



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

February 3, 2021 - 1:00 PM ET
Video Conference

Members in Attendance:

1. Mary Kay Hudson (IN), Chair
2. Dori Littler (AZ), Vice-Chair
3. Rebecca Brunger (AK)
4. Amber Schubert (AR)
5. Chris Moore (GA)
6. Susan Gagnon (ME)
7. Amy Vorachek (ND)
8. Robert Maccarone (NY)
9. Tracy Hudrlik (MN), Ex-Officio
10. Margaret Thompson (PA), Ex-Officio
11. Pat Odell (WY), Ex-Officio
12. Thomas Travis, Legal Counsel

Members not in Attendance:

1. Tim Strickland (FL), Ex-Officio

Guests:

1. Matthew Charton (NY)
2. Tina Balandran (TX)
3. Brandon Watts (TX)

Staff:

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Policy and Operations Director
3. Barno Saturday, Logistics 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

Chair M. Hudson (IN) called the meeting to order at 1:00 pm ET. Executive Director A. Lippert called the roll. All voting members were present, a quorum was established.

Approval of Agenda and Minutes

Commissioner R. Maccarone (NY) moved to approve the agenda as presented. Commissioner D. Littler (AZ) seconded. Agenda approved.

Commissioner D. Littler (AZ) moved to approve the minutes from November 17, 2020 meeting as drafted. R. Brunger (AK) seconded. Minutes approved.

Discussion

Warrant timeframe rule proposal package: Chair M. Hudson (IN) reminded the committee that the current rules had varying timeframes for issuing a compact compliant warrant from ‘upon receipt’ to ‘30 days’, and some rules requiring a warrant did not have a timeframe at all. At its last meeting, the committee approved the warrant proposal package to establish consistent timeframe in the interest of training stakeholders and public safety. The package includes amendments to six rules (2.110, 4.111, 5.101, 5.102, 5.103 & 5.103-1) expanding the timeframe for issuing compact compliant warrants to a standard 15-business day, when an offender fails to arrive or return as instructed or is subject to retaking.

Chair M. Hudson (IN) and Vice-chair D. Littler (AZ) will attend region meetings to address any questions and concerns regarding the proposal package.

Proposed Amendments Review: Chair M. Hudson (IN) stated that the Rules Committee received three proposals from the Midwest Region to amend Rule 1.101 Definitions of Resident, Rule 4.105, and Rule 5.108 as well as one proposal from the South Region to amend Rule 3.103.

The committee reviewed a proposal to amend Rule 1.101 Definitions of Resident proposed by the Midwest Region.

Rule 1.101 Definitions

“Resident” means a person who—

- ~~(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; and~~
- ~~(2) (1) intends that such state shall be the person’s principal place of residence; and~~
- ~~(2) has continuously resided in the receiving state for at least 180 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.

Executive Director A. Lippert stated that the national office supports the proposal.

DCA M. Thompson (PA) noted the importance of simplifying the current rule. She noted that Pennsylvania proposed a similar proposal to amend the rule a few years ago, but it did not pass through the region. She suggested adding “immediately” to section (2): “has continuously resided in the receiving state for at least 180 days immediately prior to”.

Commissioner D. Littler (AZ) agreed with Pennsylvania and supported amending the rule. She inquired about the meaning of section 2(b) “current incarceration, or”.

DCA T. Hudrlik (MN) stated that “current incarceration” applied to a person who was incarcerated prior to the transfer request. In addition, the Midwest Region wanted to make sure that it applied to offenders who were *currently* incarcerated and would be released from their current incarceration to their home state.

Commissioner R. Maccarone (NY) stated that the current proposal rewarded absconders. New York suggests an alternative language to ensure that the request for transfer under qualifying reasons remained tied to the offense for which the offender was placed under supervision. Furthermore, he suggested using a one-year timeframe instead of the proposed 180 days.

DCA T. Hudrlik (MN) suggested using six months as the threshold to established residency under the Compact. She added that the fact that they might have previously absconded would be addressed at the court hearing.

Commissioner C. Moore (GA) asked how states distinguished between offenders who absconded and offenders on approved bond.

Commissioner D. Littler (AZ) noted that the definition of “resident” and “resident family” served different purposes and could not be mirrored.

The committee tabled the discussion pending receipt of New York’s language to amend Rule 1.101 Definition of Resident. New York will distribute its proposal to the committee prior to the next meeting.

The committee reviewed a proposal to amend *Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding* proposed by the South Region.

Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding

(a)

- (1) A request for reporting instructions for an offender who was living in the receiving state at the time of initial sentencing or after disposition of a violation or revocation proceeding shall be submitted by the sending state within 7 business days of the initial sentencing date, disposition of violation, revocation proceeding or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of initial sentencing or disposition of violation or revocation proceeding. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

- (2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
 - (3) The sending state shall ensure that the offender signs all forms requiring the offender's signature under Rule 3.107 prior to granting a travel permit to the offender.
 - (A) Upon request from the receiving state, the sending state shall transmit all signed forms within 5 business days.
 - (B) When an offender is sentenced remotely and is in the receiving state at the time of sentencing, the receiving state shall assist the sending state in acquiring the offender's signature on the "Application for Interstate Compact Transfer" and any other forms that may be required under Rule 3.107, and shall transmit these forms to the sending state within 7 business days and mail the original to the sending state.
 - (4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.
 - (5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.
- (b) The sending state retains supervisory responsibility until the offender's arrival in the receiving state.
 - (c) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender's arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.
 - (d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.
 - (e) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender's return to the sending state under the requirements of Rule 4.111.
 - (f) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state may initiate the offender's return to the sending state under the requirements of Rule 4.111.

Justification:

The ongoing pandemic in 2020 has created many for change. One of these changes is that many Courts have adopted practices that allow offenders to be sentenced remotely via video conference. This has shown to be beneficial in several ways, including allowing offenders that reside in other states to remain in the area they reside, without the expense of traveling for the sole purpose of being sentenced.

Current rules do not support remote sentencing as the sending state is required to ensure the offender signs all forms prior to granting a travel permit when obtaining reporting instructions for an offender living in the receiving state at time of sentencing. Since the offender is not in the sending state, it is not possible for a sending state to obtain the required signatures. Requiring an offender to travel to the sending state to sign paperwork can have a significant financial impact on an offender, which can in turn have a negative impact on their community supervision as well.

This issue was previously addressed in Rule 3.102(d) for offenders released from custody in the receiving state, which presents a similar challenge. The proposed change to this rule mirrors the wording of Rule 3.102(d)(1) and would clarify that a receiving state is required to assist in obtaining

signatures for offenders that were sentenced remotely and not available to sign the required documents in the receiving state.

Commissioner D. Littler (AZ) stated that because of the pandemic, more states were utilizing remote sentencing. She spoke against the proposal, noting the amount of responsibility it placed on receiving states by advising offenders on supervision standards of another state as well as adding the unnecessary procedures to the rules.

Commissioner R. Maccarone (NY) suggested lengthening the timeframe to 15 business days.

Commissioner R. Brunger (AK) noted difficulty of implementing this amendment in remote locations.

Executive Director A. Lippert noted challenges related to putting processes in the rules, as different states operated differently; therefore, the national office did not support the proposal. She added that the proposed language mirrored the wording of Rule 3.102(d)(1) that should possibly be revised as well.

The committee agreed that the amendment's concept generated many concerns, and recommended the South Region withdraw its proposal to amend Rule 3.103.

Commissioner C. Moore (GA) moved to recommend withdrawal of South Region proposal to amend Rule 3.103 based on invalidity of concept. Commissioner R. Maccarone (NY) seconded. Motion passed.

The national office will inform the South Region chair about the Rules Committee's action. The South Region will need to meet and discuss the action prior to the next committee meeting.

The committee reviewed a proposal to amend Rule 4.105 Arrival and departure notifications; withdrawal of reporting instructions proposed by Midwest Region.

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.
- (b) *Arrival notifications*-At the time of an [offender](#)'s [arrival](#) in any state pursuant to a transfer of [supervision](#) or the granting of reporting instructions, or upon the failure of an offender to arrive as instructed, the intended [receiving state](#) shall immediately notify the state from which the offender departed, and, if applicable, the [sending state](#), through the electronic information system of the offender's [arrival](#) or failure to arrive.
- (c) A receiving state may withdraw its [reporting instructions](#) if the [offender](#) does not report to the receiving state as directed.

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. Below are examples of cases where a NOD was submitted in advance and the issues it created:

Examples (case numbers can be provided upon request):

An offender is on supervision with both the sending and receiving states. The offender requests to return to the original sending state and return reporting instructions were submitted as well as expedited RI’s on a new receiving state case. These reporting instructions were approved. A notice of departure was submitted in one case immediately and a month later in the other case. When the offender failed to report multiple CARS were sent. It wasn’t discovered that he never departed for almost a month as there was no follow up with the offender. This could be avoided if the supervising agent would maintain contact with the offender and had not submitted a NOD until he actually departed in both cases.

A request for mandatory reporting instructions was approved and a notice of departure was immediately submitted. The offender failed to report and a failure to arrive was submitted. During the transfer investigation it was discovered that the offender was in jail and had been since sentencing. A notice of departure should not have been submitted as the offender never received reporting instructions or left the sending state.

A receiving state accepts a transfer of supervision. The sending state agent calls the offender and gives him his reporting instructions. The agent then immediately submits a notice of departure. Two weeks later during a notice of departure/notice of arrival audit, it is discovered that the sending state agent put the offender’s intended future departure date in the notice of departure rather than waiting for him to leave. This risks a failure to arrive and potential for the transfer acceptance being withdrawn.

Commissioner R. Maccarone (NY) expressed his concerns with word “actual” and suggested using “approved” instead of “actual” to institute a formal authorization process:

(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 approved departure and the date by which the offender has been instructed to arrive.

Training Coordinator M. Spring noted that the proposal also included an ICOTS enhancement to remove the ability to enter a future departure date on the Notice of Departure (NOD) activity. The enhancement would eliminate the need for multiple CARs and emails to other states to find out where the offender was as well as ensure the supervising agent knows the offenders’ whereabouts.

The committee discussed if it was more important to receive the NOD before the offender departs or after; as well as the difficulty to predict an offender's accurate departure time and date.

After consideration, the Rules committee decided not to add additional restrictions to the rules when the action could be addressed with an ICOTS enhancement.

Commissioner C. Moore (GA) moved to recommend the Midwest Region withdraw proposal to amend Rule 4.105 and consider addressing the issue stated in the justification for the ability to amend notices of an offenders' departure with the ICOTS enhancement. Commissioner R. Maccarone (NY) seconded. Motion passed.

The national office will inform the Midwest Region chair about the Rules Committee action. The Midwest Region will need to meet and discuss the action prior to the next committee meeting.

The committee reviewed a proposal to amend *Rule 5.108 – Probable cause hearing in receiving state* proposed by Midwest Region.

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.

This is in accordance with the ICAOS Bench Book 4.7.3.3 Probable Cause Waiver, where 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 waiver or evidence of a violation that would result in revocation, be supplied to the sending state.

The Rules Committee reviewed the definition for 'Behavior Requiring Retaking':

Behavior Requiring Retaking (BRR) – means an act or pattern of non-compliance with conditions of supervision that could not be successfully addressed through the use of documented corrective action or graduated responses and would result in a require for revocation of supervision in the receiving state.

After consideration, the Rules Committee agreed on alternative language to amend Rule 5.108 that was more consistent with other language in the rule and the definition for 'Behavior Requiring Retaking'.

- (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 would result in the pursuance of revocation of supervision in the receiving state and require retaking.

Commissioner R. Maccarone (NY) moved to recommend alternative language for the Midwest Region’s proposal to amend Rule 5.108. Commissioner D. Littler (AZ) seconded. Motion passed.

The national office will inform the Midwest Region chair about the Rules Committee action. The Midwest Region will need to meet and discuss the action prior to the next committee meeting.

Old Business

Executive Director A. Lippert stated that 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 would make the formal decision in March to rescind the rule.

New Business

Commissioner D. Littler (AZ) asked to add remote sentencing to the committee agenda.

Executive Director A. Lippert informed the committee that in March, the national office would host two round table discussions with Legal Councils T. Travis and R. Masters on electronic signatures and remote sentencing.

Chair M. Hudson (IN) reminded the committee that the next committee meeting was scheduled for March 4. The final rule proposals would be posted for comments on the Commission’s website on April 1.

Adjourn

Commissioner D. Littler (AZ) moved to adjourn. Commissioner C. Moore (GA) seconded.

The meeting adjourned at 3:11 pm ET.