

# **2015 ICAOS Rule Proposals**

- A. Rule 1.101 'Offender' & Rule 2.105 (West Region)**
- B. Rule 2.105 (East Region)**
- C. Rule 3.101-2 (West Region & Rules Committee)**
- D. Rule 3.101-3 (East Region & Rules Committee)**
- E. Rule 3.102 (East Region)**
- F. Rule 3.103 (South Region & Rules Committee)**
- G. Rule 4.111 (Midwest Region)**
- H. Rule 5.101-2 (Rules Committee) \*New Rule**
- I. Rules 3.101-1, 3.103, 3.106, 4.111, 5.103 (Executive Committee & Rules Committee)**
- J. BylawArt2Sec2 (Executive Committee)**
- K. BylawArt7 (Executive Committee)**

Proposal to create/amend rules:

## **Rule 2.105 Misdemeanants**

- (a) A misdemeanor offender whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes ~~1 or more of the following—~~
- ~~(1) an offense in which a person has incurred direct or threatened physical or psychological harm;~~
  - ~~(2) an offense that involves the use or possession of a firearm;~~
  - ~~(3) a 2nd or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;~~
  - (4) a sexual offense that requires the offender to register as a sex offender in the sending state.

*Adoption of this amendment would require the following additional changes to existing ICAOS definitions as follows:*

## **Rule 1.101 Definitions**

**Offender** – means an adult placed under, or made subject to, supervision as the result of a felony conviction for a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

*As the misdemeanor rule as proposed to be amended would only apply to the misdemeanor offender whose instant offense was a sexual offense that requires the offender to register as a sex offender in the sending state and whose sentence includes 1 year or more of supervision, no change would be required to the existing definition for “Sex Offender” which reflects as follows:*

**Sex Offender** – means an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to register as a sex offender either in the sending or receiving state and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

### **Justification:**

## 2015\_1101Offender\_2105WEST

This proposal would amend the misdemeanor rule to specifically address the misdemeanor offender whose instant offense was a sexual offense that requires the offender to register as a sex offender in the sending state and whose sentence includes 1 year or more of supervision.

There has been extensive discussion by the Commission regarding misdemeanants and their inclusion within the requirements of the Interstate Compact. Debate has centered around whether misdemeanants should continue to be included, whether the qualifiers should be modified or whether misdemeanants should be eliminated from the Compact. Many regions and standing committees have submitted proposed amendments to the misdemeanor rule for consideration. This proposal provides an alternate approach for consideration.

The existing language in ICAOS Rule 3.101-2, Discretionary Transfer of Supervision, already provides us with the language needed to address “misdemeanants” if the misdemeanor rule were to be amended and/or eliminated by the Commission. Additionally, Advisory Opinion 4-2005 already directly supports that sending states may submit offense ineligible offenders for discretionary transfer consideration under the current rules of the Compact. During discussions and training, facilitators would need to emphasize that sending states would still have the ability to submit those cases they deem appropriate, based on the specific circumstances of the case, giving the prospective receiving state the opportunity to supervise those cases.

For sending states with supervised misdemeanants that need to be transferred, nothing in these proposed changes will impact those states from continuing to submit their misdemeanor cases for consideration by a prospective receiving state. However, for those states with lower level misdemeanants that are not supervised by the paroling or probation authority, but still trigger the requirements of the compact, this would remove the liability issue that has previously been discussed by removing those lower level misdemeanor cases, which states may not even be aware of, from the mandatory transfer criteria.

*The following information is drafted by the Rules Committee*

---

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

None

### **ICOTS impact:**

None

### **Scope and Metric**

Data may be able to be pulled to determine how many transfers will be affected.

**Rules Committee action:**

March 2015: Motion to recommend that the West Region withdraw or revise the proposal to Rule 2.105 made by T. Hudrlik, seconded by C. Moore. Motion passed. Motion to recommend the proposal not pass should the West Region move the proposal to Rule 2.105 forward as written, made by E. Ligtenberg, seconded by R. Maccarone. Motion passed.

**Effective date:**

March 1, 2016

**Proposal to create/amend rules:**

***Rule 2.105 Misdemeanants***

- (a) A misdemeanor offender whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes 1 or more of the following—
- (1) an offense in which a person has incurred direct or threatened physical or psychological harm;
  - (2) an offense that involves the use or possession of a firearm;
  - (3) a 2<sup>nd</sup> or subsequent misdemeanor ~~offense~~ conviction of driving while impaired by drugs or alcohol;
  - (4) a sexual offense that requires the offender to register as a sex offender in the sending state.

**Justification:**

Changing the word ‘offense’ to ‘conviction’ clarifies that there has to be a conviction on a previous DUI in order for the instant offense to be considered a 2<sup>nd</sup> or subsequent offense and an eligible misdemeanor. This question is asked frequently, especially by new or casual users, because the word offense does not necessarily mean a conviction occurred. During ICAOS rules trainings the fact that this rule refers to convictions only is always stated to clarify what this means because with the existing language it is not clear.

*The following information is drafted by the Rules Committee*

---

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

None

**ICOTS impact:**

None

**Scope and Metric**

N/A

**Rules Committee action:**

**2015-2105-EAST**

March 2015: Motion to recommend proposal from East Region to amend Rule 2.105 as drafted made by R. Maccarone, seconded by J. Nimer. This proposal will be considered for vote after the West Region proposal to Rule 2.105.

**Effective date:**

March 1, 2016

Proposal to create/amend rules:

***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, where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the offender, promote public safety, and protect the rights of victims.
- (b) The sending state ~~must~~ shall 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 specifying the discretionary reasons for rejection.

**Justification:**

Increases the likelihood for acceptances of discretionary case by providing more information that supports the purpose of the compact.

*The following information is drafted by the Rules Committee*

---

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

None

**ICOTS impact:**

None

**Scope and Metric**

N/A

**Rules Committee action:**

Rules Committee March 2015: Recommend Rules Committee alternative to West Region and recommend its version be withdrawn made by R. Maccarone, seconded by J. Nimer. Motion passed.

## **2015 3.101\_2WESTRULES**

West Region April 2015: Motion to withdraw original proposal to Rule 3.101-2 and support the Rules Committee alternate language made by D. Ege, seconded by K. Madris. Motion passed.

July Rules Committee 2015:

Issues discussed:

- Providing risk assessment for discretionary cases
- Concerns for receiving state to use risk level as reason for denying a case
- Interpretation of what 'level of supervision' mean

Motion to revise the proposal D-2015\_3101\_1WESTRULES by removing added language 'to include the current level of supervision' and request the West Region support the change made by D. Clark, seconded by J. Nimer. Motion passed 7-2.

August West Region:

Motion to accept proposed changes recommend by the rules committee to remove 'to include the current level of supervision' from section (b) made by K. Madris, seconded by D. Sides. Motion passed.

**Effective date:**

March 1, 2016



Proposal to create/amend rules:

**Rule 3.101-3 Transfer of supervision of sex offenders**

- (a) *Eligibility for Transfer*-At the discretion of the sending state a sex offender shall be eligible for transfer to a receiving state under the Compact rules. A sex offender shall not be allowed to leave the sending state until the sending state's request for transfer of supervision has been approved, or reporting instructions have been issued, by the receiving state. In addition to the other provisions of Chapter 3 of these rules, the following criteria will apply.
- (b) *Application for Transfer*-In addition to the information required in an application for transfer pursuant to Rule 3.107, in an application for transfer of supervision of a sex offender the sending state shall provide the following information, if available, to assist the receiving state in supervising the offender:
- (1) assessment information, including sex offender specific assessments;
  - (2) social history;
  - (3) information relevant to the sex offender's criminal sexual behavior;
  - (4) law enforcement report that provides specific details of sex offense;
  - (5) victim information
    - (A) the name, sex, age and relationship to the offender;
    - (B) the statement of the victim or victim's representative;
  - (6) the sending state's current or recommended supervision and treatment plan.
- (c) *Reporting instructions for sex offenders ~~living in the receiving state at the time of sentencing~~*- Rules 3.101-1, 3.103 and 3.106 apply to the transfer of sex offenders, as defined by the compact, except for the following:
- (1) The receiving state shall have 5 business days to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instruction. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.
  - (2) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state; except for 3.102 (c).

**Justification:**

The current language only applies to sex offenders living in the receiving state at the time of sentencing; therefore, that language was removed from the proposed amendment to make this section of the rule apply to all sex offenders. The language of 'as defined by the compact' was also added to emphasize that, in order to know if this rule applies in lieu of 3.103, the registration requirements of both state must be known.

When a receiving state receives an RFRI for a reason other than 'living in the receiving state at the time of sentencing' and only has 2 business days to respond, the tendency is to

## 2015- 3.101-3 EASTRULES

deny without taking the reasons for the request into consideration. If the receiving state has 5 business days to determine the suitability of the home plan for any sex offender request for reporting instructions, it is more likely the request will be given fair consideration. Additionally, the language ‘ except for 3.102 (c)’ was added under (c)(2) to clarify that sex offenders may be permitted to be in the receiving state, like any other offender, for the reasons outlined under rule 3.102(c). It is a common misconception that 3.101-3(c)(2) trumps all other rules with regard to sex offender travel when, in fact, offenders can be in the receiving state per 3.102(c) if they meet the condition of that rule.

Example 1: Receiving state receives a RFRI for a sex offender who has been under supervision in the sentencing state for several years and is doing well. The request is being submitted as expedited because the offender has received a job offer in the receiving state that is a great opportunity financially. The new employer is fully aware of the offender’s legal issues and situation. The employer would like him to start in 2 weeks and the company has found a residence for the offender in the receiving state. Since the receiving state has only 2 business days to respond, they deny because they want to have an opportunity to check out the residence to determine if it is appropriate for a sex offender and does not violate any local or state ordinances. If the receiving state had 5 business days to conduct a preliminary investigation of the home, they would be more likely to consider this request and entertain this opportunity for this offender.

Example 2: Receiving state receives a RFRI for a sex offender who lives in the sending state with his wife who is an active member of the US Navy. After 6 months of compliant supervision the offender’s wife receives military orders to relocate to a receiving state. The sending state submits a RFRI to the receiving state who denies because they will not grant RI’s without checking out the residence to determine if it is appropriate for a sex offender and does not violate any local or state ordinances. If the receiving state were given the 5 business days to preliminarily review the residence, they would be less likely to go directly to a denial and, if approved, the offender’s residential stability would be maintained.

*The following information is drafted by the Rules Committee*

---

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

None.

### **ICOTS impact:**

Est \$18,000: Change Compact Office users’ Compact Workload and email notifications to distinguish sex offenders of having a 5 business day due date for providing reporting instructions.

### **Scope and Metric**

## **2015- 3.101-3 EASTRULES**

ICOTS external compliance reports already account for 5 business days.

### **Rules Committee action:**

Rules Committee March 2015: Recommend modified proposal to East region as alternate to 3.101-3 made by E. Ligtenberg, seconded by D. Ege. Motion passed.

East Region April 2015: Motion to withdraw original proposal to Rule 3.101-3 and support the Rules Committee amended version made by G. Roberge, seconded by R. Maccarone. Motion passed.

Rules Committee July 2015: The committee agreed that the proposal should include the ICOTS impact (est at \$18,000) to modify the compact workload due dates. Proposal to move forward for final comment as written.

### **Effective date:**

March 1, 2016

Proposal to create/amend rules:

***Rule 3.102 Submission of transfer request to a receiving state***

- (a) Except as provided in sections (c) & (d), and subject to the exceptions in Rule 3.103 and 3.106, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.
- (b) Except as provided in sections (c) & (d), and subject to the exceptions in Rule 3.103 and 3.106, the sending state shall not allow the offender to travel to the receiving state until the receiving state has replied to the transfer request.
- (c) An offender who is employed or attending treatment or medical appointments, in the receiving state at the time the transfer request is submitted and has been permitted to travel to the receiving state for ~~the employment, treatment or medical appointments purposes~~ may be permitted to continue to travel to the receiving state for the employment these purposes while the transfer request is being investigated, provided that the following conditions are met:
- (1) Travel is limited to what is necessary to report to work, and perform the duties of the job or to attend treatment or medical appointments and return to the sending state.
  - (2) The offender shall return to the sending state daily, immediately upon completion of the appointment or employment during non-working hours, and
  - (3) The Transfer Request shall include notice that the offender has permission to travel to and from the receiving state, pursuant to this rule, while the transfer request is investigated.
- (d) When a sending state verifies an offender is released from incarceration in a receiving state and the offender requests to relocate there and the offender meets the eligibility requirements of Rule 3.101 (a), (b) & (c), the sending state shall request expedited reporting instructions within 2 business days of the notification of the offender's release. The receiving state shall issue the reporting instructions no later than 2 business days. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.
- (1) 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, and shall transmit these forms to the sending state within 7 business days and mail the original to the sending state.
  - (2) The provisions of Rule 3.106 (b), (c) & (d) apply.

**Justification:**

Offenders who reside close to state borders are often forced to seek treatment or attend medical appointments across state lines due to limited options or because the location in the other state is the closest facility that meets their specific needs. These offenders need to be in the receiving state during the investigation so treatment is not interrupted and they can return to the sending state daily similarly to the offenders working in the receiving state. It is counterproductive to have an offender under these circumstances discontinue needed treatment pending the time it takes to complete an investigation.

Real example: A sending state had an offender who was undergoing cancer treatments in a nearby border state. The offender decided to relocate to that border state and had family there who were willing and able to assist so a TR was submitted. A request for RI's was also submitted because of the medical issues, but it was denied as not being an emergency. A TR was submitted and included a statement that the offender needed to be in the receiving state several days per week for ongoing cancer treatments. The receiving state indicated that the offender could not be there during the investigation despite the medical issues. The sending state's compact office spoke with the receiving state's compact office who continued to insist that the offender not be permitted to travel to the receiving state until the TR investigation was completed. The sending state asked then if RI's would be reconsidered and they were told 'no.' To interrupt this type of treatment is completely counterproductive and detrimental to an offender's health and well-being. Luckily the receiving state did expedite the investigation, but all of that could be avoided had the proposal to this rule existed.

Real example: A sending state had an offender who was attending D&A treatment at the closest provider to their rural home area which happened to be in a border state. That offender later receive a job offer in that same border state and was hoping to start the new job as soon as possible. A request for RI's was denied as not an emergency. A TR was submitted and denied because the sending state officer realized, through a review of the documents submitted, that the offender was attending treatment twice weekly (one individual and one group session per week) in the receiving state. The offender was only in the receiving state for the purposes of treatment and would return after each appointment. To insist this offender discontinue treatment, even for 30 or 45 days, is counterproductive and can negatively affect their stability, which is what we strive to maintain as these offender relocate from one state to another.

*The following information is drafted by the Rules Committee*

---

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

None.

**ICOTS impact:**

None.

**2015-3.102EAST**

**Scope and Metric**

N/A

**Rules Committee action:**

Rules Committee: Motion to recommend adoption of East Region's proposal for Rule 3.102 made by D. Ege, seconded T. Hudrlik. Motion passed.

**Effective date:**

March 1, 2016

Proposal to create/amend rules:

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding**

- (a)
- (1) A request for reporting instructions ~~request~~ for an offender who was living in the receiving state at the time of initial sentencing or after disposition of a violation or revocation proceeding shall be submitted by the sending state within 7 business days of the initial sentencing date, disposition of violation, revocation proceeding or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of initial sentencing or disposition of violation or revocation proceeding. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.
  - (2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
  - (3) The sending state shall ensure that the offender signs all forms requiring the offender's signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state, the sending state shall transmit all signed forms within 5 business days.
  - (4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.
  - (5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.
- (b) The sending state retains supervisory responsibility until the offender's arrival in the receiving state.
- (c) 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.
- (d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.
- (e)
- (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 15th business 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

15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant.

- (2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender's failure to appear in the sending state.

**Justification:**

When offenders given Reporting Instructions under Rule 3.103 (Living in the Receiving State at the Time of Sentencing) are retaken by the sending state to face revocation and are then returned to supervision after serving 6 months or less on the revocation, they currently do not qualify again as Living in the RS at Sentencing because "sentencing" has been interpreted to mean the initial sentencing only and not the revocation sentencing.

This often creates a hardship for an offender who still has no ties to the sending state and may have to wait up to 45 calendar days before being allowed to return to their home and job if discretionary Reporting Instructions are not approved.

The new, mandatory Request for Reporting Instructions would be submitted under a new case number since the old one would have been closed out when the offender was retaken. A transfer request investigation of the plan would still be conducted. New Notices of Departure and Arrival would still be submitted.

*The following information is drafted by the Rules Committee*

---

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

None.

**ICOTS impact:**

Requires ICOTS enhancement. Estimate: \$2,300.

Due to application and title change, text change should be made to the RFRI builder and PDFs 'reason for reporting instructions.' Currently users select "Probationer living in the receiving state" for cases qualifying under this rule.

**Scope and Metric**

N/A

**Rules Committee action:**



## **2015\_3103SOUTHRULES**

Rules Committee March 2015: Motion to recommend alternate proposal to the South Region for Rule 3.103 made by M. Gilliam, seconded by E. Ligtenberg. Motion passed.

South Region April 2015: Motion to support Rules Committee version to Rule 3.103 adding language to the title and requesting clarification from the Rules Committee about the impact of leaving 'probation' in section (a) made by A. Precythe, seconded by G. Powers. Motion passed.

Rules Committee April 2015: Motion to accept the South Region's recommendation for title change and to strike the last paragraph of the justification made by D. Ege, seconded by R. Maccarone. Motion passed. It was also discussed that 'probation' should remain in section (a) as it pertains to those offenders qualifying under the rule at initial sentencing.

### **Effective date:**

March 1, 2016

Proposal to create/amend rules:

***Rule 4.111 Offender requesting return to the sending state***

- (a) Upon an offender's request to return to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions.
- (b) Except as provided in subsection (c), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.
- (c) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.
- (d) A receiving state shall notify the sending state as required in Rule 4.105 (a).
- (e) A sending state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender's departure from the receiving state. A sending state shall notify the receiving state as required in Rule 4.105 (b).

**Justification:**

When an offender returns to the sending state on approved reporting instructions, the Notice of Departure is submitted upon the offender's departure by the receiving state per Rule 4.111 (d). Rule 4.112 (a) provides the receiving state may close its supervision of an offender and cease supervision upon (5) Return to sending state. Since it is not required by Rule, at the sending state's discretion, a Notice of Arrival may or may not be submitted notifying the receiving state of the offender's arrival. Therefore, the receiving state may not receive confirmation of the offender's return. Although the Case Closure Notice reply may include this information when it is submitted to the receiving state, which by Rule must occur within 10 business days of receipt, there is no requirement the offender's arrival or failure to arrive be documented. In the interest of public safety and sound accountability practices, it needs to be clear that the sending state has assumed supervision upon the offender's return to the sending state. This Rule Amendment would provide clear direction to the sending state that a Notice of Arrival must be submitted upon the offender's arrival or failure to do so.

*The following information is drafted by the Rules Committee*

---

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

## **2015-4111MIDWEST**

None.

### **ICOTS impact:**

Estimate: \$11, 250

Requires ICOTS enhancement. As stated in the justification, the region requests that for returning offenders that the 'supervising state' label reflects the 'sending state' upon transmission of a Notice of Departure by the receiving state after issuance of reporting instructions for a returning offender.

Current design of ICOTS changes the 'supervising state' status upon a 'successful' Notice of Arrival. In most instances for returning offenders, case closures are sent along with the Notice of Departure indicating the receiving state is no longer actively supervising the offender. The change noted above would simply reflect the supervising state assignment on the offender's profile summary.

### **Scope and Metric**

External data for compact cases can be modified to display reporting instructions information separate from the transfer request information.

### **Rules Committee action:**

Rules Committee January 2015: Commissioner D. Ege (AZ) moved to forward the proposal 2015-MIDWEST – 4.111 for the Commission's review. Commissioner C. Norman (AL) seconded. Motion passed.

Rules Committee April 2015: Committee recommends that the region review the ICOTS impact. The Committee also discussed the Executive Committee's proposal to Rule 4.111 and presenting this proposal first for vote.

### **Effective date:**

March 1, 2016

Proposal to create/amend rules:

**Rule 5.101-2 Discretionary process for disposition of violation in the sending state for a new crime conviction**

Notwithstanding any other rule, a sentence imposing a period of incarceration on an offender convicted of a new crime which occurred outside the sending state during the compact period may satisfy or partially satisfy the sentence imposed by the sending state for the violation committed. This requires the approval of the sentencing or releasing authority in the sending state and consent of the offender.

- (a) Unless waived by the offender, the sending state shall conduct, at its own expense, an electronic or in-person violation hearing.
- (b) The sending state shall send the violation hearing results to the receiving state within 10 business days.
- (c) If the offender's sentence to incarceration for the new crime fully satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is no longer required to retake if Rules 5.102 and 5.103 apply.
- (d) If the offender's sentence to incarceration for the new crime only partially satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is required to retake if Rules 5.102 and 5.103 apply.
- (e) The receiving state may close the case under Rule 4.112 (a)(3).

**Justification:**

This new rule is intended to:

- promote joint and cooperative supervision of offenders who commit new crimes outside the sending state
- provide for offender accountability
- promote victim safety
- allocate supervision responsibility between sending and receiving states in the interest of public safety
- reduce costs to states associated with retaking offenders where imposition of sentence can best be carried out by the supervising state
- promote "swift and certain" violation sanctions as advocated by justice reinvestment
- increase the likelihood that supervision is continued in lieu of early termination of supervision

## 2015-51012RULES

*The following information is drafted by the Rules Committee*

---

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

None.

### **ICOTS impact:**

None.

### **Scope and Metric**

N/A

### **Rules Committee action:**

Rules Committee March 2015: Motion to recommend new Rule 5.101-2 as an alternate proposal to the West Region's proposal for a new rule made by D. Ege, seconded by C. Moore. Motion passed.

Rules Committee July 2015: Motion to revise the proposal 2015\_5101\_2RULES by adding 'or releasing authority' made by R. Maccarone, seconded by J. Nimer. Motion passed unanimously. Motion to revise the title to proposal J-2015\_5101\_2RULES to 'Discretionary process for disposition of violation in the sending state for a new crime conviction' made by D. Ege, seconded by T. Hurdlik. Motion passed unanimously.

### **Effective date:**

March 1, 2016

Proposal to create/amend rules:

***Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, employment transfer, and veterans for medical or mental health services***

- (a) 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 for:
- (1) *Transfers of military members-* An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision.
  - (2) *Transfer of offenders who live with family who are members of the military-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who has been deployed to another state, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state.
  - (3) *Employment transfer of family member to another state-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state.
  - (4) *Employment transfer of the offender to another state –* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of supervision.
  - (5) *Transfers of veterans for medical or mental health services-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health

Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:

- (A) the sending state provides documentation to the receiving state of the medical and/or mental health referral; and
  - (B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.
- (b) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
- (c) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender's return to the sending state under the requirements of Rule 4.111.
- (d) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state may initiate the offender's return to the sending state under the requirements of Rule 4.111.

***Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing***

- (a)
- (1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a 7 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.
  - (2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
  - (3) The sending state shall ensure that the offender sign all forms requiring the offender's signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.
  - (4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.

## 2015-31011\_3103\_3106\_4111\_5103-EXECRULES

- (5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.
- (b) The sending state retains supervisory responsibility until the offender's arrival in the receiving state.
- (c) 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.
- (d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.
- (e) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender's return to the sending state under the requirements of Rule 4.111.
- (f) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state may initiate the offender's return to the sending state under the requirements of Rule 4.111.
- ~~(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 15 business 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 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant.~~
- ~~(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender's failure to appear in the sending state.~~

### ***Rule 3.106 Request for expedited reporting instructions***

- (a)
- (1) A sending state may request that a receiving state agree to expedited reporting instructions for an offender if the sending state believes that emergency



## 2015-31011\_3103\_3106\_4111\_5103-EXECRULES

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 shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender's departure.

(B) The sending state shall ensure that the offender signs all forms requiring the offender's signature under Rule 3.107 prior to granting reporting instructions to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(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 7th business day following the granting to the offender of the reporting instructions.

(d) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender's return to the sending state under the requirements of Rule 4.111.

(e) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state may initiate the offender's return to the sending state under the requirements of Rule 4.111.

~~(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 7th business 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 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant.~~

~~(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in~~

~~all states without limitation as to specific geographic area, no later than 10 business days following the offender's failure to appear in the sending state.~~

***Rule 4.111 Offender requesting Offenders returning to the sending state***

- (a) ~~Upon an offender's request to return~~ For an offender returning to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions.
- (b) If the receiving state rejects the transfer request for an offender granted reporting instructions under Rules 3.101-1, 3.101-3, 3.103 or 3.106 the receiving state shall, upon submitting notice of rejection, submit a request for return reporting instructions within 7 business days.
- (c) Except as provided in subsection ~~(e)~~ (d), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state. The sending state shall direct the offender to return to the sending state within 15 business days of the reporting instructions request.
- (d) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.
- (e) The receiving state retains authority to supervise the offender until the offender's directed departure date or issuance of the sending state's warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 (a) and submit a case closure as required by Rule 4.112 (a)(5).
- (f) If the offender does not return to the sending state as ordered, 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 5.103 Mandatory retaking for violation of conditions of supervision***

- (a) Upon a request by the receiving state and a showing that the offender 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 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 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.

**Justification:**

Currently states are uniformly using the “returning to the sending state” reason for reporting instructions when offenders *request* to return as required by Rule 4.111. This process tracks and monitors information and offender movement using notice of departure and notice of arrivals as well as prompts the sending state to inform any known victim's before the offenders return.

Although recognizing it is not required by rule, some states use the existing functionality for requesting reporting instructions for offenders returning after a rejection or violation exceeding rule requirements. A few states upon receipt of the reporting instructions requests insist those requests be withdrawn due to the rules not requiring the process which is counterintuitive to the Commission's efforts to track offenders and protect the public.

Using the existing functionality for offenders returning due to a rejection and/or violation makes sense as part of the Commission's goal to enhance public safety by tracking offender movement.

The use of reporting instructions ensures the offender is returned timely while tracking the movement of the offender in ICOTS. The changes also allow the receiving state to clearly indicate whether the rejection was due to incompleteness allowing the offender to remain or is a rejection in which the offender will be required to return to the sending state.

Requiring a warrant for any instance where an offender fails to appear back in the sending state as ordered enhances public safety.

Intended Rule Application:

## 2015-31011\_3103\_3106\_4111\_5103-EXECRULES

This proposal references Rule 4.111 as a standard procedure for requesting reporting instructions for offenders returning to a sending state. Each scenario and Rule covers three different circumstances for why an offender supervised in a receiving state would return to a sending state.

#1 offenders returning based on a rejected Transfer Request after approval of reporting instructions

#2 returning based on an offender's request to return

#3 returning an offender under Rule 5.103 in lieu of retaking

*The following information is drafted by the Rules Committee*

---

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

None.

### **ICOTS impact:**

None. This proposal would not require an enhancement to ICOTS as functionality already exists for returning offenders using the Request for Reporting Instruction functionality. This process allows for transmission of a Notice of Departure and Notice of Arrival to track the offender's movement.

### **Scope and Metric**

Each scenario and reason for returning should be able to be tracked and distinguished from one another in ICOTS using various data elements concerning compact case statuses and other activities existing on the records. However, the process regardless of the reason will be consistent for the user managing the return.

### **Rules Committee action:**

Rules Committee March 2015: Motion to recommendation that the Executive Committee accept the Rules Committee version of the proposal for Rules 3.101-1, 3.103, 3.106 & 4.111 made by D. Ege, seconded by E.Ligtenberg. Motion passed. This would include Rule 5.103 to be voted separately (includes Rules Committee version and Executive Committee version) and 3.101-1 added to the alternate language as recommended by the Rules Committee.

Executive Committee April 2015: Motion to accept the Rules Committee version for the Executive Committees alternate proposal for Rules 3.101-1, 3.103, 3.106 & 4.111 and requesting that 4.111 (g) be removed from the proposal made by A. Precythe, seconded by G. Miller Fox. Motion Passed.

## **2015-31011\_3103\_3106\_4111\_5103-EXECRULES**

Rules Committee April 2015: Motion to accept the request to remove 4.111 (g) from the proposal, switch order of sections (a) & (b) and modify the title of the rule made by C. Moore, seconded by D. Ege. Motion passed.

Rules Committee July 2015:

Issues discussed:

- Comment concerns about allowing discretion for the receiving state to request return when the sending state fails to send a completed transfer request.
- Comment concerns regarding return addresses. The committee agreed that states can put the sending state's agency address if unknown.

Motion to support and revise the proposal K-2015\_3101\_1\_3103\_3106\_4111\_EXECRULES by changing the word 'shall' to 'may' in sections 3.101-1 (d), 3.103 (f) and 3.106 (e) and request the Executive Committee to support the changes made by T. Hurdlik, seconded by M. Gilliam. Motion passed unanimously.

Motion to support and revise proposal Ka-2015\_5103EXEC with Executive Committee's approval to include additional language to section (b) 'within 7 business days following the receipt of the violation response' made by T. Hurdlik, seconded by D. Ege. Motion passed unanimously.

### **Effective date:**

March 1, 2016

**Proposal to create/amend rules:**

***Section 2. Ex-Officio Members***

The Commission membership shall also include but are not limited to individuals who are not commissioners and who shall not have a vote, but who are members of interested organizations. Such non-commissioner members must include a ~~member~~ representative of the National Governors Association, the National Conference of State Legislatures, the Conference of Chief Justices, the National Association of Attorneys General and the National Organization for Victim Assistance. ~~of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims.~~ In addition representatives of the National Institute of Corrections, the American Probation and Parole Association, ~~and~~ Association of Paroling Authorities International, the Interstate Commission for Juveniles, the Association of Prosecuting Attorneys, the Conference of State Court Administrators, the National Sheriff's Association, the American Jail Association, the National Association of Police Organizations, National Association for Public Defense and the International Association of Chief of Police shall ~~may~~ be ex-officio members of the Commission.

**Justification:**

This amendment updates and expands the ex-officio organizations/members to reflect current practice and to allow for additional interested stakeholders to be considered ex-officio members as needed.

*The following information is drafted by the Rules Committee*

---

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

None.

**ICOTS impact:**

None.

**Scope and Metric**

N/A

**Rules Committee action:**

Rules Committee January 2015: Commissioner D. Ege (AZ) moved to forward the proposal 2015-EXEC-By-LawArt2Sec2 for the Commission's review. Commissioner J. Nimer (FL) seconded. Motion passed.

**2015- By-LawArt2Sec2 EXEC**

Executive Committee August 2015: Motion to remove 'National Association of Defense Attorneys' due to non-response and add 'National Association for Public Defense' to list of ex-officio members

**Effective date:**

March 1, 2016

**Proposal to create/amend rules:**

***Section 1. Executive Committee.***

The Commission may establish an executive committee, which shall be empowered to act on behalf of the Commission during the interim between Commission meetings, except for rulemaking or amendment of the Compact. The Committee shall be composed of all officers of the Interstate Commission, the chairpersons or vice-chairperson of each committee, the regional representatives or designees, and the ex-officio victims' representative to the Interstate Commission. The immediate past chairperson of the Commission shall also serve as an ex-officio member of the executive committee and both the ex-officio victims' representative and immediate past chairperson shall serve for a term of two years. The procedures, duties, budget, and tenure of such an executive committee shall be determined by the Commission. The power of such an executive committee to act on behalf of the Commission shall at all times be subject to any limitations imposed by the Commission, the Compact or these By-laws.

***Section 2. Standing Committees.***

The Commission may establish such other committees as it deems necessary to carry out its objectives, which shall include, but not be limited to Finance Committee; Rules Committee; Compliance Committee; Information Technology Committee; and Training, Education and Public Relations Committee. The composition, procedures, duties, budget and tenure of such committees shall be determined by the Commission. In the event a chairperson of a standing committee is unable to attend a specified meeting of a standing committee or a meeting of the executive committee, each standing committee may designate a vice-chairperson to act on behalf of the standing committee at a specified standing or executive committee meeting.

***Section 4. Regional Representatives.***

A regional representative of each of the four regions of the United States, Northeastern, Midwestern, Southern, and Western, shall be elected or reelected, beginning with the 2005 annual meeting, by a plurality vote of the commissioners of each region, and shall serve for two years or until a successor is elected by the commissioners of that region. The states and territories comprising each region shall be determined by reference to the regional divisions used by the Council of State Governments. In the event a regional representative is unable to attend a regional meeting or a meeting of the executive committee, that region shall be authorized to designate an alternative representative who is a commissioner from the same region to act on behalf of a regional representative at a specified regional or executive committee meeting.

**Justification:**

This amendment allows a vice-chair of a committee or a designee of a region to serve in place of a committee chair or regional representative when that chair or representative is



## **2015- By-LawArt7EXEC**

unavailable. This allows for business to be conducted in spite of those absences and therefore creates greater continuity of business. It also encourages an expansion of potential leadership for the Commission and formally defines the role of vice-chair and designee.

*The following information is drafted by the Rules Committee*

---

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

None.

### **ICOTS impact:**

None

### **Scope and Metric**

N/A

### **Rules Committee action:**

Rules Committee January 2015: Commissioner D. Ege (AZ) moved to forward the proposal 2015-EXEC-By-LawArt7Sec1,2and4 for the Commission's review. Commissioner J. Nimer (FL) seconded. Motion passed.

### **Effective date:**

March 1, 2016