



Notice of Public Hearing

In accordance with ICAOS Rule 2.109(c), the Rules Committee shall publish the text of the proposed rule or amendment no later than 30 days prior to the meeting at which the vote on the rule is scheduled. A vote scheduled on September 14, 2011 will consider proposed amendments to Rule 1.101, Rule 3.101-3, Rule 3.101-4, Rule 3.105, Rule 3.107, Rule 4.112, and Bylaws, Article VII.

Place: **Montgomery-5 Room**, Montgomery Renaissance Hotel, 201 Tallapoosa St, Montgomery, AL 36104

Date: Tuesday, September 13, 2011

Time: 5:00 pm (CDT)

The manner which interested persons may submit notice to the Commission of their intent to attend and submit written comments, to:

Sam Razor
Assistant Director

srazor@interstatecompact.org

Phone: (859) 721-1052,
Fax: (859) 721-1059

836 Euclid Ave, Suite 322
Lexington, KY 40502

2011-RULES-1.101Resident

Proposal to create/amend rules:

Rule 1.101 Definitions...

“Resident” means a person who—

- (1) has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision; and
- (2) intends that such state shall be the person’s principal place of residence; and
- (3) has not, unless incarcerated or on active military deployment, remained in another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.

Justification

Military personnel are frequently deployed away from their home states. In these cases, location is not a voluntary decision. When these personnel are convicted of crimes in the states where they are deployed, and become subject to supervision by civil authorities, they may be discharged by the military service. However, if an offender has been away from his or her home state more than six months, the offender may no longer meet the criteria for “resident” of that state. This modification establishes that presence in a state while on military deployment will not be considered “remain[ing] in another state” under section (3) and will not, in itself, disqualify an offender from claiming residence in his or her home state.

Effect on other rules, advisory opinions or dispute resolutions:

No effect on other rules, advisory opinions or dispute resolutions.

ICOTS impact:

These definitions do not require adjustments to ICOTS.

Rules Committee action:

The committee considered the comments received.

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal be adopted.

Effective date:

March 1, 2012

2011-RULES-1.101ViolentOffender

Proposal to create/amend rules:

Rule 1.101 Definitions...

"Violent Offender" means an offender under supervision for a violent crime committed in the sending state.

Justification:

The addition of "committed in the sending state" helps to clarify that the sending state statute determines whether an offender seeking transfer under the compact is under supervision for a violent crime.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

This definition does not require adjustments to ICOTS.

Rules Committee action:

The committee considered the comments received.

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal be adopted.

Effective date:

March 1, 2012

2011-EAST-3.101-3

Proposal to create/amend rules:

Rule 3.101-3 Transfer of supervision of sex offenders

- (a) *Eligibility for Transfer*-At the discretion of the sending state a sex offender shall be eligible for transfer to a receiving state under the Compact rules. A sex offender shall not be allowed to leave the sending state until the sending state's request for transfer of supervision has been approved, or reporting instructions have been issued, by the receiving state. In addition to the other provisions of Chapter 3 of these rules, the following criteria will apply.
- (b) *Application for Transfer*-In addition to the information required in an application for transfer pursuant to Rule 3.107, in an application for transfer of supervision of a sex offender the sending state shall provide the following information, if available, to assist the receiving state in supervising the offender:
- (1) assessment information, including sex offender specific assessments;
 - (2) social history;
 - (3) information relevant to the sex offender's criminal sexual behavior;
 - (4) law enforcement report that provides specific details of sex offense;
 - (5) victim information
 - (A) the name, sex, age and relationship to the offender;
 - (B) the statement of the victim or victim's representative;
 - (6) the sending state's current or recommended supervision and treatment plan.
- ~~(c) *Reporting instructions for sex offenders living in the receiving state at the time of sentencing* Rule 3.103 applies to the transfer of sex offenders, except for the following:~~
- ~~(1) The receiving state shall have five business days to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instruction. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.~~
 - ~~(2) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state.~~
- (c) The receiving state shall issue reporting instructions to sex offenders living in the receiving state at the time of sentencing per Rule 3.103, if the offender:
- (1) meets the compact definition of resident of the receiving state supported by documentation provided by the sending state at the time of the request, and
 - (2) is on supervision for a term of probation that was not preceded by a continuous period of incarceration immediately prior to the effective date of the probation term.

- (d) If the offender qualifies for reporting instructions under (c), the receiving state shall conduct an investigation of the proposed residence within 5 business days following receipt of the sending state's request for reporting instructions to ensure compliance with state laws and/or policies.
- (1) If the results of the investigation indicate that the proposed residence is not suitable for a sex offender or invalid due to state laws and/or policies, the receiving state's field staff will assist the offender in establishing an alternative residence or an approved temporary living arrangement until an acceptable permanent residence can be secured.
- (2) If the proposed residence is deemed appropriate for a sex offender, the offender shall be permitted to remain at that address pending the investigation of the transfer request.
- (e) Upon receipt of a request for reporting instructions from the sending state for a sex offender who was living in the receiving state at the time of sentencing that does not meet the ICAOS definition of resident or who was incarcerated for a continuous period of time prior to being placed on probation, the receiving state shall have 5 business days to investigate the proposed residence. If the proposed residence is invalid due to existing law or policy, the receiving state may deny reporting instructions. No travel permit shall be granted by the sending state until approved reporting instructions are issued by the receiving state.

Justification

Section 3.101-3(c) is repealed and recreated, and creating 3.101-3 (d) and (e):

Sending states' officers often find themselves scrambling to find temporary housing for sex offenders who were living in the receiving state at the time of sentencing pending the results of the 5 day preliminary investigation being conducted in the receiving state. These offenders are often employed in the receiving state and need to return to work or face possible termination. The situation for the offender worsens in cases where the current residence in the receiving state is found to be unsuitable and they are forced to remain in the sending state for much longer while attempting to secure an alternative address in the receiving state. Often the only options available in the sending state are shelters that, in many instances, do not take sex offenders, or hotels where families frequently stay with children. Causing the offender to lose their employment only exacerbates the issue since they will need money to relocate or find a second residence in addition to the cost of the residence where the offender's family may be residing.

It seems more logical that, if an offender is a resident of the receiving state by definition of the compact and all of their recourses are there, the offender should be permitted to return to the sending state per rule 3.103 and be placed by the receiving state officer in a shelter or other temporary type of housing if, after their 5 day preliminary investigation, it is determined that the home is unsuitable. This change in language allows the offender to

return to their state of residence and places the responsibility of finding an appropriate residence on the officers in the receiving state who know their area, its resources and laws. This would allow the offender to continue with their employment and other obligations in the receiving state while an appropriate home plan is developed.

Effect on other rules, advisory opinions or dispute resolutions:

This proposal does not appear to directly conflict with any existing rules or previous advisory opinions. The Rules Committee changed the format of the original proposal and revised some of the language, without affecting the meaning or intent proposal.

ICOTS impact:

This proposal can be implemented without modification to ICOTS.

Rules Committee action:

The Rules Committee applauds the East Region's efforts and supports the concept of collaborative efforts by both the sending and receiving states for sex offenders living in the receiving state at the time of sentencing who are also Compact residents. However after reviewing the comments, it does not support the proposed language as written and the policy shift it establishes without extensive discussion and vetting. The Rules Committee recommends a new sex offender ad hoc committee be established to revisit the concepts addressed in this proposal instead of adopting this amendment at this time. The ad hoc committee would provide a report to the Rules Committee for drafting a proposed amendment.

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal not be adopted.

Effective date:

March 1, 2012

2011-RULES-3.105

Proposal to create/amend rules:

Rule 3.105 Pre-release transfer ~~R~~ request for transfer of a paroling offender

(a) A sending state ~~shall~~ may submit a completed request for transfer of supervision no earlier than 120 days prior to an offender's planned release from a correctional facility a paroling offender to a receiving state no earlier than 120 days prior to the offender's planned prison release date.

(b) If a pre-release transfer request has been submitted, ~~A~~ sending state shall notify a receiving state

(1) if the planned release date changes; ~~of the offender's date of release from prison~~
or

(2) if recommendation for release parole of the offender has been withdrawn or denied.

(c) ~~(1)~~ A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender's intended date of departure ~~from the sending state~~ and shall provide immediate notice of such withdrawal to the sending state.

~~(2) A receiving state that withdraws its acceptance under Rule 3.105 (c) (1) shall immediately notify the sending state.~~

~~(3) Following withdrawal of the receiving state's acceptance, a sending state must resubmit a request for transfer of supervision of a paroling offender in the same manner as required in Rule 3.105 (a).~~

Justification

The proposed revision clarifies the intent and scope of the rule, consistent with ICAOS Advisory Opinion 1-2009. A state may submit a request to transfer an offender incarcerated in a correctional facility, whether it be a prison, jail, halfway house, workhouse, or some other custodial facility, prior to the offender's release. Public safety is served best when a transfer investigation can be completed prior to an offender's release to supervision. Further, the compact language addresses "supervision" without exclusive reference to "parole", which is not defined in the rules. While that term might once have included anyone subject to supervision following a period of incarceration, it is no longer the case.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

This proposal does not require adjustments to ICOTS.

Rules Committee action:

The committee considered the comments received and upon further review decided to leave language in section (c) concerning failure to report and notice of withdrawal.

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107a1

Proposal to create/amend rules:

Rule 3.107 Transfer Request

- (a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
- (1) transfer request ~~form~~ information entered into electronic information system;.....

Justification:

(a) (1): The electronic information system does not utilize forms. The word “form” should be deleted to avoid confusion.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

The proposal can be implemented without modification to ICOTS.

Rules Committee action:

The committee considered the comments received and feel the justification does not match the proposal and might create confusion regarding the completion of the transfer request.

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (a)(1) not be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107a2

Proposal to create/amend rules:

Rule 3.107 Transfer Request

- (a) A transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
- (2) ~~A narrative description of the~~ instant offense in sufficient detail to describe the ~~circumstances~~, type and severity of offense, who committed the offense, where and when the offense was committed, how the offense was committed, and whether the charge has been reduced at the time of imposition of sentence;.....

Justification:

(a) (2): This language is very specific as to what information should be included in the narrative description of the offense.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

This proposal does not require adjustments to ICOTS.

Rules Committee action:

The committee considered the comments received and feel the amendment to this rule effective March 1, 2011 accomplishes the intent of this proposal already.

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (a)(2) not be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107a3

Proposal to create/amend rules:

Rule 3.107 Transfer Request

- (a) A transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
(3) specific offense at conviction and sending state statute number;

Justification:

(a) (3): The statute under which the offender was sentenced in the sending state will assist the officer in the receiving state in determining the comparable receiving state statute and classification of the offender in the receiving state. Currently, the rule only requires that the sending state indicate whether the charge was reduced at the time of imposition of sentence. There is no field in ICOTS that requires or captures the specific offense at conviction, only broad NCIC categories of offenses.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

While the proposal may be implemented without modification to ICOTS, it is likely the information would not be transmitted consistently without significant changes to ICOTS.

Cost estimate to add field on offense screen to allow sending state to enter state statute number=\$6, 840

Rules Committee action:

While the requirement to provide the statutory number defining the crime of which the offender was convicted is laudable, this amendment would allow a rejection of a transfer request merely for not providing this number per Rule 3.104 (b). Such information may be requested under 3.107 (c).

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (a)(3) not be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107a5_6

Proposal to create/amend rules:

Rule 3.107 Transfer Request

- (a) A transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
- (5) order of supervision with standard and special conditions of supervision within thirty (30) calendar days of the offender's arrival in the receiving state, if not available at the time the transfer request is submitted;
 - ~~(6) conditions of supervision;~~

Justification:

(a) (5): The order of supervision specifying both standard and special conditions of supervision is needed to indicate the offense for which the offender was ultimately convicted, as opposed to what the offender was charged with at the time of arrest. There is also no field in ICOTS that requires or captures standard conditions of supervision. Inclusion of the order of supervision will serve as back up documentation of the special conditions imposed by the sending state. The rule will allow for transmission of the supervision order within thirty (30) days of acceptance if it is not available at the time the transfer request is submitted.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does create a conflict with other rules as explained in the rules committee action below.

ICOTS impact:

While the proposal may be implemented without modification to ICOTS, it is likely the information would not be transmitted consistently without significant changes to ICOTS.

Cost estimate to create new "Order of Supervision" process to allow for delayed delivery of conditions of supervision to be sent within 30 days of arrival in the receiving state=\$90,000 – 120,000

Rules Committee action:

After review of comments received, the Rules Committee reevaluated its prior analysis and concluded it had overlooked conflicts with existing rules. The proposed amendments specifically contradict the rules as follows:

- Rule 1.101 "plan of supervision"- requires the terms and conditions of supervision.
- Rule 3.101 (b)-requires the plan of supervision as part of a mandatory transfer request.

- Rule 4.103(c)- requires the sending state to inform the receiving state of any special conditions to which the offender is subject at the time the request for transfer is made.
- Rule 4.103(d)-requires the receiving state to notify the sending state of its inability to enforce a special condition at the time the request for transfer is made.
- Rule 4.103-1-references the original plan of supervision and precludes the ability to report a violation during first 30 days.

In addition to conflicts with above noted rules, a receiving state cannot accept a case without the sending state's conditions creating significant public safety and victim safety issues.

Section (c) already contains the 30 day time limit to request the "Order of Supervision." Conditions of supervision need to be provided at the time a request for transfer is made as noted above.

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (a)(5) & (a)(6) not be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107a9

Proposal to create/amend rules:

Rule 3.107 Transfer Request

- (a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
- (9) information as to whether the offender has a known gang affiliation, and the gang with which the offender is known to be affiliated;

Justification:

(a) (9): Information related to offenders' known gang affiliations provides useful information to probation officers and other law enforcement agencies tracking the interstate movement of gang members. This information will also enhance the safety of the investigating officer in the receiving state.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

The proposal does not require adjustment to ICOTS. ICOTS already allows for a user to enter gang affiliation information.

Rules Committee action:

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (a)(9) be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107a11

Proposal to create/amend rules:

Rule 3.107 Transfer Request

- (a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
- (11) supervision history; ~~unless it does not exist,~~ if the offender has been on supervision for more than thirty (30) calendar days at the time the transfer request is submitted;

Justification:

(a) (11): Setting a specific time frame to require supervision history provides clear guidance as to when this information is required.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

The amendment does not require adjustment to ICOTS.

Rules Committee action:

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (a)(11) be adopted.

Effective date:

March 1, 2012

2011-SOUTH-3.107c

Proposal to create/amend rules:

Rule 3.107 Transfer Request

(c) Additional documents, ~~necessary for supervision in the receiving state, such as the Judgment and Commitment, and any other information~~ may be requested from the sending state following acceptance of the offender. The sending state shall provide the documents within no more than 30 calendar days from the date of the request, unless distribution is prohibited by law or a document does not exist.

Justification:

(c): There is no need to give an example of additional documents that might be requested.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

The amendment does not require adjustment to ICOTS.

Rules Committee action:

The proposed amendment was offered prior to changes effective March 1, 2011 that make the amendment unnecessary.

On 7/14/2011, by 5-0 vote, the Rules Committee recommends that (c) not be adopted.

Effective date:

March 1, 2012

2011-RULES-4.111

Proposal to create/amend rules:

Rule 4.111 Return to the sending state

(a) Upon an offender's request to return to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions.

(b) Except as provided in subsection (c), the sending state shall grant the request and provide reporting instructions no later than two business days following receipt of the request for reporting instructions from the receiving state.

(c) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108-1 (b)(1)(C) have been followed.

(d) A receiving state shall notify the sending state as required in Rule 4.105 (a).

Justification:

The purpose of this proposal is to distinguish between the victim's right to be heard under Rule 3.108-1 (a) and victim notification required under Rule 3.108 during the process of an offender returning to the sending state where the victim resides. The proposal leaves intact the victim's right to be heard. Reporting instructions shall not be provided until the victim has been notified.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

This proposal does not require adjustments to ICOTS.

Rules Committee action:

Upon review of comments, "victim notification" was inserted to clarify the requirement to notify victims when an offender requests to return to the sending state.

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal be adopted.

Effective date:

March 1, 2012

2011-SOUTH-4.112

Proposal to create/amend rules:

Rule 4.112 Closing of supervision by the receiving state

(a) The receiving state may close its supervision of an offender and cease supervision upon-

- (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
- (2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;
- (3) Notification to the sending state that the offender has been sentenced to incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender's location;
- (4) Notification of death; or
- (5) Return to sending state.

(b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender under Rule 5.101.

(c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment.

(d) The sending state shall submit the case closure notice reply to the receiving state within ten (10) business days of receipt.

Justification:

With the implementation of ICOTS, states are now required to submit a case closure notice response indicating validation or invalidation of a case closure by the receiving state to ensure that all parties are aware of and in agreement with closure of a case. There is not currently any provision in the Compact rules for this process or a time frame for submission of the reply. Timely closure of cases is essential to removing inactive cases from the public ICOTS portal.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

This proposal can be implemented without modification to ICOTS, however the tracking of the time frame and the generation of automated email notifications requires modifications.

Cost estimate to enforce a due date on the case closure response, including due date on the compact workload, email notifications and a new overdue report=\$13,680

Rules Committee action:

The Rules Committee requests costs on modifying ICOTS to eliminate the Case Closure Response and ensure compliance with the requirements of Rule 4.112 (a) (1-5).

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal be adopted.

Effective date:

March 1, 2012

2011-RULES-BylawArtVIIISec3

Proposal to Amend ICAOS Bylaws, ARTICLE VII, COMMITTEES, and to create:

Section 2. ~~Other~~ Standing Committees

.....

Section 3. Ad hoc Committees

The Commission may establish ad hoc committees to perform special purposes or functions. Upon creation of an *ad hoc* committee, the chairperson of the Commission shall issue a charge to the committee, describing the committee's duties and responsibilities. The charge shall specify the date by which the *ad hoc* committee shall complete its business and shall specify the means by which the *ad hoc* committee shall report its activities to the Commission.

Section ~~3~~ 4. Regional Representatives

Justification:

The new section will clarify the authority and procedural requirements for creating *ad hoc* committees, and require a defined purpose and time frame for the *ad hoc* committee to perform its duties. Without these requirements, *ad hoc* committees may be unable to identify exactly what they are expected to accomplish or when it has occurred.

Effect on other rules, advisory opinions or dispute resolutions:

The proposal does not appear to create a conflict with any other rules, advisory opinions or dispute resolutions.

ICOTS impact:

This proposal does not require adjustments to ICOTS.

Rules Committee action:

Upon reviewing comments, the Rules Committee made technical changes to the proposal to eliminate language already included in the By-laws regarding the power of the executive committee to act on behalf of the Commission.

On 7/14/2011, by 5-0 vote, the Rules Committee recommended the proposal be adopted.

Effective date:

March 1, 2012