



**Interstate Commission
for Adult Offender Supervision
ADVISORY OPINION**

Opinion Number: 1-2019

Dated: May 15, 2019

Issued by:

Ashley H. Lippert, Executive Director

Richard L. Masters, Legal Counsel

State Requesting: ICAOS Executive Committee

Description: When offenders located in receiving states abscond and are later apprehended in the jurisdiction of the receiving state, is the closed case required to be reopened in ICOTS?

Background & History:

When offenders supervised in a receiving state abscond, the receiving state reports and requests a warrant from a sending state via submission of a violation report requiring retaking and sends a case closure as supervision ceases (via Rule 4.112 (a)(2)) due to unknown whereabouts of the offender. If the offender is later apprehended in the jurisdiction of the receiving state, Rule 5.103-1 outlines requirements to establish probable cause (assuming revocation in the sending state is to be pursued) and in cases where probable cause may not be found, the receiving state must resume supervision.

There are inconsistencies among states related to the practice of re-opening cases in ICOTS to provide documentation of probable cause and/or to report decisions or actions made by stakeholders, particularly when new pending charges may exist in the receiving state. Concerns around reopening a case in ICOTS to communicate and provide documentation is thought to possibly change the legal status or supervision responsibility. Due to the inconsistencies, the executive committee asks the following questions, pursuant to Commission Rule 6.101(c):

Issue:

Generally, how should states manage an occurrence when offenders located in receiving states abscond, triggering case closure, but are later apprehended in the jurisdiction of the receiving state? And, is the receiving state required to reopen the case in ICOTS? Specifically, the following questions arise from the general issues presented to the Commission :

- Does Rule 4.112 (b) apply when absconders are subject to retaking, or should these cases be considered ‘non-compact’ matters?
- If Rule 4.112 (b) applies and the sending state’s warrant for absconding is subsequently ‘pulled’ and/or the offender is released from custody by the authorities in the receiving state for any reason, is the receiving state expected to supervise the offender in accordance with the sending state’s sentencing order?
- When there are pending charges, does Rule 5.101-1 apply, or are these matters considered ‘non-compact’ cases requiring the sending state to retake in spite of pending charges in the receiving state, provided the offender is available and not held on pending charges?



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- May prosecutors and state authorities use discretion when determining whether to hold offenders on bonds for absconders subject to retaking or should they detain offenders with a bond established by a new offense?
- What is the effect on a receiving state's legal liability upon re-opening cases in ICOTS?

Applicable Rules:

Rule 4.112 (a)(2), in relevant part, provides as follows:

(a) The receiving state may close its supervision of an offender and cease supervision upon- . . .

(2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;

Rule 4.112 (b), in relevant part, provides:

(b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender.

Rule 5.101-1, in relevant part, provides:

Notwithstanding any other rule, if an offender is charged with a subsequent felony or violent crime, the offender shall not be retaken or ordered to return until criminal charges have been dismissed, the sentence has been satisfied, or the offender has been released to supervision for the subsequent offense, unless the sending and receiving states mutually agree to the retaking or return.

Analysis and Conclusion:

Issues raised are addressed in order:

- **Does Rule 4.112 (b) apply when absconders are subject to retaking, or should these cases be considered 'non-compact' matters?**



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As stated in Advisory Opinion 11-2006, with the possible exception of a discharge of the offender from supervision pursuant to the offender's original application as provided in 4.112 (a)(1), this rule does not determine whether an offender is subject to the Compact.

With the exception of case closure under Rule 4.112 in which the original term of supervision has expired, whether the offender flees the original receiving state and is apprehended in a third state or is apprehended in the original receiving state, Article I of the Compact and Rule 5.107 specifically authorize officers of a sending state to enter a state where the offender is found to apprehend and retake the offender.

Thus, except in those excluded cases where the offender is discharged from supervision under the original application for supervision, it appears that these cases should be subject to the Compact.

- **If Rule 4.112 (b) applies and the sending state's warrant for absconding is subsequently 'pulled' and/or the offender is released from custody by the authorities in the receiving state for any reason, is the receiving state expected to supervise the offender in accordance with the sending state's sentencing order?**

Rule 4.112 (b) is not dispositive of whether an offender is subject to the Compact. Therefore, absent a determination by the sending state that the offender should be retaken, it is reasonable to conclude that the receiving state would continue to supervise the offender in accordance with the sending state's sentencing order.

- **When there are pending charges, would Rule 5.101-1 apply, or are these matters considered 'non-compact' cases requiring the sending state to retake in spite of pending charges in the receiving state provided the offender is available and not held on pending charges?**

Unless the sending and receiving states mutually agree to the retaking or return and given the fact that these cases are still subject to the compact, Rule 5.101-1 applies. Accordingly, such offenders should not be retaken or ordered to return until criminal charges are dismissed, the sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.

- **May prosecutors and state authorities use discretion when determining whether to hold offenders or absconders subject to retaking bonds or whether to detain offenders with bonding established by a new offense?**



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Subject to the provisions of the ICAOS rules, prosecutors and other state authorities responsible for the supervision of offenders are permitted to exercise discretion in the determination of whether an offender or absconder should be held subject to retaking bonds or to be detained on bonds set in connection with a new offense. The language of Rule 5.101-1 anticipates the exercise of such discretion by providing the caveat that the prohibition against retaking an offender subject to pending charges is applicable “unless the sending and receiving states mutually agree to the retaking or return.”

- **What is the effect on a receiving state’s legal liability upon re-opening cases in ICOTS?**

As a general matter, parole and probation officers enjoy qualified immunity if their actions are **in furtherance of a statutory duty** and **in substantial compliance** with the directives of superiors and **relevant statutory or regulatory guidelines** (emphasis supplied). This immunity requires only that an officer’s conduct be in substantial compliance, not strict compliance, with the directives of superiors and regulatory procedures. *Taggart v. State*, 822 P.2d 243 (Wash. 1992). Whether a government official may be held personally liable for an allegedly unlawful action turns on the ‘objective legal reasonableness’ of the action in light of the legal rules that were ‘clearly established’ at the time.” *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (quoting and interpreting *Harlow v. Fitzgerald*, 457 U.S. 800, 818-19 (1982)).

Given that the provisions of the Compact and the ICAOS rules would still apply to such cases under the circumstances described above and applying the above standard to the question of liability when states reopen cases in ICOTS, those responsible for supervision would be subject to increased liability exposure by **not** enforcing both the Compact statute and Compact rules in such cases (emphasis added).