



Ad Hoc Committee on Violation Sanctions & Retaking Report

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

ANNUAL BUSINESS MEETING
CLEVELAND, OHIO

SEPTEMBER 14, 2016

TO: Commissioners of the Interstate Commission for Adult Offender Supervision

FROM: Robert Maccarone, Chair, Ad Hoc Committee Violation Sanctions and Retaking,
Commissioner, State of New York

Membership

Chair Robert Maccarone (NY) Commissioner, Vice Chair Tracy Hudrlik (WI) Commissioner, Commissioner Annmarie Aylward (WA), Commissioner Sara Andrews (OH), Commissioner Jane Seigel (IN), Commissioner Chris Moore (GA), and Rick Masters ICAOS Legal Counsel.

Charge of the Committee

In the interest of enhancing public safety, the Commission wishes to examine the sanctioning and retaking of offenders who violate conditions of supervision and who commit new crimes in the receiving state. Specifically, the committee is asked to review and recommend changes to Chapter One, "Definitions" and Chapter Five "Retaking" of the ICAOS Rules. The national office will support the work of the committee by providing administrative assistance, logistic support, and research.

Discussion

The ad hoc committee on violations, sanctions and retaking met six times: once in person and five using WebEx. The in person meeting took place in Louisville, KY on February 23, 2016. The committee members discussed the issues at length and developed new definitions and rule amendments, as well as some recommendations on ICOTS modifications. On March 29, 2016 Committee Chair Maccarone presented the ad hoc committee's work to the ICAOS Executive Committee.

During the in person meeting on February 23, 2016 the committee voted on and approved the following recommendations and forwarded to the Executive Committee for consideration.

Recommendations submitted to the Executive Committee

See attached minutes from February 23rd

Respectfully submitted,

Robert Maccarone

Robert Maccarone

Chair, Ad Hoc on Violation Sanctions & Retaking Committee



**Interstate Commission for Adult Offender Supervision
ICAOS Violation Sanctions and Retaking Ad Hoc Committee Meeting Minutes
Tuesday, February 23, 2016
Face-to-Face Meeting
The Brown Hotel
335 West Broadway
Louisville, KY 40202**

Members in Attendance:

- | | |
|---------------------|----------------|
| 1. Robert Maccarone | Chair, NY |
| 2. Anmarie Aylward | WA |
| 3. Tracy Hudrlik | Vice-chair, WI |
| 4. Sara Andrews | OH |
| 5. Jane Seigel | IN |
| 6. Chris Moore | GA |
| 7. Rick Masters | Legal Counsel |

Staff:

1. Harry Hageman
2. Lori Meister
3. Mindy Spring

Call to Order

Commissioner R. Maccarone (NY) called the meeting to order at 8:31 am ET; six voting members were present, establishing a quorum.

Agenda

Commissioner S. Andrews (OH) moved to approve the agenda. Commissioner J. Seigel (IN) seconded. Agenda approved.

Minutes

Commissioner S. Andrews (OH) moved to approve the minutes from January 19, 2016. Commissioner J. Seigel (IN) seconded.

Minutes approved.

Discussion

The committee reviewed the “Charge of the Committee”

“In the interest of enhancing public safety, the Commission wishes to examine the sanctioning and retaking of offenders who violate conditions of supervision and who commit new crimes in the receiving state. Specifically, the committee is asked to review and recommend changes to Chapter One, “Definitions” and Chapter Five “Retaking” of the ICAOS rules. The national office will support the work of the committee by providing administrative assistance, logistic support, and research.”

Commissioner R. Maccarone (NY) requested the members review the incentive and graduated response document provided by Indiana for consideration during discussion with agenda and worksheet items.

With reference to the draft proposals presented in the worksheet, the Committee discussed:

- Lack of consistency in applying the definition of ‘significant violation’ and lack of consistency in what behavior results in a request for revocation or retake.
 - Need to shift definition to relate to behavior, not particular action.
- Relationship between offenders and supervising authority
 - Incentives versus sanctions for offenders
 - R. Maccarone noted a recent study showed offenders preferred incentives related to privileges and that relationship between offender and supervising officers is important to offenders.
- States may initially perceive proposal as more work on a receiving state, but if applied properly the proposal should improve relationships between states
- Need to distinguish between violation and non-compliant behavior and more focus on receiving state’s responsibility for supervising interstate offenders as the majority are residents of the receiving state.
 - More focus on helping the offender and public safety
- Need requirement for receiving state to provide more detail and description when reporting non-compliant behavior.
- Definition of ‘significant violation’ is not in tandem with process of reporting technical violations
 - Lack of training illustrating behavior and action attempted to correct behavior. S. Andrews suggested training efforts should use detailed examples emphasizing the receiving state’s responsibility is to assist the offender in being successful.

1.101 Definitions

The Committee reviewed a proposal for Rule 1.101 replacing the definition of “significant violation” with a new definition regarding non-compliant behavior. It was considered whether the new definition should reference terms and conditions of supervision. The Committee agreed it is behavior, not necessarily an act which results in revocation of supervision.

Motion to forward proposal to Rule 1.101 to the Executive Committee for consideration made by S. Andrews, seconded by C. Moore. Motion carried.

Rule 1.101

~~“Significant Violation” means an offender’s failure to comply with the terms or conditions of supervision that, if occurring in the receiving state, would result in a request for revocation of supervision.~~

“Behavior Requiring Retaking” – means an act or pattern of non-compliance that could not be successfully addressed through corrective action or the use of graduated responses and would result in a request for revocation of supervision in the receiving state.

Chapter 3 – Transfer of Supervision

The Committee reviewed a proposal for Rule 3.108 to replace the term “significant violation” with the drafted definition for “behavior requiring retaking.”

Motion to forward proposal to Rule 3.108 to the Executive Committee for consideration made by S. Andrews, seconded by J. Seigel. Motion carried.

Rule 3.108 Victim Notification

(b) *Notification to victims upon violation by offender or other change in status-*

(1) The receiving state is responsible for reporting information to the sending state when an offender-

(A) Engages in behavior requiring retaking ~~Commits a significant violation;~~

Chapter 4 –Supervision in Receiving State

The Committee reviewed a proposal for Rule 4.101, which is intended to strengthen the receiving state’s ability to impose graduated sanction or corrective actions on interstate transfers. The proposal reinforces what states can use to address non-compliant behavior.

Motion to forward proposal to Rule 4.101 to the Executive Committee for consideration made T. Hudrlik, seconded by S. Andrews. Motion carried.

Rule 4.101 Manner and degree of supervision in the receiving state

A receiving state shall supervise offenders consistent with the supervision of similar offenders sentenced in the receiving state, including the use of incentives, corrective actions, graduated responses and other supervision techniques.

The Committee reviewed a proposal for Rule 4.103 discussing Advisory Opinion 1-2015, Rule 4.103-1 and impact of requiring the receiving state to notify any time an offender is subjected to a new condition, corrective action or use of graduated sanction. The offender application was also taken into consideration as the offender agrees to conditions imposed by both sending and receiving states as it is a privilege for offenders to be supervised in another state.

Motion to forward proposal to Rule 4.103 and 4.103-1 to the Executive Committee for consideration made S. Andrews, seconded by J. Seigel. Motion carried.

4.103-Special Conditions of Supervision

- (a) A sending state shall inform the receiving state of ~~any special~~ conditions to which the offender is subject at the time the request for transfer is made or at any time thereafter.
- (b) A receiving state that is unable to enforce any a special condition imposed ~~in~~ by the sending state shall notify the sending state of its inability to enforce the a special condition(s) at the time of when the request for transfer of supervision is made.
- (c) The sending state will give the same effect to conditions of supervision, including the use of incentives, corrective actions, graduated responses and other supervision techniques imposed by the receiving state.

Rule 4.103-1 Effect of special conditions or requirements

~~For purposes of revocation or other punitive action against an offender, the probation or paroling authority of a sending state shall give the same effect to a violation of special conditions or requirement imposed by a receiving state as if those conditions or requirement had been imposed by the sending state. Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state. For purposes of this rule, the original plan of supervision shall include, but not be limited to, any court orders setting forth the terms and conditions of probation, any orders incorporating a plan of supervision by reference, or any orders or directives of the paroling or probation authority.~~

The Committee reviewed a proposal for Rule 4.106 discussing it should be emphasized the importance of descriptive information and that the form should be used to report both compliant and non-compliant behavior that does not require retaking. Field staff should be trained to ensure progress reports are reviewed upon submission and progress reports should also include incentives afforded to the offender. Progress reports are a tool for communicating offender progress good and bad and should not be considered to be burdensome for field staff and compact offices.

Motion to forward proposal to Rule 4.106 to the Executive Committee for consideration made A. Aylward, seconded by C. Moore. Motion carried.

4.106 Progress reports on offender compliance and non-compliance

(a) A receiving state shall provide to the sending state a progress report on offender compliance and non-compliance at least annually, or more frequently, upon the request of the sending state, or for good cause shown. The receiving state shall provide the progress report within 30 calendar days of receiving the request.

(b) Progress reports are to be used by the receiving state to describe offender non-compliant behavior that does not require retaking and to document corrective actions or graduated responses imposed.

~~(b)~~ (c) A progress report shall include-

- (1) offender's name;
- (2) offender's residence address;
- (3) offender's telephone number and electronic mail address;
- (4) name and address of offender's employer;
- (5) supervising officer's summary of offender's conduct, progress and attitude, and compliance with conditions of supervision;
- (6) programs of treatment attempted and completed by the offender;
- (7) information about any sanctions that have been imposed on the offender since the previous progress report;
- (8) supervising officer's recommendation;
- (9) any other information requested by the sending state that is available in the receiving state.

The Committee reviewed proposal for Rule 4.109 which is intended to require the receiving state show the actions it has taken in attempting to address the offender's non-compliant behavior *prior* to the submission of a violation that requires retaking.

It was also discussed that responses to violation report under the proposal for Rule 5.103 limits the sending state to issuing a warrant, request probable cause hearing and order to return. All other responses will be removed. It was also clarified that the 30 days of discovery is determined by the receiving state's ability to no longer address the non-compliant behavior and that ICOTS also captures availability status to assist the sending state in timing for warrant issuing for cases when pending charges exist and the offender is not available for retaking.

Motion to forward proposal to Rule 4.109 to the Executive Committee for consideration made S. Andrews, seconded by C. Moore. Motion carried.

4.109 Violation Report [s] Requiring a Request for Retaking

(a) A receiving state shall notify a sending state of an act or pattern of behavior requiring retaking ~~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(s) or infraction(s) that forms the basis of the behavior requiring retaking violation;
- (4) description of the offense(s) or infraction(s);
- (5) the use of incentives, corrective actions, including graduated responses or other supervision techniques to address the behavior requiring retaking in the receiving state, and the offender's response to such actions;
- ~~(5) (6) status and disposition, if any, of offense(s) or infraction(s);~~
- ~~(6) (7) dates, and descriptions and documentation of previous non-compliance, to include a description of the use of corrective actions, graduated responses or other supervision techniques; 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 10 business days following 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

Chapter 5 –Retaking

The Committee reviewed a proposal for Rule 5.103 which requires the sending state to retake at the time it is determined the offender’s non-compliant behavior is no longer able to be successfully addressed in the receiving state.

It was considered that resistance for this proposal from states may stem from subjectivity of the proposal. However, the focus should rather be that the requirement for proper documentation should substantially decrease violation reports if applied properly and align supervision techniques with evidence based practices.

Also considered was if the option to ‘order the return’ in lieu of retaking should remain in the rule. Based on the newly adopted rules requiring reporting instructions for returning offenders, the committee asked the national office to review future stats on the percentage of offenders returning as ordered after violations. At this time, it was determined to leave the option in the proposal.

Motion to forward proposal to Rule 5.103 to the Executive Committee for consideration made S. Andrews, seconded by A. Aylward. Motion carried.

Motion to include an amendment to the title of Rule 5.103 with the proposal for Rule 5.103 to the Executive Committee for consideration T. Hudrlik, seconded by J. Seigel. Motion carried.

5.103 Offender behavior requiring Mandatory retaking for violation of conditions of supervision

(a) Upon a request by the receiving state and documentation ~~a showing~~ that the offender’s behavior requires retaking ~~has committed 3 or more significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision,~~ a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the request by the receiving state.

- (b) If the offender is ordered to return in lieu of retaking, the receiving state shall request reporting instructions per Rule 4.111 within 7 business days following the receipt of the violation report response.
- (c) The receiving state retains authority to supervise until the offender's directed departure date. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender's failure to appear in the sending state.

Incentives, Corrective Actions and Graduated Responses

The Committee discussed templates for best practices for reporting what sanctions were attempted to correct non-compliant behavior when using the violation report to report "behavior requiring retaking." The list provided with the worksheet was reviewed and screens in ICOTS were reviewed to see if such a list could be included in ICOTS.

The national office will provide mock up screens for the violation report and possibly the progress report at the next committee meeting. The ICOTS changes are intended to provide users with check boxes for reporting what sanctions have been imposed and prompt for detailed information as to how the offender responded to those sanctions. Considering the draft list, the Committee decided the list in ICOTS should not include 'referral to services' and should include an option for 'other.' R. Maccaroni requested the national office contact Matt Charton or Kelly Palmateer if clarification is needed.

- Verbal reprimand/warning*
- Report violation to sending state through Progress Report*
- Increased reporting*
- Loss of privilege*
- Travel restriction*
- Behavioral contract*
- Increased Urine Drug Screens*
- Impose curfew*
- Impose upward modification of conditions*
- Referral to services*
- Community Service*
- GPS/House Arrest/EM*
- Brief period of incarceration*
- Other [User to provide a description]*

The Committee discussed the importance of quality supervision and that the perception for the proposals from this committee should not be perceived as 'more work' but rather an effort to eliminate repetitive non-compliant behavior.

Offender Application for Interstate Compact Transfer

The Committee discussed the proposed changes provided to the Offender Application for Interstate Compact Transfer. The changes are intended to emphasize the notice of provisions and expectations of the transferee that he/she may be supervised in the receiving state in a manner consistent with other individuals being supervised in the state. It is also emphasized that transfer is a privilege.

Motion to forward amended Offender Application for Interstate Compact Transfer (attached) to the Executive Committee for consideration made by A. Aylward, seconded by C. Moore. Motion carried.

Next Steps and future Ad Hoc Committee calls

The Committee is scheduled to meet via WebEx March 8th and 15th.

The work of the Committee will be reported to the Executive Committee at its upcoming face-to-face meeting March 29, 2016. The Executive Committee will determine whether to forward the proposals to the Rules Committee for consideration at the 2016 Annual Business Meeting.

In anticipation the rules will be forwarded to the Commission for vote, Rules Committee Chair J. Seigel indicated the Rules Committee will meet to discuss the proposals tentatively May 10th to prepare the proposals to post for Commission initial comment June 1st, review the comments received mid-July and prepare the final proposals for public post by August 1st, 2016.

H. Hageman suggested a newsletter be sent to Commissioners to report out on the committee's work and request the region chairs provide justification for the rule proposals at upcoming region meetings.

It was discussed that the purposes for the work of the ad hoc committee were intended to:

- address issues arising with retaking offenders
- continue conversations initiated at the 2015 Annual Business Meeting in the workshop provided by Dr. Latessa on aligning justice reinvestment initiatives with the field supervising offenders
- emphasize evidence based practices with focus on offender behavior in seeking better outcomes with offender rehabilitation and public safety
- highlight the importance of quality driven reporting for non-compliant behavior
- address recent legal challenges with rules related to conditions and supervision responsibilities of the receiving state

Adjourn

Motion to adjourn made by A. Aylward, seconded by C. Moore.

Meeting adjourned at 3:37 pm ET.

Ad hoc Committee Minutes