



Interstate Commission for Adult Offender Supervision

Midwest Region Meeting MINUTES

January 14, 2021
Video Conference

Members in Attendance:

1. Russell Marlan (MI), Chair
2. Rebecca Walton (IL)
3. Mary Kay Hudson (IN)
4. Hope Cooper (KS)
5. Sally Kreamer (IA)
6. Tracy Hudrlik (MN)
7. Sally Reinhardt-Stewart (NE)
8. Amy Vorachek (ND)
9. Katrina Ransom (OH)
10. Bradley Lewandowski (SD)
11. Joselyn Lopez (WI)

Guests:

1. Simona Hammond (IA)
2. Heather Bell (IA)
3. Holly Kassube (IL)
4. Joe Guber (IN)
5. Nita Wright (IN)
6. Angie Hensley-Langdell (IN)
7. Matt Billinger (KS)
8. Daryn Cobb (MI)
9. Alyssa Miller (ND)
10. Susan Barnard (NE)
11. Jacey Rader (NE)
12. Catherine Corbet (NE)
13. Suzanne Brooks (OH)
14. Sarah Ball (SD)
15. Charles Frieberg (SD)
16. Kathy Finn (WI)

Staff:

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Policy and Operations Director
3. Barno Saturday, Logistics and Administrative Coordinator
4. Mindy Spring, Administrative and Training Coordinator
5. Xavier Donnelly, ICOTS Project Manager
6. Kelsey Moore, Web Applications and Tech Support Manager

Call to Order

Commissioner R. Marlan (MI) called the meeting to order at 11:01 am ET. All voting members were present, a quorum was established.

Approval of Agenda and Minutes

Commissioner H. Cooper (KS) moved to approve the agenda as presented. Commissioner K. Ransom (OH) seconded. Agenda approved.

Commissioner M. Hudson (IN) moved to approve the minutes from September 10, 2020 meeting as drafted. Commissioner S. Reinhardt-Stewart (NE) seconded. Minutes approved.

Discussion

Rule proposals for submission to the 2021 Annual Business Meeting: Official designee T. Hudrlik (MN) presented a proposal to amend Rule 1.101 *Definition of Resident* submitted by the State of Minnesota. She noted that the all DCA regions discussed this proposal and either were in support of the proposal or had no major issues with the proposal.

Rule 1.101 Definition of Resident.

Resident – means a person who

1. ~~2.~~ intends that such state shall be the person's principal place of residence; and
2. ~~1.~~ has continuously inhabited a state for at least 1 year prior to the commission of the offense for which the offender is under supervision, resided in the receiving state for at least 180 calendar days prior to:
 - A. the date of the transfer request; or
 - B. current incarceration; or
 - C. active military duty.
3. ~~has not, unless incarcerated or on active military deployment, remained in another state or states for a continuous period of 6 months or more with the intent to establish a new principal place of residence.~~

Justification:

The current definition is too restrictive and particularly challenging to supply proper documentation when it has been months or years from the time the offense is committed until conviction/sentencing. Especially so when an offender has lived in a receiving state for years at the time of transfer, but still doesn't meet the current definition of resident per compact rules. Further, the current definition implies that living in another state for 6 months at any time after commission of the offense would disqualify them as a resident and excludes the offender from meeting the definition for 'resident' in ANY state. The misapplication of the current definition results in delays or denials as transfer requests marked 'resident' incorrectly are returned to end users for correction or denied when transmitted to a receiving state and the offender does not meet 'resident' criteria even if the plan of supervision is valid.

By mirroring the timeframe (180 days) in the "resident family" definition, providing greater consistency in training and applying the definition, this language is also expected to increase mandatory transfers overall and acceptance rates for 'resident' reason.

Commissioner H. Cooper (KS) moved to forward the proposal to amend Rule 1.101 *Definition of Resident* for consideration at the 2021 Annual Business Meeting. Commissioner A. Vorachek (ND) seconded. Motion passed.

Official designee T. Hudrlik (MN) presented a proposal to amend Rule 4.105 *Arrival and departure notifications; withdrawal of reporting instructions* submitted by the State of Minnesota.

She noted that the all DCA regions discussed this proposal and either were in support of the proposal or had no major issues with the proposal.

Rule 4.105 – Arrival and departure notifications; withdrawal of reporting instructions

- (a) *Departure notifications*—At the time of an offender’s departure from any state pursuant to a transfer of supervision or the granting of reporting instructions, the state from which the offender departs shall notify the intended receiving state, and, if applicable, the sending state, through the electronic information system of the date and time of the offender’s ~~intended~~ actual departure and the date by which the offender has been instructed to arrive.

Justification:

This rule proposal seeks to clarify that a NOD should be submitted “at the time of an offender’s departure” as indicated in the first line of the rule, and replaces the word “intended” with “actual” as the current rule language appears to conflict. The word “intended” implies that the NOD can be done in advance, when the initial language indicates it should be done at the time of departure, not in advance.

Further, submitting a notice of departure when an offender departs, rather than in advance, will reduce the number of “notice of failure to arrive” when an offender hasn’t actually left the sending or receiving state yet even though a NOD was submitted. This will also ensure that supervising agents know where an offender is and who is responsible for supervision. It will remove the need for multiple CAR’s and emails to other states to find out where the offender is currently located and require the supervising agency to continue supervision until actual departure.

According to national data, approximately 10% of NOD’s are done in advance, which is a significant percentage of cases that can lead to further supervision issues.

Impact on ICOTS

Agents would submit a NOD on or after the departure date and not prior to the offender departing. An ICOTS enhancement that doesn’t allow a NOD to be submitted with a future date would eliminate the need for multiple CAR’s and emails to other states to find out where an offender is. It would also ensure that the supervising agent knows the whereabouts of an offender and makes it the agent’s responsibility to make sure that they provide the offender with the reporting instructions.

Commissioner M. Hudson (IN) inquired if when reviewing the NOD, there was assumption that the sending state confirmed that the offender had already departed.

Official Designee T. Hudrlik (MN) stated that the rule did not specify this information. She added that in Minnesota, they trained their agents to verify that the client (offender) actually left the state.

Commissioner S. Reinhardt-Stewart (NE) stated that due to COVID-19, one of their offenders was leaving on Saturday and she submitted the NOD on Friday afternoon.

ICOTS Project Manager X. Donnelly noted that ICOTS also had a bug occurring with the intended departure date not saving if the offender employment was left blank. The bug was resolved with a hotfix by Appriss in November 17, 2020.

Commissioner H. Cooper (KS) moved to forward the proposal to amend Rule 4.105 and proposed ICOTS Enhancement to disallow NOD transmission prior to the departure date for consideration at the 2021 Annual Business Meeting. Commissioner R. Marlan (MI) seconded. Motion passed.

DCA M. Billinger (KS) presented a proposal to amend Rule 5.108 *Probable cause hearing in receiving state* submitted by the State of Kansas.

Rule 5.108 – Probable cause hearing in receiving state

(a) An offender subject to retaking that may result in a revocation shall be afforded the opportunity for a probable cause hearing before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.

(b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to 1 or more violations of the conditions of supervision that are subject to revocation of supervision.

(c) A copy of a judgment of conviction regarding the conviction of a new criminal offense by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for further proceedings.

(d) The offender shall be entitled to the following rights at the probable cause hearing:

1. Written notice of the alleged violation(s);
2. Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);
3. The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);
4. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.

(e) The receiving state shall prepare and submit to the sending state a written report within 10 business days of the hearing that identifies the time, date and location of the hearing; lists the parties present at the hearing; and includes a clear and concise summary of the testimony taken and the evidence relied upon in rendering the decision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

(f) If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of conditions of supervision that would result in the pursuance of revocation of supervision, the receiving state shall hold the offender in custody, and the sending state shall, within 15 business days of receipt of the hearing officer's report, notify the receiving state of the decision to retake or other action to be taken.

(g) If probable cause is not established, the receiving state shall:

1. Continue supervision if the offender is not in custody.
2. Notify the sending state to vacate the warrant, and continue supervision upon release if the offender is in custody on the sending state's warrant.
3. Vacate the receiving state's warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

Justification:

Added language to this rule would align it more with both ICAOS Bench Book and ICAOS training of this rule. In 2016, this rule was amended to remove language as the commission no longer used the term "significant" in referring to violations resulting in revocation in order to be consistent with the supervision of probationers and parolees in the receiving state. The intent was to create a single standard of supervision in the respective states by eliminating the three significant violations. However, by removing the word significant, it leaves open interpretation that any admission of any violation could result in the requirement for retaking. For example, a receiving state may report a

combination of violations including major violations such as violence or prohibited contact, in addition to a minor violation of failing to report. Should the offender only admit guilt to the failing to report, many could and do interpret that to create a mandatory retaking situation. In discussion of this amendment, multiple states reported this occurring multiple times. In this situation, it would then require the sending state to request further action from the sending or be forced to conduct a probable cause hearing in the sending state, foregoing rights such as the opportunity to confront witnesses, and have the hearing near the location of the violation.

In accordance with the ICAOS Bench Book 4.7.3.3 Probable Cause Waiver, it states that the effect of waiving the probable cause hearing is “in effect, an admission that they have committed an offense of sufficient gravity as to justify revocation...”. Also that “by waiving the hearing, the offender is implicitly admitting that their actions could justify revocation of supervised release”. It is important to clarify that the intent of the rule is that the offender must admit guilt to a violation that would result in revocation.

In accordance with ICAOS Bench Book 4.7.3.2.2 Probable Cause Hearing Report, it discusses that the purpose of Rule 5.103 – Offender behavior requiring retaking is “that officials in the receiving state must show through documentation that the offender has engaged in behavior requiring retaking. Therefore, by adding language to both (a) and (f) it supports that the a waiver or evidence of a violation that would result in revocation, be supplied to the sending state.

Executive Director A. Lippert stated that the national office supported the amendment and recommended adding ‘of supervision’ to sections 5.108 (b) and (f) to match the Hearing Officer’s Guide.

The region agreed with the recommended change.

Commissioner K. Ransom (OH) moved to forward the proposal Rule 5. 108 as amended for consideration at the 2021 Annual Business Meeting. Commissioner R. Brunger (IL) seconded. Motion passed.

Official designee T. Hudrlik (MN) stated that at the last Annual Business Meeting, many states indicated they were not able to comply with the warrants rule requirement especially in misdemeanor cases.

Minnesota proposes removing misdemeanants from compact eligibility, unless a state chooses to do so. She added that many states, such as the State of Washington, were moving towards not supervising misdemeanants.

Commissioner M. Hudson (IN) expressed her concern that if the Compact eliminates this requirement, then a segment of high-risk misdemeanor population would be left unsupervised.

Commissioner H. Cooper (KS) agreed with Indiana. Kansas was writing a letter of notification to a judge who did not send a misdemeanor who met criteria through the Compact for transfer. The offender was put on unsupervised probation; however, the offender’s behavior was concerning enough that the judge put additional conditions. Commissioner H. Cooper (KS) added that many misdemeanors were potentially high-risk offenders and must be supervised.

The Region took no action on Minnesota’s proposal.

Executive Director Update: Executive Director A. Lippert presented her report to the region:

- DCA T. Hudrlik (MN) completed her two-year term as the DCA Liaison Committee chair. The Executive Committee appointed DCA S. Brooks (OH) to be the new chair.
- The Executive Committee approved a plan to assist states with preparation for rescinding the applicability of Rule 2.111 on April 1, 2021. The committee will make the formal decision in February or March to rescind the rule.
- The Executive Committee approved changes to the state council policy AP 3-2009. The changes allowed states to submit their state council information online. Executive Director A. Lippert demonstrated the online state council reporting form developed by the national office. The form pre-populates state's existing data simplifying the process for making corrections or additions.

The Executive Committee agreed that no enforcement for the states council policy compliance would occur in 2020.

- The ABM Planning Workgroup is working on setting the agenda for the 2021 Annual Business Meeting in Milwaukee, WI.

The Executive Committee selected New York City, NY as the location for the 2022 Annual Business Meeting. The calendar year of 2022 was a DCA Training Institute year and the Commission's 20th anniversary.

New Business

Chair R. Marlan (MI) asked the states to provide any update related to COVID-19. He noted that Michigan started immunizing the Department of Corrections employees.

Adjourn

Commissioner S. Kreamer (IA) moved to adjourn. Commissioner H. Cooper (KS) seconded.

Meeting adjourned at 11:55 am ET.