



## Interstate Commission for Adult Offender Supervision

...Ensuring public safety for the 21<sup>st</sup> century

July 25, 2005

**Re: Rule Amendments**

Dear Commissioners:

Since last year's ICAOS Annual Business Meeting, the Rules Committee has been reviewing the Compact rules, all issues surrounding the rules, and drafting amendments to better meet the needs of the Commission. With direction from the ICAOS Executive Committee, the Rules Committee has prepared the attached proposals for your review prior to the Annual Business Meeting in September. These proposals are based on requests by Commissioners, referrals from last year's annual meeting, and issues submitted to the Commission national office.

The Committee reviewed all ICAOS rules to determine if proposed changes were needed to assist in the implementation of the National Adult Compact Information System (NACIS). Several recommendations were made to insure compatibility with NACIS.

The Committee also addressed how rules are forwarded to the Rules Committee and the method of voting at the annual meeting. A specific method for referring proposals assures the Committee uses its resources efficiently. The recommendation offers a method of submitting proposals, reviewing drafts, and examining comments from all Commissioners before a final draft is completed to ensure the entire Commission is served. Attached are final drafts of the proposals sent out to all Commissioners in early June for review and comments. The goal for the ICAOS meeting in September is to allow Commissioners to make comments concerning the final drafts of the rules, with no amendments taken from the floor which may have unintended consequences on other rules. The vote will be for or against a rule, or refer the rule back to the Rules Committee for further review. This process will be addressed at the beginning of our annual meeting.

If you have any questions on the drafts feel free to contact me, Milton Gilliam, Chair of the Rules Committee or John D'Amico, Vice-Chair.

Sincerely,

Milton R. Gilliam  
Rules Committee Chair

Interstate Commission for  
Adult Offender Supervision

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*Proposed Rules/Amendments: Approved by the Rules Committee June 28 & 29, 2005*

***RULE 1.101 Definitions***

(ff) “**Victim**” means a natural person or the family of a natural person who has incurred direct or threatened physical or psychological harm as a result of an act or omission of an offender.

Justification: This change is recommended to make the definition consistent with the language used in Rule 2.105.

(ii) “**Relocate**” means to remain in another state for more than 90 days in any 12 month period.

Justification: This additional definition is proposed to clear up confusion in Rule 2.110 and 3.103.

(jj) “**Compact**” means the Interstate Compact for Adult Offender Supervision.

Justification: The proposed new definition is to alleviate the need to spell out the entire name of the compact each time it is used in the rules.

(r) “**Resident**” means a person who—

- (1) has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision; and
- (2) intends that such state shall be the person’s principal place of residence; and
- (3) has not, unless incarcerated, remained in another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.

(ee) “**Travel permit**” means the written permission granted to an offender authorizing the offender to travel from one state to another.

Justification: Both of the above listed definitions currently use the term relocate. Due to the recommended new definition of relocate in (ii), it is proposed that the term relocate be removed from these definitions.

***RULE 2.102 Data collection and reporting***

(a) As required by the compact, and as specified by the operational procedures and forms approved by the commission, the states shall gather, maintain and report data regarding the transfer and supervision of offenders supervised under this compact.

- (b) (1) Each state shall report to the commission each month the total number of offenders supervised under the compact in that state.
  - (2) Each state shall report to the commission each month the numbers of offenders transferred to and received from other states in the previous month.
  - (3) Reports required under Rule 2.102 (b)(1) and (2) shall be received by the commission no later than the 15<sup>th</sup> day of each month.
- (c) ~~Unless readopted, this rule shall expire on December 31, 2005.~~  
**This Rule will not expire until the Electronic Information System approved by the commission is fully implemented and functional..**

**Justification** Due to the delay in the implementation of the national data base system for the commission it is necessary to amend Rule 2.102 to require states to continue to report figures to the national office monthly.

***RULE 2.109 Adoption of rules; amendment***

Proposed new rules or amendments to the rules shall be adopted by majority vote of the members of the Interstate Commission in the following manner.

- (a) Proposed new rules and amendments to existing rules shall be submitted to the Interstate Commission office for referral to the Rules Committee in the following manner:
  - (1) Any Commissioner may submit a proposed rule or rule amendment for referral to the Rules Committee during the annual Commission meeting. This proposal would be made in the form of a motion and would have to be approved by a majority vote of a quorum of the Commission members present at the meeting.
  - (2) Standing ICAOS Committees may propose rules or rule amendments by a majority vote of that committee.
  - (3) ICAOS Regions may propose rules or rule amendments by a majority vote of members of that region.
- (b) The Rules Committee shall prepare a draft of all proposed rules and provide the draft to all Commissioners for review and comments. Based on the comments made by the Commissioners the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments.
- (c) Prior to the Commission voting on any proposed rule or amendment, the text of the proposed rule or amendment shall be published by the Rules Committee not later than 30 days prior to the meeting at which vote on the rule is scheduled, on the official web site of the Interstate Commission and in any other official publication that may be designated by the Interstate Commission for the publication of its rules. In addition to the text of the proposed rule or amendment, the reason for the proposed rule shall be provided.

- (d) Each proposed rule or amendment shall state—
- (1) The place, time, and date of the scheduled public hearing;
  - (2) The manner in which interested persons may submit notice to the Interstate Commission of their intention to attend the public hearing and any written comments; and
  - (3) The name, position, physical and electronic mail address, telephone, and telefax number of the person to whom interested persons may respond with notice of their attendance and written comments.
- (e) Every public hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Interstate Commission from making a transcript or recording of the public hearing if it so chooses.
- (f) Nothing in this section shall be construed as requiring a separate public hearing on each rule. Rules may be grouped for the convenience of the Interstate Commission at public hearings required by this section.
- (g) Following the scheduled public hearing date, the Interstate Commission shall consider all written and oral comments received.
- (h) The Interstate Commission shall, by majority vote of a quorum of the commissioners, take final action on the proposed rule or amendment by a vote of yes/no or by referring the rule back to the Rules Committee for further action. The Commission shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- (i) Not later than sixty days after a rule is adopted, any interested person may file a petition for judicial review of the rule in the United States District Court of the District of Columbia or in the federal district court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence, as defined in the federal Administrative Procedures Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. In the event that a petition for judicial review of a rule is filed against the Interstate Commission by a state, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.
- (j) Upon determination that an emergency exists, the Interstate Commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than

ninety days after the effective date of the rule. An emergency rule is one that must be made effective immediately in order to--

- (1) Meet an imminent threat to public health, safety, or welfare;
- (2) Prevent a loss of federal or state funds;
- (3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
- (4) Protect human health and the environment.

Justification: The changes to this rule establish a specific method to bring rules to the rules committee and sets out a detailed system to review, prepare and vote on new rules or rules amendments by the Commission.

***RULE 2.110            Transfer of offenders under this compact***

- (a) No state shall permit an offender who is eligible for transfer under this compact to relocate to another state except as provided by the Compact and these rules.
- (b) An offender who is not eligible for transfer under this Compact is not subject to these rules and remains subject to the laws and regulations of the state responsible for the offender's supervision.

Justification: The proposed changes in this rule are to help clarify what should happen to an offender who does not meet eligibility requirements under the compact.

***RULE 3.101    Mandatory transfer of supervision***

At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender:

- (1) has more than 90 days or an indefinite period of supervision remaining; and
- (2) has a valid plan of supervision; and
- (3) is in substantial compliance with the terms of supervision in the sending state; and
- (4) is a resident of the receiving state; or
- (5) (A) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and  
(B) can obtain employment in the receiving state or has a visible means of support.

Justification: See justification for 3.1011 and 3.1012 below. There are no substantive changes made to 3.101 other than separating it into three rules.

***RULE 3.101-1 Mandatory Transfers of Military, Families of Military, and Family Members Employed;***

- (a) *Transfer of Military members-* An offender who is a member of the military and has been deployed by the military to another state, shall be immediately eligible for reporting instructions and transfer of supervision.
- (b) *Transfer of Offenders who live with family who are members of the military-* An offender who meets the other criteria specified in Rules 3.101 (3) and 3.101 (5)(B) and who lives with a family member who has been deployed to another state, shall be immediately eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state.-
- (c) *Employment transfer of family member to another state-* An offender who meets the other criteria specified in Rules 3.101(3) and 3.101(5)(B), and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, shall be immediately eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state.

***RULE 3.101-2 Discretionary transfer of supervision***

- (a) A sending state may request transfer of supervision of an offender who does not meet the eligibility requirements in Rule 3.101
- (b) The sending state must provide sufficient documentation to justify the requested transfer.
- (c) The receiving state shall have the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the compact.

Justification: The purpose of this proposed rule change is to encourage the states to approve the discretionary transfer of offenders for treatment, education, employment, etc... in a manner consistent with the purposes of the Compact, which are to promote public safety, protect the rights of victims, and provide for the effective supervision and rehabilitation of offenders.

Changes were suggested in 3.101-1, to clarify that an offender in the military or with family members in the military or transferring employment should be immediately eligible for reporting instructions to allow travel to the receiving state.

***RULE 3.103 Acceptance of the offender by receiving state; exception***

- (a) A sending state shall not allow an offender to relocate to a receiving state without the receiving state's acceptance of the transfer of supervision.
- (b) Exception—

- (1)(A) A sending state may request reporting instructions from a receiving state through the electronic information system and may grant a seven day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.
  - (B) The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.
  - (C) The sending state shall ensure that the offender sign all forms requiring the offender's signature under Rule 3.107 (a) prior to granting a travel permit to the offender. Signed forms shall be maintained in the sending state until termination of compact supervision.
  - (D) The sending state shall transmit a departure notice to the receiving state per Rule 4.105 (a).
  - (E) This exception is applicable to offenders sentenced to jail as a condition of probation and released to probation supervision from a jail facility.
  - (F) This exception is not applicable to offenders released to supervision from prison.
- (2) The sending state retains supervisory responsibility until the offender's arrival in the receiving state.
- (3) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender's arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.
- (4) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 calendar days following the granting to the offender of the reporting instructions.
- (5)(A) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request from the receiving state, direct the offender to return to the sending state within 30 calendar days after the receipt of notification of the rejection of the transfer request.
  - (B) If the offender does not return to the sending state, as directed, the sending state shall initiate the retaking of the offender by issuing a warrant or an order to return no later than 10 calendar days following the offender's failure to appear in the sending state.

- (C) The receiving state shall continue to supervise the offender until a warrant is issued or notice is given by the sending state as required under Rule 4.105.

**Justification:**

These proposed changes streamline this rule and puts the paragraphs in an order that is easier to follow for training purposes.

“Granted a travel permit” language was replaced with “granted reporting instructions” to remain consistent with that language used throughout the rule and in NACIS.

(b)(5)(A) and also in Rule 3.106 (d)(1) Recommended adding a time frame in which the sending state must order the return of an offender whose transfer request has been denied. As currently stated, states can interpret any time frame they choose to direct the offender’s return. This lack of time frame is not consistent with the goal of continued supervision and tracking of offender movement.

***RULE 3.104 Time allowed for investigation by receiving state***

- (a) A receiving state shall complete investigation and respond to a sending state’s request for an offender’s transfer of supervision no later than the 45<sup>th</sup> calendar day following receipt of a completed transfer request in the receiving state’s compact office.
- (b) If a receiving state determines that an offender transfer request is incomplete the receiving state shall notify the sending state by rejecting the transfer request with the specific reason(s) for the rejection.

**Justification:** The recommended changes in this rule are to assist with the transition to the electronic information system.

***RULE. 3.104-1 Acceptance of offender; issuance of reporting instructions***

- (a) If a receiving state accepts transfer of the offender, the receiving state’s acceptance shall include reporting instructions.
- (b) Upon notice of acceptance of transfer by the receiving state, the sending state shall issue a travel permit to the offender and notify the receiving state of the offender’s departure as required under Rule 4.105.
- (c) An acceptance by the receiving state shall be valid for 120 calendar days. If the sending state has not sent a Departure Notice to the receiving state in that time frame, the receiving state may withdraw its acceptance and close interest in the case. This does not apply to paroling offenders. See Rule 3.105 (c)(1).

Justification: Rule 3.105 (c) (1) allows for receiving states to withdraw acceptances on paroling offenders. However, there is no provision to allow receiving states to withdraw acceptances on other offenders, like probationers. This added language would allow for states to withdraw their acceptance after 120 calendar days if the offender fails to report, etc.

***RULE 3.106 Request for expedited reporting instructions***

- (a)(1) A sending state may request that a receiving state agree to expedited reporting instructions of an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination. If the receiving state does not agree with that determination, the offender shall not proceed to the receiving state until an acceptance is received under Rule 3.104-1.
- (2) (A) A receiving state that agrees to expedited reporting instructions of an offender shall immediately issue reporting instructions for the offender, and a sending state shall immediately transmit a departure notice.
- (B) The sending state shall ensure that the offender signs all forms requiring the offender's signature under Rule 3.107 (a) prior to granting reporting instructions to the offender. Signed forms shall be maintained in the sending state until termination of compact supervision.
- (b) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender's plan of supervision upon the offender's arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.
- (c) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the seventh calendar day following the granting to the offender of the reporting instructions.
- (d)(1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the seventh calendar day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 30 calendar days after receipt of notification of the rejection of the transfer request.
- (2) If the offender does not return to the sending state as directed, the sending state shall initiate the retaking of the offender no later than 10 calendar days following the offender's failure to appear in the sending state.
- (3) The receiving state shall continue to supervise the offender until a warrant is issued or notice is given by the sending state as required under Rule 4.105.

Justification: These proposed changes will assist in the transition to the electronic information system and will change the terminology from expedited transfer to expedited request for reporting instructions which more clearly defines the rule.

“Travel permit” changed to “reporting instructions.” This change in the language makes it clear that agents cannot provide a travel permit unless reporting instructions are approved and received. The receiving state does not provide a travel permit, but rather reporting instructions.

Added language that prohibits sending states from allowing their offenders to proceed to prospective reporting instructions when reporting instructions are denied. Currently, there is no provision from prohibiting sending states to send offenders to receiving states after a receiving state denies a request for reporting instructions under this rule. Therefore, several offenders travel without notification or supervision to prospective receiving states and it is not determined until the investigation phase of the process.

Recommended adding a time frame, as in proposed change to 3.103 (within 30 calendar days) in which the sending state must order the return of an offender whose transfer request has been denied. As currently stated, states can interpret any time frame they choose to direct the offender’s return. This lack of time frame is not consistent with the goal of continued supervision and tracking of offender movement.

***RULE 3.107 Transfer Request***

- (a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—
- (1) transfer request form;
  - (2) instant offense in sufficient detail to describe the type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;
  - (3) photograph of offender;
  - (4) conditions of supervision;
  - (5) any orders restricting the offender’s contact with victims or any other person;
  - (6) any known orders protecting the offender from contact with any other person;
  - (7) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
  - (8) pre-sentence investigation report, if available;
  - (9) supervision history, if available;
  - (10) information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.
- (b) The Offender Application for Interstate Compact Transfer shall be maintained in the sending state.

- (c) Additional documents, such as the Judgment and Commitment, and any other information may be requested from the sending state following acceptance of the offender. The sending state shall provide the documents if available.

**Justification:** The proposed changes in this rule are to assist with the transition to the electronic information system:

1. **Criminal history:** during the development of NACIS there have been issues raised by the FBI, CJIS division, of storing criminal records in NACIS without meeting very strict security measures. These requirements would make it almost impossible for jurisdictions to comply. As a result it will be necessary for receiving states to do their own criminal history checks, which we understand is a common practice in most states.
2. **Signed Waiver of Extradition:** Past practices have been to submit this form with the transfer packet. During the development of NACIS it was determined that this signed form is only needed in the receiving state when the offender is being retaken and the court requires proof of the waiver. The proposed rule would allow for the waiver to be signed and retained in the sending state until requested by the receiving state. This would eliminate the need to scan and attach the document to a transfer request packet in NACIS.
3. **Consent to random drug & alcohol testing:** The amendment to 3.107 (18) is proposed as the result of the prior amendment to 3.103 (3) by the 2004 annual session of the Commission and which now provides that the receiving state shall assume responsibility for supervision of an offender upon arrival in the receiving state rendering subsection (18) unnecessary.
4. **Release of medical/psychological information:** The amendment to 3.107 (19) is proposed as the result of recent clarification of HIPPA by the Office of Counsel for the Department of Health and Human Services which clearly exempts the use of such information for law enforcement purposes from its requirements.
5. **Judgment & Commitment documents:** The requirement of this document to be attached to the transfer request is causing tremendous delays and non-compliance with Rule 3.103. This rule requires that a transfer packet be forwarded from the sending state to the receiving state within 15 days. Most states cannot meet this requirement due to delays from the court in delivering the documents. This proposed rule change will allow states to forward the transfer packets and the receiving states will be able to complete investigations without delay.

***RULE 4.103 Special conditions***

- (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 offender if sentence 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.

**Justification:** The proposed change in this rule is to clear up confusion on when special conditions can be imposed.

***RULE 4.105 Arrival and departure notifications; withdrawal of reporting instructions***

***(a) Departure notifications***

At the time of an offender's departure from any state pursuant to a transfer of supervision or the granting of reporting instructions, the state from which the offender departs shall notify the intended receiving state, and, if applicable, the sending state, through the electronic information system of the date and time of the offender's intended departure and the date by which the offender has been instructed to arrive.

***(b) Arrival notifications***

At the time of an offender's arrival in any state pursuant to a transfer of supervision or the granting of reporting instructions, or upon the failure of an offender to arrive as instructed, the intended receiving state shall immediately notify the state from which the offender departed, and, if applicable, the sending state, through the electronic information system of the offender's arrival or failure to arrive.

- (c) A receiving state may withdraw its reporting instructions if the offender does not report to the receiving state as directed.

**Justification:** The proposed changes in this rule are to assist with the transition to the electronic information system.

***RULE. 4.110 Transfer to a subsequent receiving state***

- (a) At the request of an offender for transfer to a subsequent receiving state, and with the approval of the sending state, the sending state shall prepare and transmit a request for transfer to the subsequent state in the same manner as an initial request for transfer is made.

- (b) The receiving state shall assist the sending state in acquiring the offender's signature on the "Application for Interstate Compact Transfer" and any other forms that may be required under Rule 3.107 (a), and shall transmit these forms to the sending state.
- (c) The receiving state shall submit a statement to the sending state summarizing the offender's progress under supervision.
- (d) The receiving state shall issue a travel permit to the offender when the sending state informs the receiving state that the offender's transfer to the subsequent receiving state has been approved.
- (e) Notification of offender's departure and arrival shall be made as required under Rule 4.105.
- (f) Acceptance of the offender's transfer of supervision by a subsequent state and issuance of reporting instructions to the offender terminate the receiving state's supervisory obligations for the offender.

Justification: The proposed changes in this rule will assist with the transition to the electronic information system, by deletion of forms recommended for deletion in 3.107.