

## **Report of the ad hoc Committee on Violations and Retaking**

The ad hoc Committee on Violations and Retaking respectfully submits the following report of its findings and recommendations.

### **Creation of Committee**

On March 31, 2010, the ICAOS Executive Committee voted unanimously to authorize the ad hoc Committee on Violations and Retaking. Ken Merz, Interstate Commission for Adult Offender Supervision (ICAOS)-Chair appointed the following members to the committee:

Chair: Milton Gilliam (OK), Commissioner  
Mike McAlister (NH), Commissioner  
William Rankin (WI), Commissioner  
Dori Ege, (AZ), Commissioner  
Sara Andrews (OH), Commissioner  
Scott Blonien (WA), Commissioner  
Warren Emmer, (ND)-Ex-Officio  
Regina Grimes, (TX)-Ex-Officio  
Rick Masters (KY)-General Counsel

### **Charge to the Committee**

The Executive Committee hereby authorizes creation of the ad hoc Committee on Violations and Retaking. The ad hoc committee is directed to study the question:

Do the ICAOS Rules provide adequate authority and sufficient clarity, in regard to procedures for responding to violations and retaking of offenders, to ensure public safety, provide due process to offenders, and balance the legitimate interests of the sending and receiving states?

If the ad hoc committee determines that the current rules are inadequate or insufficient, the ad hoc committee shall submit proposals to create or amend existing rules. The ad hoc committee shall include in its deliberations consideration of proposals recommended by the State of Washington.

### **Activities of the Committee**

The ad hoc committee convened a 2-day meeting in Oklahoma City, Oklahoma, May 4-5, 2010. The committee meeting began with an explanation of the purpose of the committee and a discussion of the incident involving Maurice Clemmons, Arkansas parolee that was transferred to the State of Washington. During his supervision Clemmons shot and killed four police officers in Washington. This incident was one of the factors that was discussed when the decision was made to authorize this committee to review violations and retaking.

An outline of the rules and a list of questions about those particular rules in reference to violations and retaking as well as one rule concerning the transfer process was reviewed by the committee and it was agreed to use it as a guide for the discussion. During the next two days the committee discussed the rules and the issues and made several recommendations about violations including new and amended rules and referrals to the training and rules committee.

### **Recommendations of the Committee**

After discussion of the issues and rules surrounding these issues the committee is making the following recommendations and referrals to the ICAOS Executive Committee for action.

1. Abscond-The committee recommends changes to Rule 4.109 by deleting certain language. The committee is proposing a new rule specifically addressing the violation of absconding. This new rule details the types of attempts that should be made to determine if the offender is an absconder. Another new rule is being proposed by the committee to require mandatory retaking of offenders who abscond supervision.
2. Violations-The committee is proposing a new rule that designates mandatory retaking for violent offenders or for offenders who commit a violent crime. Due to the proposed rule the committee is recommending new definitions for violent offender and violent crime. A referral will be made to the training committee chair to draft an ICOTS enhancement recommending change of the information on the violation and violation response forms.
3. Transfer Request-Recommendations are being made to amend Rule 3.107 in order to strengthen language referring to the description of the offense and to the section of the rule dealing with the terminology, "if available". Additional language is also recommended to clarify that documents necessary for supervision shall be provided within a specified time frame if they exist.
4. Custody-The recommendations for this area include continued training on the authority to detain the offender and the responsibility of holding the probable cause hearing. It was noted that items were a current training item and it was recommended that they be topics at the 2010 Deputy Compact Administrator's training and at the ICAOS Annual Business meeting. Discussion was held concerning compact warrants being issued by Commissioners. This item will be referred to the Rules Committee for further study.
5. Warrants-The committee is proposing a new definition of the term warrant. The term is used in the ICAOS Rules, but is not currently defined. The Training Committee will be asked to clarify the difference between a warrant and a detainer in a training bulletin and will be asked to include training at the 2010 Deputy Compact Administrator's training and the ICAOS Annual Business meeting in reference to standard language for NCIC entries. The committee is recommending added language to several current rules and proposed rules to specify the responsibility for issuing a warrant for an offender and lodging a detainer with the holding facility. A referral will be made to the Rules Committee for further study in regards to standardizing warrant language.
6. Probable Cause Hearings-There are no recommendations at this time from the committee.
7. The recommendation from the committee is to strike language in Rules 5.102 and 5.103 that allows an offender to be ordered to return and requires that a warrant be issued to retake offender when requested from the receiving state. After discussion of retaking without the intent to revoke and who makes the decision of when an offender should be retaking when there are pending charges in the receiving state it was determined that the training committee is already providing training on these issues.

The ad hoc Committee on Violations and Retaking made several recommendations for proposed rules additions and changes for consideration by the full Commission at the 2010 ICAOS Annual Business Meeting. The following proposals will be submitted to the ICAOS Executive Committee Meeting, May 18, 2010, for review and action. It will also be recommended that the ad hoc Committee on Violations and Retaking remain active until after the presentation of the proposals to the Commission at the ICAOS Annual Business Meeting.

## **VIOLATIONS AND RETAKING**

Due to concerns by states, as well as high profile media cases the Interstate Commission for Adult Offender Supervision (ICAOS), Executive Committee voted during their March, 2010, meeting to appoint an ad hoc committee to study issues and rules concerning violations and retaking of interstate compact offenders. The focus of this committee was to review current rules to determine if they were adequate to respond to violations and retaking by ensuring public safety, providing due process to offenders, and balancing the interest of both the sending and receiving state. After review the committee was tasked with submitting proposals to the ICAOS Executive Committee such as creating or amending existing rules and/or making referrals to other standing ICAOS committees. The committee convened in Oklahoma City, Oklahoma, May 4 & 5, 2010.

The ICAOS rules were reviewed in reference to violations and retaking to determine their current effectiveness, how they impact public safety, and the effect they would have on each ICAOS member state. After exhaustive discussion and review the committee has made several recommendations ranging

from proposed new rules, proposed rule amendments, and referrals to the training committee and rules committee.

The attached recommendations by this committee are a comprehensive approach to make needed changes and additions to rules as well as continuing our training efforts on the existing rules in an effort to promote public safety around the country. This committee would like to encourage all Compact Commissioners to study these recommendations as a part of an all-inclusive plan to ensure that we are following through with the violation and retaking process to make sure we are protecting the citizens of our respective states.

### **RULE 1.101-DEFINITIONS**

**NEW DEFINITION-“VIOLENT CRIME”** MEANS ANY CRIME INVOLVING VIOLENCE, INCLUDING AN OFFENSE IN WHICH A PERSON HAS INCURRED DIRECT OR THREATENED PHYSICAL OR PSYCHOLOGICAL HARM OR INVOLVING THE USE OF A DEADLY WEAPON IN THE COMMISSION OF A CRIME, OR ANY SEX OFFENSE REQUIRING REGISTRATION.

**NEW DEFINITION-“VIOLENT OFFENDER”** MEANS AN OFFENDER UNDER SUPERVISION FOR A VIOLENT CRIME.

**Justification:** Definitions are necessary to promulgate retaking rules on violent offenders/offenses

**NEW DEFINITION-“WARRANT”** MEANS A WRITTEN ORDER OF THE COURT OR AUTHORITIES OF A SENDING OR RECEIVING STATE OR OTHER BODY OF COMPETENT JURISDICTION WHICH IS MADE ON BEHALF OF THE STATE, OR UNITED STATES, ISSUED PURSUANT TO STATUTE AND/OR RULE AND WHICH COMMANDS LAW ENFORCEMENT TO ARREST AN OFFENDER. THE WARRANT SHALL BE ENTERED IN THE NATIONAL CRIME INFORMATION CENTER (NCIC) WITH A NATIONWIDE PICK UP RADIUS.

**Justification:** Define a term that is used in the rules, but not previously defined.

**AMENDMENT TO CURRENT RULE**-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;
  - (2) **A NARRATIVE DESCRIPTION OF THE** instant offense in sufficient detail to describe the **CIRCUMSTANCES**, type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;
  - (3) photograph of offender;
  - (4) conditions of supervision;
  - (5) any orders restricting the offender’s contact with victims or any other person;
  - (6) any known orders protecting the offender from contact with any other person;
  - (7) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
  - (8) pre-sentence investigation report, ~~if available~~, **UNLESS DISTRIBUTION PROHIBITED BY LAW OR IT DOES NOT EXIST.**
  - (9) supervision history, ~~if available~~, **UNLESS IT DOES NOT EXIST.**
  - (10) information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.
- (b) The original signed Offender Application for Interstate Compact Transfer shall be maintained in the sending state. A copy of the signed Offender Application for Interstate Compact Transfer shall be attached to the 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 ~~if available~~. **WITHIN NO MORE THAN 30 CALENDAR DAYS FROM THE DATE OF THE REQUEST, UNLESS DISTRIBUTION IS PROHIBITED BY LAW OR DOES NOT EXIST.**

**Justification:** Clarifies the requirement to provide instant offense details and other documents in the transfer request and to specify the time period for responding to request for information necessary for supervision, following acceptance.

*References:*

*ICAOS Advisory Opinions*

*5-2005* [For paroling offenders a release date is to be required for the transfer application]

**History:** *Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended September 13, 2005 (to be effective upon the implementation of electronic system; date to be determined by Executive Committee), effective October 6, 2008; amended September 26, 2007, effective January 1, 2008; amended November 4, 2009, effective March 1, 2010.*

## **AMENDMENT TO CURRENT RULE-Rule 4.109 Violation reports**

- (a) A receiving state shall notify a sending state of significant violations of conditions of supervision by an offender within 30 calendar days of discovery of the violation.
- (b) A violation report shall contain-
- (1) offender's name and location;
  - (2) offender's state-issued identifying numbers;
  - (3) date of the offense or infraction that forms the basis of the violation;
  - (4) description of the offense or infraction;
  - (5) status and disposition, if any, of offense or infraction;
  - (6) dates and descriptions of any previous violations;
  - (7) receiving state's recommendation of actions sending state may take;
  - (8) name and title of the officer making the report; and
  - (9) if the offender has absconded, the offender's last known address and telephone number, name and address of the offender's employer, and the date of the offender's last personal contact with the supervising officer and details regarding how the supervising officer determined the offender to be an absconder.
  - (10) Supporting documentation regarding the violation including but not limited to police reports, toxicology reports, and preliminary findings.
- (c)
- (1) The sending state shall respond to a report of a violation made by the receiving state no later than ten business days following receipt by the sending state. Receipt of a violation report shall be presumed to have occurred by the fifth business day following its transmission by the receiving state;
  - (2) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion date.
  - ~~(3) A sending state shall, upon receipt of an absconder violation report and case closure, issue a warrant for the offender that is effective in all states without limit as to specific geographic area.~~
  - ~~(4) If an offender who has absconded is apprehended on a sending state's warrant within the jurisdiction of the receiving state that issued the violation report and case closure, the receiving state shall, upon request by the sending state, conduct a probable cause hearing as provided in Rule 5.108 (d) and (e) unless waived as provided in Rule 5.108~~

*History: Adopted November 4, 2003, effective August 1, 2004; amended September 26, 2007, effective January 1, 2008. November 4, 2003, effective August 1, 2004; amended September 26, 2007, effective January 1, 2008.*

**Justification:** Deletes information now incorporated in proposed rules.

**NEW PROPOSED RULE-4.109-2 Absconding Violation**

A. IF THE RECEIVING STATE BELIEVES THAT AN OFFENDER HAS ABSCONDED THE RECEIVING STATE SHALL ATTEMPT TO LOCATE THE OFFENDER. SUCH ATTEMPTS SHALL INCLUDE, BUT ARE NOT LIMITED TO:

- 1) CONDUCT FIELD CONTACT AT THE LAST KNOWN PLACE OF RESIDENCE
- 2) CONTACT THE LAST KNOWN PLACE OF EMPLOYMENT, IF APPLICABLE
- 3) CONTACT KNOWN FAMILY MEMBERS AND COLLATERAL CONTACTS

B. IF THE OFFENDER IS NOT LOCATED FOLLOWING THE ABOVE ATTEMPTS THE RECEIVING STATE SHALL SUBMIT A VIOLATION REPORT PURSUANT TO RULE 4.109(B)(9).

**Justification:** Proposed new rule to clarify the receiving state's responsibility to determine that the offender absconded, prior to submitting a violation report and closing interest.



**AMENDMENT TO CURRENT RULE-Rule 5.101 Retaking by the sending state**

(a) Except as required in Rules 5.102 and 5.103, at its sole discretion, a sending state may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.

**(B) UPON ITS DETERMINATION TO RETAKE THE OFFENDER, THE SENDING STATE SHALL ISSUE A WARRANT AND FILE A DETAINER WITH THE HOLDING FACILITY WHEN THE OFFENDER IS IN CUSTODY.**

(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.

**Justification:** Clarifies responsibility of the sending state with regard to retaking.

*References:*

*ICAOS Advisory Opinion*

12-2006[Neither the time frame nor the means by which the retaking of the offender shall occur as outlined in Rule 5.101 (a) are provided]

***History: Adopted November 4, 2003, effective August 1, 2004; amended September 26, 2007, effective January 1, 2008.***

**AMENDMENT TO CURRENT RULE-Rule 5.102 Mandatory retaking for a new felony conviction**

Upon a request from the receiving state, a sending state shall retake ~~or order the return of~~ an offender from the receiving state or a subsequent receiving state upon the offender's conviction for a new felony offense and-

- (a) completion of a term of incarceration for that conviction; or
- (b) placement under supervision for that felony offense.

**WHEN A SENDING STATE IS REQUIRED TO RETAKE AN OFFENDER, THE SENDING STATE SHALL ISSUE A WARRANT AND FILE A DETAINER WITH THE HOLDING FACILITY WHEN THE OFFENDER IS IN CUSTODY.**

~~If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographic area, no later than 10 calendar days following the offender's failure to appear in the sending state.~~

**Justification:** Clarifies responsibility of the sending state with regard to retaking.

*History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.*

**AMENDMENT TO CURRENT RULE-Rule 5.103 Mandatory retaking for violation of conditions of supervision**

- (a) Upon a request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake ~~or order the return of~~ an offender from the receiving state or a subsequent receiving state.
- (b) ~~If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographic area, no later than 10 calendar days following the offender's failure to appear in the sending state.~~
- (b) WHEN A SENDING STATE IS REQUIRED TO RETAKE AN OFFENDER, THE SENDING STATE SHALL ISSUE A WARRANT AND FILE A DETAINER WITH THE HOLDING FACILITY WHEN THE OFFENDER IS IN CUSTODY.**

**Justification:** Clarifies responsibility of the sending state with regard to retaking.

*References:*

*ICAOS Advisory Opinions*

2-2005 [An out of state offender may be arrested and detained by a receiving state who are subject to retaking based on violations of supervision, *See* Rule 4.109-1]

10-2006[Offenders transferred prior to the adoption of ICAOS rules August 1, 2004 may be retaken under the current rules if one of the significant violations occurred after August 1, 2004]

4-2007 [It is unreasonable to assume the subsequent application of Rule 5.103 (a) to include violations occurring prior to an application being accepted as a basis to require retaking]

***History: Adopted November 4, 2003, effective August 1, 2004; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.***

**NEW PROPOSED RULE-5.103-1 Mandatory retaking for offenders who abscond**

- A. UPON RECEIPT OF AN ABSCONDER VIOLATION REPORT AND CASE CLOSURE, THE SENDING STATE SHALL ISSUE A WARRANT AND FILE A DETAINER WITH THE HOLDING FACILITY WHEN THE OFFENDER IS IN CUSTODY.
- B. IF AN OFFENDER WHO HAS ABSCONDED IS APPREHENDED ON A SENDING STATE'S WARRANT WITHIN THE JURISDICTION OF THE RECEIVING STATE THAT ISSUED THE VIOLATION REPORT AND CASE CLOSURE, THE RECEIVING STATE SHALL, UPON REQUEST BY THE SENDING STATE, CONDUCT A PROBABLE CAUSE HEARING AS PROVIDED IN RULE 5.108 (D) AND (E) UNLESS WAIVED AS PROVIDED IN RULE 5.108 (B).
- C. THE SENDING STATE SHALL KEEP ITS WARRANT AND DETAINER IN PLACE UNTIL THE OFFENDER IS RETAKEN.
- D. UPON A FINDING OF PROBABLE CAUSE THE SENDING STATE SHALL RETAKE THE OFFENDER FROM THE RECEIVING STATE.
- E. IF PROBABLE CAUSE IS NOT ESTABLISHED, THE RECEIVING STATE SHALL RESUME SUPERVISION UPON THE REQUEST BY THE SENDING STATE.

**Justification:** Clarifies responsibility of the sending state with regard to retaking absconders.

**NEW PROPOSED RULE-RULE 5.103-2 MANDATORY RETAKING FOR VIOLENT OFFENDERS AND VIOLENT CRIMES**

- A. UPON A REQUEST FROM THE RECEIVING STATE, A SENDING STATE SHALL RETAKE A VIOLENT OFFENDER WHO HAS COMMITTED A SIGNIFICANT VIOLATION.
- B. UPON A REQUEST FROM THE RECEIVING STATE, A SENDING STATE SHALL RETAKE AN OFFENDER WHO IS CONVICTED OF A VIOLENT CRIME.
- C. WHEN A SENDING STATE IS REQUIRED TO RETAKE AN OFFENDER, THE SENDING STATE SHALL ISSUE A WARRANT AND FILE A DETAINER WITH THE HOLDING FACILITY WHEN THE OFFENDER IS IN CUSTODY.

**Justification:** Creates a rule to retake violent offenders and offenders who commit violent crimes.