

**Proposal to create/amend rules:**

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

(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 following information is drafted by the Rules Committee*

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**Effect on other rules, advisory opinions, or dispute resolutions:**

Consistent with ICAOS Benchbook and Hearing Officer Guide on Rule 5.108.

**ICOTS impact:**

None.

**Scope and Metric**

N/A

**Region/Committee action:**

*Midwest Region Jan 2021:* Commissioner K. Ransom (OH) moved to forward proposal to Rule 5.108 (b) & (f), Commissioner R. Walton (IL) seconded. Motion passed.

*Rules Committee Feb 2021:* Motion to recommend alternate language for the Midwest's proposal to Rule 5.108 (b) '.....that would result in the pursuance of revocation of supervision in the receiving state and require retaking' for consideration made by Commissioner R. Maccarone (NY,) seconded by Commissioner D. Littler (AZ). Motion carried.

*Midwest Region Feb 2021:* Motion to amend proposal as recommended by the Rules Committee made by Commissioner A. Godfrey (MN), seconded by Commissioner J. Lopez (WI). Motion carried. Replace that are subject to revocation of supervision with that would result in the pursuance of revocation of supervision in the receiving state and require retaking in section (b)

*Rules Committee Mar 2021:* Motion to recommend proposal to Rule 5.08 made by Commissioner R. Maccarone (NY), seconded by Commissioner A. Schubert (AR). Motion carried.

*Rules Committee June 2021:* Review of comments from Commission members. No changes made to proposal and is considered final for Commission vote in September.

**Effective date:**

April 1, 2022