



Interstate Commission for Adult Offender Supervision

East Region Meeting MINUTES

July 25, 2024 · 1:00 pm ET
Teleconference

Members in Attendance:

1. Dale Crook (VT), Chair
2. Gary Roberge (CT)
3. Heidi Collier (DE)
4. Tina Hurley (MA)
5. David Cady (NH)
6. Samuel Plumeri (NJ)
7. Christian Stephens (PA)

Members not in Attendance:

8. Susan Gagnon (ME)
9. Matthew Charton (NY)
10. Raquel Colon (PR)
11. Wayne Salisbury (RI)
12. Wynn Timer Testamark (VI)

Guests:

1. Melissa Kearney (DE)
2. Jeanne Stewart (NH)
3. Alexandra Modica (CT)
4. Keara Kelley (MA)
5. Kelly Palmateer (NY)
6. Scott Hurteau (NY)
7. Shyra Bland (NJ)
8. Dina Rogers (NJ)
9. Matthew Reed (PA)
10. Ingrid Siliezar (RI)
11. Rickey Plank (VT)

Staff

1. Ashley Lippert, Executive Director
2. Allen Eskridge, Director of Operations & Policy
3. Barno Saturday, Logistics and Administrative Coordinator
4. Mindy Spring, Administrative and Training Coordinator
5. Xavier Donnelly, ICOTS Project Manager
6. Drake Greeott, Web Development Manager

Call to Order

Chair D. Crook (VT) called the meeting to order at 1:00 pm ET. Seven out of twelve voting members were present. A quorum was established.

Agenda and Minutes

Commissioner G. Roberge (CT) moved to approve the agenda as presented. Commissioner S. Plumeri (NJ) seconded. Agenda approved as presented.

Commissioner G. Roberge (CT) moved to approve the minutes from April 18, 2024, meeting as drafted. Commissioner D. Cady (NH) seconded. Minutes approved as drafted.

Discussion

Rule 5.108 Probable cause hearing in receiving state: The region reviewed a proposal put together by the State of Pennsylvania:

Rule 5.108 Probable cause hearing in receiving state

(a) A supervised individual 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) A receiving state shall conduct a probable cause hearing within 30 calendar days of a request made by a sending state for a supervised individual subject to retaking unless the supervised individual requests and is granted a postponement by the hearing officer.

(c) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the supervised individual 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.

(d) 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.

(e) 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.

(f) 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; documents the alleged violations of conditions and the hearing officer's finding on each violation; 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.

(g) The supervised individual shall not be considered available for retaking pursuant to Rule 5.105 until the results of the probable cause hearing have been submitted to the sending state.

(h) If the hearing officer determines that there is probable cause to believe that the supervised individual has committed the alleged violations of conditions of supervision that would result in the pursuance of revocation of supervision, the receiving state 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.

(i) 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:

One of the key components of due process centers around timeliness. In *Morrissey v. Brewer* the court held that due process requires a prompt inquiry. While *Morrissey* did not establish a specific time period to conduct the hearing, it did recognize the requirement of applying timeliness to due process. This proposal sets out to address those probable cause hearings requested by the sending state that far exceed what one could reasonably consider timely. Such delays or inaction violate and infringe upon a supervised individual's due process. The proposed language seeks to rectify such timeliness issues for transferred individuals who are subject to retaking and for whom a probable cause hearing has been requested by the sending state. Additionally, the new language will build on the framework of *Morrissey* and enhance Rule 5.108. The omission of such a time frame in the current language only acts to ignite a negative circumstance. No supervised individual should have his or her liberties restrained indefinitely on a sending state's warrant as the receiving state fails to uphold the founding principle of timely due process.

The ICAOS rules provide a plethora of time frames for various actions. These time frames are set to ensure public safety, properly track the movement of a supervised individual and much more. Mandating a time frame to conduct the PCH fully supports these same reasons and purposes. The first aspect of this proposal is to establish a 30-calendar day time frame to hold a probable cause hearing when requested by the sending state for a supervised individual who is subject to retaking. The recommended 30-calendar day time frame was selected based on not only open-source research, but also the use of such a time frame in other aspects of the ICAOS rules. The goal is to establish a defined time frame that will then prompt such aspects as tracking of the request, ICOTS notifications pertaining to the deadline, enforcement, and an audit trail. Currently, states are having to set their own internal control to seek the status of a requested PCH. At this time, sending states do not have any enforcement tool when a requested PCH has not been held in months despite outreach via ICOTS and to the receiving state's compact office. Enacting a reasonable time frame will prevent supervised individuals from being held on a sending state's warrant for extensive periods of time before the PCH is actually held. Alleviating these scenarios will

reduce the cost the receiving state incurs to detain a supervised individual and will support the timeliness aspects of *Morrissey*.

Open-source research was conducted on all 53 signatories with regards to established time frames to conduct their PCH hearing for their own population of supervised individuals. The results revealed that 33 signatories have an established time frame to conduct a PCH, ranging from 3 days to 60 days. Twenty states have no obvious timeframe and rely on language like “prompt” or “as soon as possible.” Upon further review of the 33 signatories with a set time frame, the median number of days is 14 and the average is 18. Only three signatories (WI, IN, DC) have a timeframe greater than 30 days. Taking these findings into account, there are 30 signatories that would not be directly affected by this proposal as they are already required to hold a PCH in 30 days or less. It is vital to note the low impact as it builds additional support to ensure all signatories are operating under the same criteria when dealing with a transferred supervised individual’s due process.

The proposal also looks to enhance the language related to the hearing report required to be submitted to the sending state within 10 business days. Currently, Rule 5.108(f) provides that a report must include the time, date, location of the hearing, list of the parties present, and a summary of the testimony and evidence. The rule omits any language that specifically requires the hearing officer to outline in their report which conditions specifically have probable cause established and which did not. Expanding this language will afford the sending state clear distinctions between those violations where PC is or is not established. A more accurate and concise report will assist the sending state in the revocation process after retake occurs. The additional requirement in this report will seek to eliminate unjustified retake when probable cause is established on violations that do not meet the ICAOS definition of behavior requiring retaking or those that do not meet the absconder definition.

Finally, the proposal seeks to provide clarity and enforcement upon when a supervised individual is available for retake when a PCH is requested by the sending state. Under Rule 5.105, a sending state is required to retake a supervised individual within 30 calendars of being held solely on the sending state’s warrant. If a supervised individual is detained on a sending state’s warrant in the receiving state due to a prior absconding situation, Rule 5.105 dictates the offender shall be retaken within 30 calendar days assuming no other matters are interfering with retaking. However, in many instances, a sending state will request a PCH per Rule 5.103-1(b). All too often, receiving state’s holding facilities want the detained supervised individual retaken within the 30 days per Rule 5.105 regardless of any request made by the sending state for a PCH. Further, the holding facility may not be aware of the ICAOS rules or that a request for PCH has been made. The time and resources to rectify these matters can be alleviated with the imposition of this new language. The inclusion of section (g) in this proposal will eliminate the demand for retake prior to the PCH being conducted and results received. It will help to assure that no supervised individual is retaken prior to receiving all due process afforded by law. The language in this proposed section will eliminate the contradiction that is occurring now between Rule 5.105 and 5.103-1.

Effect on other rules, advisory opinions or dispute resolutions:

Rule 5.103-1 will merely need 3 minor adjustments to correlate to the additional language sections in Rule 5.108.

Rule 5.103-1 - Mandatory retaking for offenders who abscond

(a) Within 15 business days of receipt of an absconder violation report and case closure, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

(b) If an offender who has absconded is apprehended on a sending state’s warrant within the jurisdiction of the receiving state that issued the violation report and case closure, the receiving state shall, upon request by the sending state, conduct a probable cause hearing as provided in Rule 5.108 (d) (e) and (e) (f) unless waived as provided in Rule 5.108 (b) (c).

(c) Upon a finding of probable cause the sending state shall retake the offender from the receiving state.

(d) If probable cause is not established, the receiving state shall resume supervision upon the request of the sending state.

(e) The sending state shall keep its warrant and detainer in place until the offender is retaken pursuant to paragraph (c) or supervision is resumed pursuant to paragraph (d).

ICOTS impact:

There will be an impact on ICOTS due to the imposition of the 30-day time frame required to hold the PCH.

Consideration to how ICOTS will perform to accomplish this task should come from current practices and established methods already in use in ICOTS. There is a level of expectation that the 30-day time frame can be viewed in either an ICOTS or Dashboard report for tracking and audit purposes. The proposed language will require ICOTS to create a tool (i.e. new special status similar to warrant tracking) to indicate when a request for a PCH is made by the sending state. In turn, ICOTS will need to provide a mechanism to acknowledge that the PCH was conducted within 30 days by the receiving state. Along the same lines, ICOTS would be expected to send auto-generated emails to alert the receiving state of the due date and overdue date. Emails would be sent in intervals similar to that of a Case Closure Notice.

Consideration would need to be made in ICOTS as to how to acknowledge when the PCH report is conducted to prove the time frame to conduct in 30 calendar days is met.

Commissioner S. Plumeri (NJ) moved to forward an amendment to Rule 5.108 Probable cause hearing in receiving state to the Rules Committee for the Commission’s consideration at the 2025 Annual Business Meeting. Commissioner T. Hurley (MA) seconded. Motion passed.

Old/New Business

There was no old/new business.

Adjourn

Commissioner G. Roberge (CT) moved to adjourn, Commissioner C. Stephens (PA) seconded.

The meeting adjourned at 1:07 pm ET.