

**Proposal to 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~~ may 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.

## **2023-WestRegion-Rule5.108**

### **Justification:**

The “shall” requirement in subsection f. of Rule 5.108 is not a requirement of the Supreme Court decision that Rule 5.108 is based upon and it puts some compact member states in violation of the requirement because they have no statutory authority to hold a person in custody pending the decision from the sending state. Holding an offender in custody following the outcome of a probable cause hearing or signed waiver should be at the discretion of the hearing officer or authority in the receiving state in accordance with local procedures. Revising the verbiage from “shall” to “may” will still allow states the option to hold an offender in custody.

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

TBD

### **ICOTS impact:**

None

### **Scope and Metric**

N/A

### **Proposal History/Committee action:**

*West Region January 2023:* Motion to forward proposal for Rule 5.108 and recommend for adoption made by Commissioner R. Cohen (NM), seconded by Commissioner D. Littler (AZ). Motion carried unanimously.

*Rules Committee March 2023:* Motion to recommend proposal for Rule 5.108 for adoption made by Commissioner C. Moore (GA), seconded by Commissioner A. Vorachek (ND). Motion carried unanimously.

*Rules Committee June 2023:* Comments for both support and opposition for the proposal to Rule 5.108 were reviewed. Motion to continue to recommend proposal for Rule 5.108 for adoption made by Commissioner M. Danner (MD), seconded by Commissioner C. Moore (GA). Motion carried 5-2.

### **Effective date:**

TBD