



Interstate Commission for Adult Offender Supervision

Rules Committee Meeting MINUTES

January 7, 2025 - 1:00 pm ET

Teleconference

Members in Attendance:

1. Tracy Hudrlik (MN), Chair
2. Chris Moore (GA)
3. Amy Vorachek (ND)
4. David Cady (NH)
5. John Mosley (MO)
6. Deon McDaniel (NV)
7. Katrina Ransom (OH)
8. Jeremy Vukich (WY)
9. Brenna Kojis (WI), Ex-Officio
10. Matthew Reed (PA), Ex-officio
11. Tom Travis, Legal Counsel

Staff:

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

Call to Order

Chair T. Hudrlik (MN) 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 C. Moore (GA) moved to approve the agenda as presented. Commissioner K. Ransom (OH) seconded. Agenda approved.

Commissioner D. McDaniel (NV) moved to approve the minutes from the November 6, 2024, meeting as drafted. Commissioner D. Cady (NH) seconded. Minutes approved.

Discussion

March face-to-face meeting: Chair T. Hudrlik (MN) discussed the logistical details for the face-to-face meeting scheduled for March 18.

Proposal to amend Rule 5.108: DCA M. Reed (PA) presented the East Region's rule proposal to amend Rule 5.108 that adds a 30-day timeframe for conducting a probable cause hearing. The proposal also includes clarifications on documentation and the supervised individual's availability for retaking.

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 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 daytime 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 daytime 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 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.

Commissioner D. McDaniel (NV) expressed concerns about the possibility of financial charges after 30 days. The committee also discussed how the rule might affect states with longer timeframes for hearings.

Commissioner J. Mosley (MO) raised concerns about potential confusion regarding the 30-day retaking requirement and the probable cause hearing.

After discussion, the committee decided to proceed with the rule proposal and address any necessary changes during the comment period.

Commissioner J. Vukich (WY) moved to recommend the East Region's proposal to amend Rule 5.108 for the Commission's consideration at the 2025 Annual Business Meeting. Commissioner J. Mosley (MO) seconded. Motion passed.

Proposal to Amend Rule 3.103: Rules Committee Chair T. Hudrlik (MN) led discussion on the Midwest Region's proposal to amend Rule 3.103. The proposal extends the timeframe for sending states to gather necessary information from 7 to 15 business days. The committee discussed the potential impact of the rule change, with some members expressing concerns about the 15-day timeframe, as well as the need for address verification and the potential for conflicting information.

The committee agreed to change "should" to "shall" in section C and move forward with the rule change. The committee asked the Midwest region to review and approve the recommended language change in section C.

Rule 3.103: ~~Reporting Instructions; Supervised Individual~~ Mandatory reporting instructions for supervised individuals living in the receiving state at the time of sentencing or after the disposition of a violation or revocation proceeding

Proposed Change Re-write Rule

- (a) At the discretion of the sending state, supervised individuals who live in the receiving state at the time of sentencing or after the disposition of a violation or revocation proceeding qualify for reporting instructions.
- (b) The sending state shall ensure that the supervised individual signs all forms required under Rule 3.107 prior to departing the sending state, obtain signatures electronically, or request assistance from the receiving state if the sentencing or disposition was conducted via electronic hearing.
- (c) The reporting instructions request ~~should~~ shall include but is not limited to:
 - a. the supervised individual's address and contact information,
 - b. documentation and details regarding how the supervised individual's receiving state residence status was verified.
- (d) The sending state shall submit the request for reporting instructions within 15 business days of either the:
 - a. initial sentencing date,
 - b. date of the disposition of a violation or revocation proceeding, or
 - c. release date from incarceration to supervision, if this occurs within 60 days of the sentence.
- (e) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
- (f) The sending state shall submit a completed transfer request no later than 15 business days of the granting of reporting instructions.

Justification

Rule 3.103 has historically been subject to various interpretations by compact member states, resulting in issues such as unnecessary rejections, punitive actions against

supervised individuals, gaps in supervision, and inaccurate data entry, which compromises the integrity of the database used to track supervised individuals' locations.

The primary objective of Rule 3.103 is to allow residents of a receiving state to return to their residence once they have been sentenced by a court or sentencing authority as well as when there has been a violation or revocation proceeding resulting in immediate supervision. Rule 3.103 outlines the responsibilities of both the sending and the receiving states. It's important to note that the compact rules do not dictate how judges or sentencing authorities should sentence individuals who commit crimes or violate supervision requirements. Instead, they focus on managing the supervision imposed by these authorities and ensuring proper communication occurs between states.

For individuals under supervision who have a verified residence in the receiving state at the time of sentencing or disposition, this rule aims to prevent their displacement pending a transfer investigation. The revision of this rule aims to clarify the qualifications and documentation required for a receiving state to assume supervisory authority during a transfer investigation. The proposed language seeks to prevent hardships and instability, particularly in cases where the supervised individual's only available resources are in the receiving state.

Additionally, the revised rule clarifies the sending state's discretion to allow a supervised individual to return to their residence, which can better protect victims in the sending state and the public at large. This clarification enhances the overall effectiveness and fairness of the supervision process under the compact.

Commissioner A. Vorachek (ND) moved to recommend the Midwest Region's proposal to amend Rule 3.103 for the Commission's consideration at the 2025 Annual Business Meeting. The committee suggests changing 'should' to 'shall' in section (c). Commissioner K. Ransom (OH) seconded. Motion approved.

Commissioner A. Voracek, the Midwest region Chair, will address this revision at the next Midwest Region's meeting.

Remote Hearing: Chair T. Hudrlik (MN) led a discussion on remote hearings, seeking input from the committee on whether rule amendments were needed to clarify their use under the Compact. The committee reviewed a set of questions related to remote hearings and sentencing analysis and agreed to distribute a survey to gather information on the use and perception of remote hearings among states. The committee also discussed the possibility of rule changes or adjustments in practice related to remote hearings.

The national office will compile and present the survey results at the next meeting for further analysis and potential rule proposals.

Proposal to Amend Rule 4.105: The committee reviewed a proposal to amend Rule 4.105, submitted by the South Region. The committee expressed confusion and concern about the duplicative nature of the language and its ability to solve the problem stated in the problem statement. After careful consideration, the committee decided to not support the rule due to these concerns.

Rule 4.105 Arrival and Departure Notifications; Withdrawal of Reporting Instructions

Proposed Change: Add new section for subsequent state transfers.

- (a) Departure notifications—At the time of departure from any state pursuant to a transfer of supervision or the granting of reporting instructions, ~~the state from which the supervised individual departs shall notify the intended receiving state, and, if applicable, the sending state;~~ shall notify the receiving state through the electronic information system of the date and time of the intended departure and the date by which the supervised individual offender has been instructed to arrive.
 - 1. At the time of departure from a receiving state pursuant to either return of the supervised individual to the sending state or transfer to a subsequent receiving state, the receiving state shall notify the sending state through the electronic information system of the date and time of the intended departure and the date by which the supervised individual has been instructed to arrive.
- (b) Arrival notifications—At the time of a supervised individual’s arrival in any state pursuant to a transfer of supervision or the granting of reporting instructions, or upon the failure of a supervised individual to arrive as instructed, the intended receiving state shall immediately notify the state from which the supervised individual departed, and, if applicable, the sending state, through the electronic information system of the supervised individual’s arrival or failure to arrive.
- (c) A receiving state may withdraw its reporting instructions if the supervised individual does not report to the receiving state as directed.

Justification

Proposal provides clarity on the submission of notice of departures from a receiving state to the sending state when a supervised individual departs the receiving state either back to the sending state or to a subsequent receiving state.

Commissioner C. Moore (GA) moved not to support the South Region’s proposal to amend Rule 4.105. Commissioner J. Mosley (MO) seconded. Motion passed.

The national office will inform the region chairs of the Rules Committee’s actions during today’s meeting.

The committee will review the remaining three rule proposals at its next meeting.

Old/New Business

There was no old/new business.

Adjourn

Commissioner C. Moore (GA) moved to adjourn. Commissioner D. McDaniel (NV) seconded.

The meeting adjourned at 2:32 pm ET.