



INTERSTATE COMMISSION FOR
ADULT OFFENDER SUPERVISION

WHITE PAPER

Legal Implications of Remote Hearings in Relation to ICAOS Rules

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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 3.103-3(b) directly permits reporting instructions for “sex offenders living in the receiving state at the time of sentencing” and cross-references Rules 3.101-1, 3.103 and 3.103-1. 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) and Rule 3.103-3 (b)(2) also provide 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, these provisions are accordingly inapplicable. In such cases, Rule 3.103-3(b) 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.

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 § 5.4. 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.

Much more Rule 5.101-2 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."