

**Introduction:**

**“Charge of the Ad Hoc Committee on Violation Sanctioning & Retaking”**

“In the interest of enhancing public safety, the Commission wishes to examine the sanctioning and retaking of offenders who violate conditions of supervision and who commit new crimes in the receiving state. Specifically, the committee is asked to review and recommend changes to Chapter One, “Definitions” and Chapter Five “Retaking” of the ICAOS rules. The national office will support the work of the committee by providing administrative assistance, logistic support, and research.”

**Members of the Ad Hoc on Violation Sanctioning & Retaking:**

- |                     |                |
|---------------------|----------------|
| 1. Robert Maccarone | Chair, NY      |
| 2. Tracy Hudrlik    | Vice-chair, WI |
| 3. Anmarie Aylward  | WA             |
| 4. Sara Andrews     | OH             |
| 5. Jane Seigel      | IN             |
| 6. Chris Moore      | GA             |
| 7. Rick Masters     | Legal Counsel  |

**Proposal Summary:**

- *Rule 1.101*
- *Rule 3.108*
- *Rule 4.101*
- *Rule 4.103*
- *Rule 4.103-1*
- *Rule 4.106*
- *Rule 4.109*
- *Rule 4.109-1*
- *Rule 5.103*
- *Rule 5.108*
- *Offender Application for Interstate Compact Transfer (attached)*
- *Offender Violation Report –Mock-up (attached)*
- *Progress Report - TBD*

## 1.101 Definitions

**“Behavior Requiring Retaking”** – 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 request for revocation of supervision in the receiving state.

~~“Significant Violation”~~ means an offender’s failure to comply with the terms or conditions of supervision that, if occurring in the receiving state, would result in a request for revocation of supervision.

~~“Special condition”~~ means a condition or term that is added to the standard conditions of parole or probation by either the sending or receiving state.

## Rule 3.108 Victim Notification

- (a) *Notification to victims upon transfer of offenders-* Within 1 business day of the issuance of reporting instructions or acceptance of transfer by the receiving state, the sending state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to known victims in the sending state, and the receiving state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to victims in the receiving state.
- (b) *Notification to victims upon violation by offender or other change in status-*
- (1) The receiving state is responsible for reporting information to the sending state when an offender-
    - (A) Engages in behavior requiring retaking ~~Commits a significant violation~~;
    - (B) Changes address;
    - (C) Returns to the sending state where an offender’s victim resides;
    - (D) Departs the receiving state under an approved plan of supervision in a subsequent receiving state; or
    - (E) Is issued a temporary travel permit where supervision of the offender has been designated a victim-sensitive matter.
  - (2) Both the sending state and the receiving state shall notify known victims in their respective states of this information in accordance with their own laws or procedures.
- (c) The receiving state shall respond to requests for offender information from the sending state no later than the 5th business day following the receipt of the request.

### ***Rule 4.101 Manner and degree of supervision in the receiving state***

A receiving state shall supervise offenders consistent with the supervision of similar offenders sentenced in the receiving state, including the use of incentives, corrective actions, graduated responses and other supervision techniques.

### ***Rule 4.103 ~~Special~~ Conditions of supervision***

- (a) At the time of acceptance or during the term of supervision, ~~the compact administrator or supervising authority in the~~ receiving state may impose a special condition on an offender ~~transferred under the interstate compact~~ if that special condition would have been imposed on the an offender if sentenced had been imposed in the receiving state.
- (b) A receiving state shall notify a sending state that it intends to impose or has imposed a special condition on the offender, ~~the nature of the special condition, and the purpose.~~
- (c) A sending state shall inform the receiving state of any ~~special~~ conditions to which the offender is subject at the time the request for transfer is made or at any time thereafter.
- (d) A receiving state that is unable to enforce a ~~special~~ condition imposed in the sending state shall notify the sending state of its inability to enforce a ~~special~~ condition at the time of request for transfer of supervision is made.

### ***Rule 4.103-1 Force and Effect of special conditions imposed by a receiving state or requirements***

~~For purposes of revocation or other punitive action against an offender, the probation or paroling authority of a~~ The sending state shall give the same force and effect to a violation of special conditions ~~or requirement~~ imposed by a receiving state as if those conditions ~~or requirement~~ had been imposed by the sending state. ~~Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state. For purposes of this rule, the original plan of supervision shall include, but not be limited to, any court orders setting forth the terms and conditions of probation, any orders incorporating a plan of supervision by reference, or any orders or directives of the paroling or probation authority.~~

#### **4.106 Progress reports on offender compliance and non-compliance**

~~(a) A receiving state shall provide to the sending state a progress report annually, or more frequently, upon the request of the sending state, for good cause shown. The receiving state shall provide the progress report within 30 calendar days of receiving the request.~~

(a) A receiving state shall submit a progress report to the sending state within 30 calendar days of receiving a request.

(b) A receiving state may initiate a progress report to document offender compliant or non-compliant behavior that does not require retaking as well as incentives, corrective actions or graduated responses imposed.

~~(b)~~ (c) A progress report shall include-

- (1) offender's name;
- (2) offender's current residence address;
- (3) offender's current telephone number and current electronic mail address;
- (4) name and address of offender's current employer;
- (5) supervising officer's summary of offender's conduct, progress and attitude, and compliance with conditions of supervision;
- (6) programs of treatment attempted and completed by the offender;
- (7) information about any sanctions that have been imposed on the offender since the previous progress report;
- (8) supervising officer's recommendation;
- (9) any other information requested by the sending state that is available in the receiving state.

#### **4.109 Violation Report [s] Requiring a Request for Retaking**

(a) A receiving state shall notify a sending state of an act or pattern of behavior requiring retaking significant violations of conditions of supervision by an offender within 30 calendar days of discovery or determination.

(b) A violation report shall contain-

- (1) offender's name and location;
- (2) offender's state-issued identifying numbers;
- (3) date(s) and description of the behavior requiring retaking offense or infraction that forms the basis of the violation.
- (4) description of the offense(s) or behavior in violation of conditions of supervision infraction(s);

- ~~(4) the use of incentives, corrective actions, including graduated responses or other supervision techniques to address the behavior requiring retaking in the receiving state, and the offender's response to such actions;~~
- ~~(5) status and disposition, if any, of offense(s) or behavior requiring retaking infraction;~~
- ~~(6) dates, and descriptions and documentation of previous non-compliance, to include a description of the use of corrective actions, graduated responses or other supervision techniques; of any previous violations;~~
- ~~(7) receiving state's recommendation of actions sending state may take;~~
- ~~(8) (7) name and title of the officer making the report; and~~
- ~~(9) (8) if the offender has absconded, the offender's last known address and telephone number, name and address of the offender's employer, and the date of the offender's last personal contact with the supervising officer and details regarding how the supervising officer determined the offender to be an absconder.~~
- ~~(10) (9) Supporting documentation regarding the violation including but not limited to police reports, toxicology reports, and preliminary findings.~~

(c)

- (1) The sending state shall respond to a report of a violation made by the receiving state no later than 10 business days following transmission by the receiving state.
- (2) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion

#### ***Rule 4.109-1 Authority to arrest and detain***

An offender in violation of the ~~terms and~~ conditions of supervision may be taken into custody or continued in custody by the receiving state

#### ***5.103 Offender behavior requiring retaking Mandatory retaking for violation of conditions of supervision***

- (a) Upon a request by the receiving state and documentation ~~a showing that the offender's behavior requires retaking has committed 3 or more significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision,~~ a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the violation report ~~request by the receiving state.~~

(b) If the offender is ordered to return in lieu of retaking, the receiving state shall request reporting instructions per Rule 4.111 within 7 business days following the receipt of the violation report response.

(c) The receiving state retains authority to supervise until the offender's directed departure date. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender's failure to appear in the sending state.

### ***Rule 5.108 Probable cause hearing in receiving state***

(a) An offender subject to retaking ~~for violation of conditions of supervision~~ 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 one or more ~~significant~~ violations of the ~~terms~~ conditions 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, 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:**

The logic in supporting proposed changes to the ICAOS Violations, Sanction and Retaking Rules:

1. Enhances community safety by holding *interstate* probationers and parolees accountable for their behaviors in the receiving state, consistent with the supervision of probationers and parolees in the receiving state. This establishes a single standard of supervision *in the respective states* for all probationers and parolees under supervision.
2. Realizes and implements the single standard of supervision described in the enabling legislation-the Crime Control Act of 1934 and the Interstate Commission Rules of 1937.
3. Enhances community supervision by eliminating the three significant violations rules and recognizes that a single act or pattern of non-compliance with the terms and conditions of supervision may now serve as the basis for filling a request for violation with the sending state, provided that similar behavior demonstrated by individuals sentenced in the receiving state would result in a violation and request for revocation in the receiving state.
4. Affirms the authority of receiving state to impose terms and conditions and supervise interstate transfer (probationers and parolees) as they would individuals sentenced in the receiving state, including the use of incentives and graduated sanctions.
5. Incentivizes the use of incentives and graduated sanctions in all states consistent with the principles of evidence-based-practice. The requirement for receiving state/supervising states to document the use of incentives and graduated responses in ICOTS establishes an expectation and incentivizes evidence-based-practices.
6. Documentation of supervision practices in ICOTS, including the use of incentives and graduated responses strengthens the case presented by the receiving state at the probable cause hearing, if one is conducted.
7. Documentation of supervision practices supports the violation hearing and the basis for revocation in the sending state and reduces the likelihood of the sending state allowing the probationer/parolee to return immediately following the violation hearing.

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

Amendments to each rule in the proposal will be considered together.

**ICOTS impact:**

This proposal includes enhancements for the Offender Application for Interstate Compact Transfer (attached,) ICOTS Violation Report (mock-up attached) and ICOTS Progress Report (TBD). Cost TBD.

**Scope and Metric**

Included ICOTS proposals will provide new data elements increasing reporting capabilities for supervision techniques.

**Committee action:**

- Ad Hoc Committee on Violation Sanctioning & Retaking February/March 2016: submitted recommendations to Executive Committee
  - Amendments to rules 1.101, 3.108, 4.101, 4.103, 4.103-1, 4.106, 4.109 & 5.103 to be voted on as a package
  - Amendments to the 'Offender Application for Interstate Compact Transfer'
  - ICOTS enhancement for offender violation report
- Executive Committee March 29, 2016: reviewed and forwarded proposals to Rules Committee
  - **Commissioner A. Precythe (NC) moved to advance the ad hoc rule proposals to the Rules Committee for consideration. Commissioner A. Aylward (WA) seconded.**
- Rules Committee May 10, 2016: reviewed and prepared proposals for initial comment.
  - Additional amendments were added for rules 1.101, 4.109-1 & 5.108
  - **Commissioner D. Ege (AZ) moved to post the rule proposals referred by the Executive Committee to the ICAOS website for initial comment. Commissioner S. Arruti (NV) seconded.**
  - Sub group formed to recommend changes to the ICOTS Progress Report with final proposals in August
- July 1, 2016 initial comments due to be considered by Rules Committee in preparing final drafts
- August 1, 2016 Final proposals to be posted and presented for vote at the 2016 Annual Business Meeting (September 14, 2016)

**Effective date:** TBD





# Interstate Commission for Adult Offender Supervision

## OFFENDER'S APPLICATION FOR INTERSTATE COMPACT TRANSFER

To:	Date:	Type of supervision: <input type="checkbox"/> Parole <input checked="" type="checkbox"/> Probation	Is this case: <input checked="" type="checkbox"/> Registered Sex Offender <input type="checkbox"/> Victim sensitive
From:	Phone #:	Fax #:	

### OFFENDER INFORMATION

Offender's full name (last, first, MI):		Offender number:		
		Sending state#:	Receiving state#:	
AKA:				
SS#: (if available)	FBI#: (if available)	Sex:	Race:	DOB:

I, \_\_\_\_\_, am applying for transfer of my parole/probation/other supervision from \_\_\_\_\_ (sending state) to \_\_\_\_\_ (receiving state). I understand that the transfer of my supervision is a privilege and not a right, and that my transfer and supervision will be subject to the rules of the Interstate Commission for Adult Offender Supervision.

I understand that my supervision in another state may be different than the supervision I would be subject to in this state, and that the receiving state will determine the manner in which I will be supervised. I agree to accept any differences that may exist because I believe that transferring my supervision to \_\_\_\_\_ (receiving state) will improve my chances for making a good adjustment in the community. **I FULLY UNDERSTAND AND ACKNOWLEDGE ALL OF THE ABOVE CONDITIONS AND FREELY AND KNOWINGLY WAIVE ANY CHALLENGE TO THESE REQUIREMENTS OF TRANSFER, INCLUDING THE CONDITIONS OF SUPERVISION IN THE STATE TO WHICH I REQUEST TRANSFER. In doing so I respectfully request ask that the authorities to whom this application is made to recognize this fact and grant consider my request for transfer of supervision.**

In support of my application for transfer, I make the following statements:

1. If I am allowed to transfer my supervision to \_\_\_\_\_ (receiving state), I plan to live with \_\_\_\_\_, at (full address/telephone #) \_\_\_\_\_ until I am allowed by the supervising authorities to change my residence.
2. I will comply with the terms and conditions of my supervision that have been placed on me, or that will be placed on me by \_\_\_\_\_ (sending state) and \_\_\_\_\_ (receiving state).
3. I understand that if I do not comply with all the terms and conditions that the sending state or the receiving state, or both, placed on me, that it will be considered a violation and ~~I there may be consequences including returned~~ to the sending state.
4. I agree to the release of any drug or alcohol treatment information from \_\_\_\_\_ (sending state) to any authorized person in \_\_\_\_\_ (receiving state) for the purpose of transferring my supervision. This consent remains in effect from this date \_\_\_\_\_ (today's date) until I revoke this consent.
5. I agree to return to \_\_\_\_\_ (sending state) at any time I am directed to by the sending state or the receiving state. I know that I may have a constitutional right to insist that the sending state extradite me from the receiving state or any other state where I may be found. This is commonly called the right to extradition. But I also understand and acknowledge that I have agreed to return to the sending state when ordered to do so either by the sending or receiving state. Therefore, I agree that I will not resist or fight any effort by any state to return me to the sending state and I AGREE TO WAIVE ANY RIGHT I MAY HAVE TO EXTRADITION. I WAIVE THIS RIGHT FREELY, VOLUNTARILY AND INTELLIGENTLY.

Offender's signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

### Violation Information for John Q. Smith

Violations that may be listed on this report are new felony convictions, conviction of a violent crime, behavior requiring retaking, and absconding. **Any violations that do not fall into one of the listed categories should be reported on a Progress Report.**

\* Behavior requiring retaking is an act or pattern of behavior that would result in a request for revocation in North Carolina.

#### Violation Information

Select the type of violation:  ▼

• Discovery/Determination Date:  

• Detail the act or pattern of behavior that would result in a request for revocation:

• Select all the corrective actions taken to address the offender's behavior:

- Verbal reprimand/Warning
- Report violation to sending state through Progress Report
- Increased reporting
- Loss of privilege
- Other, describe:
- Travel Restriction
- Behavioral contract
- Increased urine drug screens
- Impose curfew
- Impose upward modifications of conditions
- Community service
- GPS/House Arrest/EM
- Brief period of incarceration

• Select all the incentive actions taken to address the offender's behavior:

- Written letter of recognition
- Modification of supervision conditions
- Decreased reporting requirements
- Other, describe:
- Fewer drug screens
- Waive program fees
- Submit positive letter to the court
- Verbal praise

• Describe in detail how all the corrective actions and/or incentives selected above did not successfully address the offender's behavior: