

Approved Rule Amendments

Interstate Commission for Adult Offender Supervision
Annual Meeting 2009 - Reno, NV

November 4, 2009

I.) Amendments passed during Rules Committee Report *ATTACHED*

- *RULE 1.101 Definitions "Supervision"*
- *RULE 2.104 Forms*
- *RULE 2.106 Offenders subject to deferred sentences*
- *RULE 2.110 Transfer of offenders under this compact*
- *RULE 3.101-1 Mandatory transfers of military, families of military, family members employed, and employment transfer ,*
- *RULE 3.102 Submission of transfer request to a receiving state*
- *RULE 3.104 Time allowed for investigation by receiving state*
- *RULE 3.104-1 Acceptance of offender; issuance of reporting instructions*
- *RULE 3.107 Transfer Request*
- *RULE 4.106 Progress Reports*

The amendments are presented using the following:

- *Deleted language is ~~struck through~~*
- *Added language is underlined*

RULE 1.101 Definitions

“Supervision” means the ~~authority or oversight exercised by supervising~~ authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to or be monitored by supervising authorities, ~~and includes any condition, qualification, special condition or requirement~~ and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender’s release to the community or during the period of supervision in the community.

Justification:

The current definition of supervision has been interpreted to require transfer of certain offenders whom the sentencing courts have clearly not intended to be subject to “supervision” as it has been traditionally understood. These include offenders placed on probation as a means to preserve jurisdiction while the offenders pay court-ordered fees, fines, court costs and restitution. Since the monitoring and collection of outstanding monies is the sending state’s responsibility under Rule 4.108, regardless of the offender’s location, there is no benefit in requiring transfer of cases, when the only conditions to be satisfied are monetary.

This amendment will eliminate confusion and inconsistencies among states in applying compact rules.

Effective Date:

March 1, 2010

History: Adopted November 3, 2003, effective August 1, 2004; “Compliance” amended October 26, 2004, effective January 1, 2005; “Resident” amended October 26, 2004, effective January 1, 2005; “Resident family” amended October 26, 2004, effective January 1, 2005; “Substantial compliance” adopted October 26, 2004, effective January 1, 2005; “Supervision” amended October 26, 2004, effective January 1, 2005; “Travel permit” amended September 13, 2005, effective January 1, 2006; “Victim” amended September 13, 2005, effective January 1, 2006; “Relocate” adopted September 13, 2005, effective January 1, 2006; “Compact” adopted September 13, 2005, effective January 1, 2006; “Resident” amended September 13, 2005, effective January 1, 2006; “Relocate” amended October 4, 2006, effective January 1, 2007; “Sex offender” adopted September 26, 2007, effective January 1, 2008. “Supervision” amended November 4, 2009, effective March 1, 2010.

Rule 2.104 Forms

- (a) States shall use the forms or electronic information system authorized by the commission ~~for all communication regarding offenders between or among states.~~
- (b) The sending state shall retain the original forms containing the offender's signature until the termination of the offender's term of compact supervision.
- (c) Section (a) shall not be construed to prohibit written, electronic or oral communication between compact offices.

Justification:

Existing language appears to restrict compact offices from communicating about offenders' cases, by any means other than ICAOS forms or the electronic information system (ICOTS). Efficient compact operations require that compact offices have the ability to send messages and to clarify, discuss and resolve certain issues outside of ICOTS. The revised language clarifies the intent of the rule that ICAOS forms and ICOTS are to be used when appropriate to the purpose, but does not restrict other communications.

Effective Date:

March 1, 2010

History: Adopted November 3, 2003, effective August 1, 2004; amended September 26, 2007, effective January 1, 2008; amended November 4, 2009, effective March 1, 2010.

Rule 2.106 Offenders subject to deferred sentences

Offenders subject to deferred sentences are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this compact.

Persons subject to supervision pursuant to a pre-trial release intervention program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

Justification:

The intent of this proposal is to eliminate any case where the offender was in a bond-like status and focus on those offenders where courts/parole boards have made a final determination that the offender has committed an offense and should be supervised for a period of time.

Effective Date:

March 1, 2010

History: Adopted November 3, 2003, effective August 1, 2004; amended March 12, 2004; amended October 26, 2004, effective January 1, 2005; amended November 4, 2009, effective March 1, 2010.

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.
- (c) Upon violation of section (a), the sending state shall direct the offender to return to the sending state within 15 calendar days of receiving such notice. If the offender does not return to the sending state as ordered, the sending state shall issue a warrant that is effective in all compact member states, without limitation as to specific geographic area, no later than 10 calendar days following the offender's failure to appear in the sending state.

Justification:

Under the current rules, there is no explicit process requiring a sending state to take specific action when it or a receiving state learns that an offender who is eligible for transfer under the Compact has been permitted to relocate to the receiving state in violation of Compact rules. This poses a significant public safety risk because the offender is residing in the receiving state but not under supervision there. Paragraph (c) would clarify a sending state's responsibilities in this situation to remove the offender from the receiving state. This does not apply to offenders who have relocated to another state without permission.

Effective Date:

March 1, 2010

History: Adopted November 3, 2003, effective August 1, 2004; amended September 13, 2005, effective January 1, 2006; amended November 4, 2009, effective March 1, 2010.

Rule 3.101-1 Mandatory transfers of military, families of military, and family members employed, and employment transfer.

(a) 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. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(b) 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. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(c) 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. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

(d) 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. The receiving state shall issue reporting instructions no later than two business days following receipt of such a request from the sending state.

Justification:

(c) For purpose of consistency

(d) An offender's ability to support themselves plays a major part in:

- 1) rehabilitation,
- 2) the ability to be a productive member of society and
- 3) the ability to pay legal financial obligations, including victim's compensation.

Offenders should not be put in a position to lose employment and become unemployed because they are transferred by their company to another state. If moving to the receiving state allows the offender to maintain employment, it should be a requirement to accept the offender.

Effective Date:

March 1, 2010

History: Adopted September 13, 2005, effective January 1, 2006; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008; amended November 4, 2009, effective March 1, 2010.

RULE 3.102 Submission of transfer request to a receiving state

- (a) Except as provided in section (c), 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 section (c), 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 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 may be permitted to continue to travel to the receiving state for the employment 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, perform the duties of the job and return to the sending state.
 - 2) The offender shall return to the sending state daily 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.

Justification:

This amendment allows an offender to maintain existing employment in a receiving state, without interruption, while a transfer request is investigated. Under existing rules, an offender who has not requested transfer to another state may travel to and from that state, as long as the offender does not relocate. However, once a sending state submits a request to transfer supervision, Rule 3.102 bars the offender from any further travel to that state. Exceptions are possible for offenders who already reside in or who, due to emergency circumstances, need to relocate to the receiving state. No exception is currently provided for an offender who has employment in that state, but does not intend to relocate prior to completion of the investigation.

Effective Date:

March 1, 2010

History: Adopted November 4, 2003, effective August 1, 2004; amended September 26, 2007, effective January 1, 2008; amended November 4, 2009, effective March 1, 2010.

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 45th 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. If the offender is in the receiving state with reporting instructions, those instructions shall remain in effect provided that the sending state submits a completed transfer request within 15 calendar days following the rejection.

Justification:

This rule currently requires an incomplete transfer application to be rejected. Other ICAOS rules require that an offender in the receiving state with reporting instructions, must return to the sending state upon notice of rejection. The addition of this language allows the offender, whose transfer has been rejected pursuant to this rule, to remain in the receiving state for a reasonable amount of time to allow the sending state to either cure the defect in the transfer application or order the return of the offender. The addition of this language further clarifies the responsibilities of the sending state.

Effective Date:

March 1, 2010

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended September 13, 2005, effective June 1, 2009; amended November 4, 2009, effective March 1, 2010.

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) A receiving state shall assume responsibility for supervision of an offender upon the offender's arrival in the receiving state and shall submit notification of arrival as required under Rule 4.105.
- (d) 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.

Justification:

This proposal is consistent with language in Rules 3.103 and 3.106 for offenders arriving in a receiving state. This language should be a part of Rule 3.104-1 as well because not all offenders arrive in a receiving state via Rules 3.103 or 3.106. Adding this language to this rule also makes it clear that the receiving state's responsibility for supervision begins upon the offender's arrival in the receiving state, and that an arrival notice is then due.

Effective Date:

March 1, 2010

History: Adopted October 26, 2004, effective August 1, 2004; amended September 13, 2005, effective January 1, 2006; amended October 4, 2006, effective January 1, 2007; amended November 4, 2009, effective March 1, 2010.

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 original signed Offender Application for Interstate Compact Transfer shall be maintained in the sending state. A copy of the signed Offender Application for Interstate Compact Transfer shall be attached to the transfer request.
- (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:

We are discovering that in cases when states do not include the Offender Application with their packets as a discretionary attachment, it is difficult to obtain one from the sending state after the fact. We spend time we don't have in trying to obtain a signed copy of this application for violating offenders. In addition, we are becoming aware that because it is not mandatory in the rule that officers are forgetting to even have the offender sign one – that can cause a lot of problems.

Effective Date:

March 1, 2010

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended September 13, 2005 (to be effective upon the implementation of electronic system; date to be determined by Executive Committee), effective October 6, 2008; amended September 26, 2007, effective January 1, 2008; amended November 4, 2009, effective March 1, 2010.

Rule 4.106 Progress reports

- (a) A receiving state shall provide to the sending state a progress report annually, or more frequently, upon the request of the sending state, for good cause shown. The receiving state shall provide the progress report within thirty (30) calendar days of receiving the request.
- (b) A progress report shall include-
 - (1) offender's name;
 - (2) offender's residence address;
 - (3) offender's telephone number and electronic mail address;
 - (4) name and address of offender's employer;
 - (5) supervising officer's summary of offender's conduct, progress and attitude, and compliance with conditions of supervision;
 - (6) programs of treatment attempted and completed by the offender;
 - (7) information about any sanctions that have been imposed on the offender since the previous progress report;
 - (8) supervising officer's recommendation;
 - (9) any other information requested by the sending state that is available in the receiving state.

Justification:

Progress reports are frequently needed for the sending state to complete regularly scheduled supervision reviews or final termination audits and must be received timely so that violations can be addressed prior to termination of supervision. All other compact processes have timeframes for response.

Effective Date:

March 1, 2010

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended November 4, 2009, effective March 1, 2010.