in the receiving state;
3. Notification to the sending state that the supervised individual has been sentenced to incarceration for 180 calendar days or longer, including judgment and sentencing documents and information about the individual’s location;
4. Notification of death;
5. Return to sending state; or
6. Departure pursuant to a subsequent state transfer.

(b) A receiving state shall not terminate its supervision while the sending state is in the process of retaking the supervised individual.

Rule 5.101-1 Pending Felony or Violent Crime Charges

Notwithstanding any other rule, if a supervised individual is charged with a subsequent felony or violent crime, the individual shall not be retaken or ordered to return until criminal charges have

been dismissed, sentence has been satisfied, or the individual has been released to supervision for the subsequent offense, unless the sending and receiving states mutually agree to the retaking or return.

Rule 5.103-1 Retaking Absconders

(a) If a supervised individual who has absconded is apprehended in the receiving state on a warrant issued by the sending state, and the apprehension occurs within 30 calendar days of the warrant's issuance, the sending state is not required to retake the individual, provided both the sending and receiving states mutually agree.

(b) If a supervised individual who has absconded is apprehended within the jurisdiction of the receiving state on a warrant issued by a sending state, and more than 30 calendar days have passed since the warrant was issued or the sending and receiving states did not mutually agree under subsection (a), the receiving state shall establish probable cause as outlined in Rule 5.108.

(c) When determined that a supervised individual who has absconded requires retaking and probable cause is established pursuant to Rule 5.108, the sending state shall retake the supervised individual from the receiving state.

(d) The sending state shall keep its warrant and detainer in place until the supervised individual is retaken pursuant to subsection (c) or supervision is resumed pursuant to subsection (a).

Rule 5.106 Sending State Transport and Authority During Retaking:

(a) Officers authorized under the laws of a sending state may enter any compact state to take custody of a supervised individual, provided they adhere to this compact, its rules, due process requirements, and confirm both their authority and the individual’s identity.

(b) Member states shall allow officers authorized by the laws of the sending or receiving state to transport supervised individuals through the state without interference.

(c) Officers authorized by the laws of a sending state may take custody of a supervised individual from a local, state or federal correctional facility at the expiration of the period of confinement or the individual’s release from that facility provided that:

1. No detainer has been placed against the supervised individual by the state in which the correctional facility lies; and
2. No extradition proceedings have been initiated against the supervised individual by a third–party jurisdiction.

Analysis

1. Does Rule 4.112(b) apply when absconders are subject to retaking, or should these be considered "non-compact" matters?

Rule 4.112(b) does not determine whether an individual remains subject to the Compact. Except where the sending state has discharged supervision under Rule 4.112(a)(1), absconders remain Compact cases, regardless of where they are apprehended. Article I of the Compact and Rule 5.106 authorize sending-state officers to enter any Compacting State to apprehend and retake the individual.

Because these cases remain under Compact authority, the receiving state must document the individual's location, status, and subsequent case actions within the national data system. Rule 2.104(a) reinforces this obligation by requiring states to use "the forms or electronic information system authorized by the Commission." While Rule 2.104(b) permits supplementary communication through other means, it does not abrogate the requirement to document official Compact activity through the national data system.

2. Must the sending state resume supervision?

Because Rule 4.112(b) does not determine Compact applicability, withdrawing a warrant does not remove the case from the Compact's authority. Absent the sending state's determination to retake the individual, the receiving state should resume supervision under the sending state's sentencing order until either retaking occurs or supervision is formally discharged.

3. Whether Rule 5.101-1 controls cases involving new charges in the receiving state.

Absent mutual agreement among the sending and receiving states respectively, Rule 5.101-1 applies when the absconder has pending charges in the receiving state. Accordingly, the individual should not be retaken or ordered to return until either the charges are dismissed, the sentence for the new offense is satisfied, or the individual is released to supervision for the new offense.

4. Whether prosecutors or law enforcement may exercise discretion when determining whether to hold or detain absconders without bond for retaking or to set bond for new charges.

Receiving state prosecutors and supervising authorities retain full discretion under their own laws to determine whether to hold a supervised individual without bond or to release the individual on bond for the new criminal charges. But this discretion applies solely to the new offense in the receiving state.

With that said, ICAOS Rules provide that detention for the purpose of retaking may occur only when the supervised individual becomes available under Rule 5.101-1. That Rule expressly permits the sending and receiving states to mutually agree to retaking despite pending charges, but absent such agreement, retaking and compact detention must await satisfaction of the rule's "availability criteria."

5. Liability concerns for reopening ICOTS cases upon apprehension

As a general matter, parole and probation officers enjoy qualified immunity if their actions are in furtherance of a statutory duty and in substantial compliance with the directives of superiors and relevant statutory or regulatory guidelines. This immunity requires only that an officer's conduct be in substantial compliance with the directives of superiors and regulatory procedures. Taggart v. States, 822 P.2d 243 (Wash. 1992). Whether a government official may be held personally liable for an allegedly unlawful act turns on the "objective legal reasonableness" of the action in light of the legal rules that were "clearly established" at the time. Anderson v. Creighton, 483 U.S. 635, 639 (1987) (referring to Harlow v. Fitzgerald, 457 U.S. 800, 818-19 (1982)).

Because the Compact and ICAOS Rules continue to apply to cases involving absconders and detailed above, failure to follow Compact procedures, including reopening cases in the national data system when required, may potentially increase legal exposure. Rule 2.104 reinforces that states must use the authorized national data system for documenting and processing Compact cases. Though additional communication is permitted, it does not abrogate the obligation to record official actions in the national data system. Properly reopening the case in the national data system and documenting all actions therefore supports compliance and reduces legal risk for receiving-state authorities.

Conclusion

1. Absconders who are later apprehended in the receiving state remain subject to the Compact unless the sending state has formally discharged supervision under Rule 4.112(a)(1). When this occurs, the receiving state should reopen the ICOTS case to document the individual's status, location, related correspondence, and any probable-cause materials.
2. If the sending state withdraws its warrant or the individual is released by local authorities, the receiving state must resume supervision consistent with the original sentencing order.
3. When new charges exist, Rule 5.101-1 applies, and retaking may not occur until the individual becomes available, unless both states mutually agree otherwise.
4. Prosecutors and supervising authorities may exercise discretion regarding detention decisions.
5. Reopening cases in the national data system in these circumstances aligns with ICAOS rules and supports compliance, which mitigates liability concerns for receiving-state officials.