

ICAOS RULES



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Introduction

The Interstate Commission for Adult Offender Supervision is charged with overseeing the day-to-day operations of the Interstate Compact for Adult Offender Supervision, a formal agreement between member states that seeks to promote public safety by systematically controlling the interstate movement of certain adult offenders. As a creature of an interstate compact, the Commission is a quasi-governmental administrative body vested by the states with broad regulatory authority. Additionally, the Interstate Compact for Adult Offender Supervision has congressional consent under Article I, § 10 of the United States Constitution and pursuant to Title 4, Section 112(a) of the United States Code.

Through its rulemaking powers, the Commission seeks to achieve the goals of the compact by creating a regulatory system applicable to the interstate movement of adult offenders, provide an opportunity for input and timely notice to victims of crime and to the jurisdictions where offenders are authorized to travel or to relocate, establish a system of uniform data collection, provide access to information on active cases to authorized criminal justice officials, and coordinate regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators. The Commission is also empowered to monitor compliance with the interstate compact and its duly promulgated rules, and where warranted to initiate interventions to address and correct noncompliance. The Commission will coordinate training and education regarding regulations of interstate movement of offenders for state officials involved in such activity.

These rules are promulgated by the Interstate Commission for Adult Offender Supervision pursuant to Article V and Article VIII of the Interstate Compact for Adult Offender Supervision. The rules are intended to effectuate the purposes of the compact and assist the member states in complying with their obligations by creating a uniform system applicable to all cases and persons subject to the terms and conditions of the compact. Under Article V, Rules promulgated by the Commission “shall have the force and effect of statutory law and shall be binding in the compacting states[.]” All state officials and state courts are required to effectuate the terms of the compact and ensure compliance with these rules. To the extent that state statutes, rules or policies conflict with the terms of the compact or rules duly promulgated by the Commission, such statutes, rules or policies are superseded by these rules to the extent of any conflict.

To further assist state officials in implementing the Compact and complying with its terms and these rules, the Commission has issued a number of advisory opinions. Additionally, informal opinions can be obtained from the Commission as warranted. Advisory opinions, contact information and other important information, can be found on the Commission’s website at <http://www.interstatecompact.org>.

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Chapter 1 Definitions

Rule 1.101 Definitions

As used in these rules, unless the context clearly requires a different construction-

“Abscond” means to be absent from the offender’s approved place of residence or employment with the intent of avoiding supervision.

“Adult” means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

“Application fee” means a reasonable sum of money charged an interstate compact offender by the sending state for each application for transfer prepared by the sending state.

“Arrival” means to report to the location and officials designated in reporting instructions given to an offender at the time of the offender’s departure from a sending state under an interstate compact transfer of supervision.

“By-laws” means those by-laws established by the Interstate Commission for Adult Offender Supervision for its governance, or for directing or controlling the Interstate Commission’s actions or conduct.

“Compact” means the Interstate Compact for Adult Offender Supervision.

“Compact administrator” means the individual in each compacting state appointed under the terms of this compact and responsible for the administration and management of the state’s supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission for Adult Offender Supervision, and policies adopted by the State Council under this compact.

“Compact commissioner” or “commissioner” means the voting representative of each compacting state appointed under the terms of the Interstate Compact for Adult Offender Supervision as adopted in the member state.

“Compliance” means that an offender is abiding by all terms and conditions of supervision, including payment of restitution, family support, fines, court costs or other financial obligations imposed by the sending state.

“Deferred sentence” means a sentence the imposition of which is postponed pending the successful completion by the offender of the terms and conditions of supervision ordered by the court.

“Detainer” means an order to hold an offender in custody.

“Discharge” means the final completion of the sentence that was imposed on an offender by the sending state.

“Extradition” means the return of a fugitive to a state in which the offender is accused, or has been convicted of, committing a criminal offense, by order of the governor of the state to which the fugitive has fled to evade justice or escape prosecution.

References:

ICAOS Dispute Resolution

2-2004 [Offenders not transferred through the ICAOS must be returned through the extradition clause of the U.S. Constitution]

“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 request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

References:

ICAOS Advisory Opinion

9-2004 [CSL offenders seeking transfer of supervision are subject to ICAOS-New Jersey]

“Plan of supervision” means the terms under which an offender will be supervised, including proposed residence, proposed employment or viable means of support and the terms and conditions of supervision.

“Probable cause hearing” a hearing in compliance with the decisions of the U.S. Supreme Court, conducted on behalf of an offender accused of violating the terms or conditions of the offender’s parole or probation.

“Receiving state” means a state to which an offender requests transfer of supervision or is transferred.

“Relocate” means to remain in another state for more than 45 consecutive days in any 12 month period.

“Reporting instructions” means the orders given to an offender by a sending or receiving state directing the offender to report to a designated person or place, at a specified date and time, in another state. Reporting instructions shall include place, date, and time on which the offender is directed to report in the receiving state.

“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.

“Resident family” means a parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who—

- (1) has resided in the receiving state for 180 days or longer as of the date of the transfer request; and
- (2) indicates willingness and ability to assist the offender as specified in the plan of supervision.

“Retaking” means the act of a sending state in physically removing an offender, or causing to have an offender removed, from a receiving state.

“Rules” means acts of the Interstate Commission, which have the force and effect of law in the compacting states, and are promulgated under the Interstate Compact for Adult Offender Supervision, and substantially affect interested parties in addition to the Interstate Commission,

“Sending state” means a state requesting the transfer of an offender, or which transfers supervision of an offender, under the terms of the Compact and its rules.

“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.

“Shall” means that a state or other actor is required to perform an act, the non-performance of which may result in the imposition of sanctions as permitted by the Interstate Compact for Adult Offender Supervision, its by-laws and rules.

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

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

“Subsequent receiving state” means a state to which an offender is transferred that is not the sending state or the original receiving state.

“Substantial compliance” means that an offender is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.

References:

ICAOS Advisory Opinion

7-2004 [determining “substantial compliance when there are pending charges in a receiving state]

“Supervision” means the oversight exercised by 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 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.

References:

ICAOS Advisory Opinions

9-2004 [CSL offenders released to the community under the jurisdiction of the Courts]

8-2004 [Suspended sentence requiring payment of monitored restitution]

3-2005 [Requirement to complete a treatment program as a condition of supervision]

“Supervision fee” means a fee collected by the receiving state for the supervision of an offender.

“Temporary travel permit” means, for the purposes of Rule 3.108 (b), the written permission granted to an offender, whose supervision has been designated a “victim-sensitive” matter, to travel outside the supervising state for more than 24 hours but no more than 31 days. A temporary travel permit shall include a starting and ending date for travel.

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

“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.

“Victim-sensitive” means a designation made by the sending state in accordance with its definition of “crime victim” under the statutes governing the rights of crime victims in the sending state. The receiving state shall give notice of offender’s movement to the sending state as specified in Rules 3.108 and 3.108-1.

“Waiver” means the voluntary relinquishment, in writing, of a known constitutional right or other right, claim or privilege by an offender.

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.

Chapter 2 General Provisions

Rule 2.101 Involvement of interstate compact offices

- (a) Acceptance, rejection or termination of supervision of an offender under this compact shall be made only with the involvement and concurrence of a state's compact administrator or the compact administrator's designated deputies.
- (b) All formal written, electronic, and oral communication regarding an offender under this compact shall be made only through the office of a state's compact administrator or the compact administrator's designated deputies.
- (c) Transfer, modification or termination of supervision authority for an offender under this compact may be authorized only with the involvement and concurrence of a state's compact administrator or the compact administrator's designated deputies.
- (d) Violation reports or other notices regarding offenders under this compact shall be transmitted only through direct communication of the compact offices of the sending and receiving states.

History: Adopted November 3, 2003, effective August 1, 2004.

Rule 2.102 Data collection and reporting [Expired; See history]

- (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 15th day of each month.
- (c) This Rule will not expire until the Electronic Information System approved by the commission is fully implemented and functional.

History: Adopted November 3, 2003, effective August 1, 2004; amended September 14, 2005, effective December 31, 2005. On November 4, 2009, the commission found that the electronic information system in (c) is fully implemented and functional, and ordered that this rule expire, effective December 31, 2009.

Rule 2.103 Dues formula

- (a) The commission shall determine the formula to be used in calculating the annual assessments to be paid by states. Public notice of any proposed revision to the approved dues formula shall be given at least 30 days prior to the Commission meeting at which the proposed revision will be considered.
- (b) The commission shall consider the population of the states and the volume of offender transfers between states in determining and adjusting the assessment formula.
- (c) The approved formula and resulting assessments for all member states shall be distributed by the commission to each member state annually.
- (d)
 - (1) The dues formula is the—
(Population of the state **divided by** Population of the United States) **plus**
(Number of offenders sent from and received by a state **divided by** Total number of offenders sent from and received by all states) divided by two.
 - (2) The resulting ratios derived from the dues formula in Rule 2.103 (d)(1) shall be used to rank the member states and to determine the appropriate level of dues to be paid by each state under a tiered dues structure approved and adjusted by the Commission at its discretion.

History: Adopted November 3, 2003, effective August 1, 2004.

Rule 2.104 Forms

- (a) States shall use the forms or electronic information system authorized by the commission.
- (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.

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 2.105 Misdemeanants

(a) A misdemeanor offender whose sentence includes one 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 one 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 second 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.

References:

ICAOS Advisory Opinion

4-2005 [Misdemeanant offender not meeting criteria of 2.105 may be transferred under Rule 3.101-2, discretionary transfer]

7-2006 [There are no exceptions to applicability of (a)(3) based on either the time period between the first and subsequent offense(s) or the jurisdiction in which the convictions occurred]

16-2006 [If the law of the sending state recognizes the use of an automobile as an element in an assault offense and the offender is so adjudicated, Rule 2.105 (a)(1) applies]

2-2008 [Based upon the provisions of the ICAOS rules, offenders not subject to ICAOS may, depending on the terms and conditions of their sentences, be free to move across state lines without prior approval from the receiving state and neither judges nor probation officers are prohibited by ICAOS from allowing such offenders to travel from Texas to another state]

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

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 program, bail, or similar program are not eligible for transfer under the terms and conditions of this compact.

References:

ICAOS Advisory Opinions

June 30, 2004 [Determining eligibility should be based on legal actions of a court rather than legal definitions]

6-2005 [Deferred prosecution may be equivalent to deferred sentence if a finding or plea of guilt has been entered and all that is left is for the Court to impose sentence]

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 2.107 Offenders on furlough, work release

A person who is released from incarceration under furlough, work-release, or other pre-parole program is not eligible for transfer under the compact.

History: Adopted November 3, 2003, effective August 1, 2004.

Rule 2.108 Offenders with disabilities

A receiving state shall continue to supervise offenders who become mentally ill or exhibit signs of mental illness or who develop a physical disability while supervised in the receiving state.

History: Adopted November 3, 2003, effective August 1, 2004.

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. All written comments received by the Rules Committee on proposed rules shall be posted on the Commission's website upon receipt. Based on the comments made by the Commissioners the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the Commission not later than the next annual meeting falling in an odd-numbered year.
- (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 the commissioners, take final action on the proposed rule or amendment by a vote of yes/no. 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.
- (k) The Chair of the Rules Committee may direct revisions to a rule or amendment adopted by the Commission, for purposes of correcting typographical errors, errors in format or grammatical errors. Public notice of any revisions shall be posted 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. For a period of 30 days after posting, the revision is subject to challenge by any commissioner. The revision may be challenged only on grounds that the revision

results in a material change to a rule. A challenge shall be made in writing, and delivered to the Executive Director of the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without approval of the commission.

References:

ICAOS Advisory Opinion

3-2006 [No provisions of the compact contemplates that a proposed rule or rule amendment may be officially voted upon at any point in the rulemaking process by anyone other than the duly appointed Commissioner of each state]

History: Adopted November 3, 2003, effective August 1, 2004; amended September 13, 2005, effective September 13, 2005; amended October 4, 2006, effective October 4, 2006; amended September 26, 2007, effective January 1, 2008.

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.

References:

ICAOS Advisory Opinions

- 3-2004 [Offenders relocating to another state shall not be issued travel permits without the permission of the receiving state as provided by ICAOS rules]
- 9-2006 [States which allow eligible offenders to travel to a receiving state pending investigations are in violation of Rule 2.110 and Rule 3.102. In such circumstances the receiving state may properly reject the request for transfer]
- 2-2008 [The provisions of Rule 2.110 (a) limit the applicability of the ICAOS rules regarding transfer of supervision to eligible offenders who 'relocate' to another state]

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.

Chapter 3 Transfer of Supervision

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:

- (a) has more than 90 days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
- (b) has a valid plan of supervision; and
- (c) is in substantial compliance with the terms of supervision in the sending state; and
- (d) is a resident of the receiving state; or
- (e)
 - (1) has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
 - (2) can obtain employment in the receiving state or has means of support.

References:

ICAOS Advisory Opinions

- 7-2004 [While a sending state controls the decision of whether or not to transfer an offender under the Compact, the receiving state has no discretion as to whether or not to accept the case as long as the offender satisfies the criteria provided in this rule]
- 9-2004 [Upon proper application and documentation for verification of mandatory criteria of Rule 3.101, CSL offenders are subject to supervision under the Compact]
- 7-2005 [All mandatory transfers are subject to the requirement that they be pursuant to a “valid plan of supervision”]
- 8-2005 [The sending state determines if an offender is in substantial compliance. If a sending state has taken no action on outstanding warrants or pending charges the offender is considered to be in substantial compliance]
- 13-2006 [An undocumented immigrant who meets the definition of “offender” and seeks transfer under the Compact is subject to its jurisdiction and would not be a *per se* disqualification as long as the immigrant establishes the prerequisites of Rule 3.101 have been satisfied]
- 15-2006 [There is no obligation of the sending state to retake when requirements of 3.101 are no longer met]
- 2-2007 [A receiving state is not authorized to deny a transfer of an offender based solely on the fact that the offender intends to reside in Section 8 housing]

History: Adopted November 3, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended September 13, 2005, effective January 1, 2006; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.

Rule 3.101-1 Mandatory transfers of military, families of military, 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.

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 3.101-2 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.

References:

ICAOS Advisory Opinions

4-2005 [Offenders not eligible for transfer under the provisions of Rule 2.105 and Rule 3.101 are eligible for transfer of supervision as a discretionary transfer]

8-2006 [Special condition(s) imposed on discretionary cases may result in retaking if the offender fails to fulfill requirements of the condition(s)]

History: Adopted September 13, 2005, effective January 1, 2006.

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*-Rule 3.103 applies to the transfer of sex offenders, except for the following:

- (1) The receiving state shall have five 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.

References:

ICAOS Advisory Opinions

1-2008 [An investigation in such cases would be largely meaningless without the cooperation of the sending state in providing sufficient details concerning the sex offense in question and a refusal to provide such information so as to allow the receiving state to make a reasonable determination as to whether the proposed residence violates local policies or laws would appear to violate the intent of this rule]

History: Adopted September 26, 2007, effective January 1, 2008; editorial change effective February 17, 2008

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.

References:

ICAOS Advisory Opinions

3-2004 [Once an application has been made under the Compact, an offender may not travel to the receiving state without the receiving state's permission]

9-2006 [States which allow eligible offenders to travel to a receiving state, without the receiving state's permission, are in violation of Rule 2.110 and 3.102. In such circumstances, the receiving state can properly reject the request for transfer of such an offender]

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 3.103 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 seven calendar days of the sentencing date or release from incarceration to probation supervision. The sending state 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.
- (2) The receiving state shall issue reporting instructions no later than two 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.
- (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 calendar 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 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 15 calendar 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 calendar days following the offender's failure to appear in the sending state.

References:

ICAOS Advisory Opinions

3-2004 [Rule 3.103 provides an exemption to 3.102 allowing for certain offenders to obtain reporting instructions pending a reply to a transfer request]

1-2006 [Rule 3.103 is not applicable to offenders released to supervision from prison]

3-2007 [If the investigation has not been completed, reporting instructions are required to be issued as provided in Rule 3.103(a). Upon completion of investigation, if the receiving state subsequently denies the transfer on the same basis or upon failure to satisfy any of the other requirements of Rule 3.101, the provisions of Rule 3.103(e)(1) and (2) clearly require the offender to return to the sending state or be retaken upon issuance of a warrant]

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008; editorial change effective February 17, 2008.

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.

References:

ICAOS Advisory Opinion

5-2006 [45 calendar days is the maximum time the receiving state has under the rules to respond to a sending state's request for transfer]

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.

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 3.105 Request for transfer of a paroling offender

- (a) A sending state shall submit a completed request for transfer of a paroling offender to a receiving state no earlier than 120 days prior to the offender's planned prison release date.
- (b) A sending state shall notify a receiving state of the offender's date of release from prison or if recommendation for parole of the offender has been withdrawn or denied.
- (c)
 - (1) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender's intended date of departure from the sending state.
 - (2) A receiving state that withdraws its acceptance under Rule 3.105 (c) (1) shall immediately notify the sending state.
 - (3) Following withdrawal of the receiving state's acceptance, a sending state must resubmit a request for transfer of supervision of a paroling offender in the same manner as required in Rule 3.105 (a).

References:

ICAOS Advisory Opinion

5-2005 [A sending state must notify a receiving state if a parolees release date has been withdrawn or denied]

History: Adopted November 4, 2003, effective August 1, 2004.

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 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 two 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 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 15 calendar 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 calendar days following the offender's failure to appear in the sending state.

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.

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.

References:

ICAOS Advisory Opinions

5-2005 [For paroling offenders a release date is to be required for the transfer application]

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 3.108 Victim notification

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

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 3.108-1 Victims' right to be heard and comment

- (a) When an offender submits a request to transfer to a receiving state or a subsequent receiving state, or to return to a sending state, the victim notification authority in the sending state shall, at the time of notification to the victim as required in Rule 3.108 (a), inform victims of the offender of their right to be heard and comment. Victims of the offender have the right to be heard regarding their concerns relating to the transfer request for their safety and family members' safety. Victims have the right to contact the sending state's interstate compact office at any time by telephone, telefax, or conventional or electronic mail regarding their concerns relating to the transfer request for their safety and family members' safety. The victim notification authority in the sending state shall provide victims of the offender with information regarding how to respond and be heard if the victim chooses.
- (b)
 - (1) Victims shall have ten business days from receipt of notice required in Rule 3.108-1 (a) to respond to the sending state. Receipt of notice shall be presumed to have occurred by the fifth business day following its sending.
 - (2) The receiving state shall continue to investigate the transfer request while awaiting response from the victim.
- (c) Upon receipt of the comments from victims of the offender, the sending state shall consider comments regarding their concerns relating to the transfer request for their safety and family members' safety. Victims' comments shall be confidential and shall not be disclosed to the public. The sending state or receiving state may impose special conditions of supervision on the offender, if the safety of the offender's victims or family members of victims is deemed to be at risk by the approval of the offender's request for transfer.
- (d) The sending state shall respond to the victim no later than five business days following receipt of victims' comments, indicating how victims' concerns will be addressed when transferring supervision of the offender.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 3.109 Waiver of extradition

- (a) An offender applying for interstate supervision shall execute, at the time of application for transfer, a waiver of extradition from any state to which the offender may abscond while under supervision in the receiving state.
- (b) States that are party to this compact waive all legal requirements to extradition of offenders who are fugitives from justice.

References:

ICAOS Advisory Opinion

2-2005 [In seeking a compact transfer of supervision, the offender accepts that a sending state can retake them at anytime and that formal extradition hearings would not be required]

History: Adopted November 4, 2003, effective August 1, 2004.

Chapter 4 Supervision in Receiving State

Rule 4.101 Manner and degree of supervision in receiving state

A receiving state shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.

References:

ICAOS Advisory Opinions

- 2-2005 [Out of state offenders can be arrested and detained for failure to comply with conditions of probation if such a failure would have resulted in an arrest of a similar situated in-state offender]
- 5-2006 [This rule does not permit a state to impose the establishment of sex offender risk level or community notification on offenders transferred under the Compact if the receiving state does not impose these same requirements on its own offenders]
- 1-2007 [This rule does not permit the receiving state to provide no supervision and at a minimum the rules of the Compact contemplate that such an offender will be under some supervision for the duration of the conditions placed upon the offender by the sending state under Rule 4.102]

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 4.102 Duration of supervision in the receiving state

A receiving state shall supervise an offender transferred under the interstate compact for a length of time determined by the sending state.

History: Adopted November 4, 2003, effective August 1, 2004.

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.

References:

ICAOS Advisory Opinion

2-2005 [In seeking a compact transfer of supervision, the offender accepts that a sending state can retake them at anytime and that formal extradition hearings would not be required and that he or she is subject to the same type of supervision afforded to other offenders in the receiving state.....The receiving state can even add additional requirements on an offender as a condition of transfer]

1-2008 [Rule 4.103 concerning special conditions does not authorize a receiving state to deny a mandatory transfer of an offender under the compact who meets the requirements of such a transfer under Rule 3.101]

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

Rule 4.103-1 *Effect of special conditions or requirements*

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

History: Adopted October 26, 2004, effective January 1, 2005; amended October 4, 2006, effective January 1, 2007.

Rule 4.104 Offender registration or DNA testing in receiving or sending state

A receiving state shall require that an offender transferred under the interstate compact comply with any offender registration and DNA testing requirements in accordance with the laws or policies of the receiving state and shall assist the sending state to ensure DNA testing requirements and offender registration requirements of a sending state are fulfilled.

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

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.

History: Adopted November 4, 2003, effective August 1, 2004; amended September 13, 2005, effective June 1, 2009.

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.

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.

Rule 4.107 Fees

- (a) *Application fee*-A sending state may impose a fee for each transfer application prepared for an offender.
- (b) *Supervision fee*-
 - (1) A receiving state may impose a reasonable supervision fee on an offender whom the state accepts for supervision, which shall not be greater than the fee charged to the state's own offenders.
 - (2) A sending state shall not impose a supervision fee on an offender whose supervision has been transferred to a receiving state.

References:

ICAOS Advisory Opinions

- 2-2006 [The sending state is prohibited from imposing a supervision fee once the offender has been transferred under the Compact]
- 14-2006[A fee imposed by a sending state for purposes of defraying costs for sex offender registration and victim notification, not appearing to fit criteria of a "supervision fee," may be collected on Compact offenders at a sending state's responsibility]

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 4.108 Collection of restitution, fines and other costs

- (a) A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on the offender.
- (b) Upon notice by the sending state that the offender is not complying with family support and restitution obligations, and financial obligations as set forth in subsection (a), the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply. The receiving state shall inform the offender of the address to which payments are to be sent.

References:

ICAOS Advisory Opinion

14-2006[A fee imposed by a sending state for purposes of defraying costs for sex offender registration and victim notification, not appearing to fit criteria of a “supervision fee,” may be collected on Compact offenders at a sending state’s responsibility. A receiving state would be obligated for notifying the offender to comply with such financial responsibility under Rule 4.108 (b)]

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 4.109 Violation reports

- (a) A receiving state shall notify a sending state of significant violations of conditions of supervision by an offender within 30 calendar days of discovery of the violation.
- (b) A violation report shall contain-
 - (1) offender's name and location;
 - (2) offender's state-issued identifying numbers;
 - (3) date of the offense or infraction that forms the basis of the violation;
 - (4) description of the offense or infraction;
 - (5) status and disposition, if any, of offense or infraction;
 - (6) dates and descriptions of any previous violations;
 - (7) receiving state's recommendation of actions sending state may take;
 - (8) name and title of the officer making the report; and
 - (9) if the offender has absconded, the offender's last known address and telephone number, name and address of the offender's employer, and the date of the offender's last personal contact with the supervising officer and details regarding how the supervising officer determined the offender to be an absconder.
 - (10) Supporting documentation regarding the violation including but not limited to police reports, toxicology reports, and preliminary findings.
- (c)
 - (1) The sending state shall respond to a report of a violation made by the receiving state no later than ten business days following receipt by the sending state. Receipt of a violation report shall be presumed to have occurred by the fifth business day following its transmission by the receiving state;
 - (2) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion date.
 - (3) A sending state shall, upon receipt of an absconder violation report and case closure, issue a warrant for the offender that is effective in all states without limit as to specific geographic area.
 - (4) If an offender who has absconded is apprehended on a sending state's warrant within the jurisdiction of the receiving state that issued the violation report and case closure, the receiving state shall, upon request by the sending state, conduct a probable cause hearing as provided in Rule 5.108 (d) and (e) unless waived as provided in Rule 5.108 (b).

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

Rule 4.109-1 Authority to arrest and detain

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

History: Adopted October 4, 2006, effective January 1, 2007.

References:

ICAOS Advisory Opinion

17-2006[Each state should determine the extent to which authority is vested in parole and probation officers as well as other law enforcement and peace officers to effect such an arrest, including the need for a warrant.]

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, 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.

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) amended September 26, 2007, effective January 1, 2008.

Rule 4.111 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 two 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 provisions of Rule 3.108-1 have been followed.
- (d) A receiving state shall notify the sending state as required in Rule 4.105 (a).

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective day January 1, 2005; amended September 26, 2007, effective January 1, 2008.

Rule 4.112 Closing of supervision by the receiving state

- (a) The receiving state may close its supervision of an offender and cease supervision upon-
 - (1) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;
 - (2) Notification to the sending state of the absconding of the offender from supervision in the receiving state;
 - (3) Notification to the sending state that the offender has been sentenced to incarceration for 180 days or longer, including judgment and sentencing documents and information about the offender's location;
 - (4) Notification of death; or
 - (5) Return to sending state.
- (b) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender under Rule 5.101.
- (c) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment.

References:

ICAOS Advisory Opinion

11-2006[A receiving state closing supervision interest, does not preclude the jurisdiction of the Compact except for cases where the original term of supervision has expired]

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended September 26, 2007, effective January 1, 2008.

Chapter 5 Retaking

Rule 5.101 Retaking by the sending state

- (a) Except as required in Rules 5.102 and 5.103, at its sole discretion, a sending state may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.
- (b) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.

References:

ICAOS Advisory Opinion

12-2006[Neither the time frame nor the means by which the retaking of the offender shall occur as outlined in Rule 5.101 (a) are provided]

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

Rule 5.102 Mandatory retaking for a new felony conviction

Upon a request from the receiving state, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state upon the offender's conviction for a new felony offense and-

- (a) completion of a term of incarceration for that conviction; or
- (b) placement under supervision for that felony offense.

If the offender does not return to the sending state as ordered, then 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.

History: Adopted November 4, 2003, effective August 1, 2004; amended October 26, 2004, effective January 1, 2005; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.

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 three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state.
- (b) If the offender does not return to the sending state as ordered, then 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.

References:

ICAOS Advisory Opinions

- 2-2005 [An out of state offender may be arrested and detained by a receiving state who are subject to retaking based on violations of supervision, *See Rule 4.109-1*]
- 10-2006[Offenders transferred prior to the adoption of ICAOS rules August 1, 2004 may be retaken under the current rules if one of the significant violations occurred after August 1, 2004]
- 4-2007 [It is unreasonable to assume the subsequent application of Rule 5.103 (a) to include violations occurring prior to an application being accepted as a basis to require retaking]

History: Adopted November 4, 2003, effective August 1, 2004; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.

Rule 5.104 Cost of retaking an offender

A sending state shall be responsible for the cost of retaking the offender.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 5.105 Time allowed for retaking an offender

A sending state shall retake an offender within 30 calendar days after the decision to retake has been made or upon release of the offender from incarceration in the receiving state.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 5.106 Cost of incarceration in receiving state

A receiving state shall be responsible for the cost of detaining the offender in the receiving state pending the offender's retaking by the sending state.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 5.107 Officers retaking an offender

- (a) Officers authorized under the law of a sending state may enter a state where the offender is found and apprehend and retake the offender, subject to this compact, its rules, and due process requirements.
- (b) The sending state shall be required to establish the authority of the officer and the identity of the offender to be retaken.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 5.108 Probable cause hearing in receiving state

- (a) An offender subject to retaking for violation of conditions of supervision that may result in a revocation shall be afforded the opportunity for a probable cause hearing before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.
- (b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to one or more significant violations of the terms or conditions of supervision.
- (c) A copy of a judgment of conviction regarding the conviction of a new felony offense by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for further proceedings.
- (d) The offender shall be entitled to the following rights at the probable cause hearing:
 - (1) Written notice of the alleged violation(s);
 - (2) Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);
 - (3) The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);
 - (4) The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that a risk of harm to a witness exists.
- (e) The receiving state shall prepare and submit to the sending state a written report within 10 business days of the hearing that identifies the time, date and location of the hearing; lists the parties present at the hearing; and includes a clear and concise summary of the testimony taken and the evidence relied upon in rendering the decision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.
- (f) If the hearing officer determines that there is probable cause to believe that the offender has committed the alleged violations of conditions of supervision, the receiving state shall hold the offender in custody, and the sending state shall, within 15 business days of receipt of the hearing officer's report, notify the receiving state of the decision to retake or other action to be taken.
- (g) If probable cause is not established, the receiving state shall:
 - (1) Continue supervision if the offender is not in custody.
 - (2) Notify the sending state to vacate the warrant, and continue supervision upon release if the offender is in custody on the sending state's warrant.
 - (3) Vacate the receiving state's warrant and release the offender back to supervision within 24 hours of the hearing if the offender is in custody.

References:

ICAOS Advisory Opinion

2-2005 [Although Rule 5.108 requires that a probable cause hearing take place for an offender subject to retaking for violations of conditions that may result in revocation as outlined in subsection (a), allegations of due process violations in the actual revocation of probation or parole are matters addressed during proceedings in the sending state after the offender's return]

17-2006[Each state should determine the extent to which authority is vested in parole and probation officers as well as other law enforcement and peace officers to effect such an arrest, including the need for a warrant.]

Gagnon v. Scarpelli, 411 U.S. 778 (1973)

Ogden v. Klundt, 550 P.2d 36, 39 (Wash. Ct. App. 1976)

See, People ex rel. Crawford v. State, 329 N.Y.S.2d 739 (N.Y. 1972)

State ex rel. Nagy v. Alvis, 90 N.E.2d 582 (Ohio 1950)

State ex rel. Reddin v. Meekma, 306 N.W.2d 664 (Wis. 1981)

Bills v. Shulsen, 700 P.2d 317 (Utah 1985)

California v. Crump, 433 A.2d 791 (N.J. Super. Ct. App. Div. 1981)

California v. Crump, 433 A.2d at 794, *Fisher v. Crist*, 594 P.2d 1140 (Mont. 1979)

State v. Maglio, 459 A.2d 1209 (N.J. Super. Ct. 1979)

In re Hayes, 468 N.E.2d 1083 (Mass. Ct. App. 1984)

Morrissey v. Brewer, 408 U.S. 471 (1972)

In State v. Hill, 334 N.W.2d 746 (Iowa 1983)

See e.g., State ex rel. Ohio Adult Parole Authority v. Coniglio, 610 N.E.2d 1196, 1198 (Ohio Ct. App. 1993)

History: Adopted November 4, 2003, effective August 1, 2004; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.

Rule 5.109 Transport of offenders

States that are party to this compact shall allow officers authorized by the law of the sending or receiving state to transport offenders through the state without interference.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 5.110 Retaking offenders from local, state or federal correctional facilities

- (a) Officers authorized by the law of a sending state may take custody of an offender from a local, state or federal correctional facility at the expiration of the sentence or the offender's release from that facility provided that-
 - (1) No detainer has been placed against the offender by the state in which the correctional facility lies; and
 - (2) No extradition proceedings have been initiated against the offender by a third-party state.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 5.111 Denial of bail or other release conditions to certain offenders

An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted to bail or other release conditions in any state.

History: Adopted November 4, 2003, effective August 1, 2004; amended October 4, 2006, effective January 1, 2007; amended September 26, 2007, effective January 1, 2008.

Chapter 6 Dispute Resolution and Interpretation of Rules

Rule 6.101 Informal communication to resolve disputes or controversies and obtain interpretation of the rules

- (a) Through the office of a state's compact administrator, states shall attempt to resolve disputes or controversies by communicating with each other by telephone, telefax, or electronic mail.
- (b) *Failure to resolve dispute or controversy-*
 - (1) Following an unsuccessful attempt to resolve controversies or disputes arising under this compact, its by-laws or its rules as required under Rule 6.101 (a), states shall pursue one or more of the informal dispute resolution processes set forth in Rule 6.101 (b)(2) prior to resorting to formal dispute resolution alternatives.
 - (2) Parties shall submit a written request to the executive director for assistance in resolving the controversy or dispute. The executive director shall provide a written response to the parties within ten business days and may, at the executive director's discretion, seek the assistance of legal counsel or the executive committee in resolving the dispute. The executive committee may authorize its standing committees or the executive director to assist in resolving the dispute or controversy.
- (c) *Interpretation of the rules*-Any state may submit an informal written request to the executive director for assistance in interpreting the rules of this compact. The executive director may seek the assistance of legal counsel, the executive committee, or both, in interpreting the rules. The executive committee may authorize its standing committees to assist in interpreting the rules. Interpretations of the rules shall be issued in writing by the executive director or the executive committee and shall be circulated to all of the states.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 6.102 Formal resolution of disputes and controversies

- (a) *Alternative dispute resolution*- Any controversy or dispute between or among parties that arises from or relates to this compact that is not resolved under Rule 6.101 may be resolved by alternative dispute resolution processes. These shall consist of mediation and arbitration.
- (b) *Mediation and arbitration*
 - (1) *Mediation*
 - (A) A state that is party to a dispute may request, or the executive committee may require, the submission of a matter in controversy to mediation.
 - (B) Mediation shall be conducted by a mediator appointed by the executive committee from a list of mediators approved by the national organization responsible for setting standards for mediators, and pursuant to procedures customarily used in mediation proceedings.
 - (2) *Arbitration*
 - (A) Arbitration may be recommended by the executive committee in any dispute regardless of the parties' previous submission of the dispute to mediation.
 - (B) Arbitration shall be administered by at least one neutral arbitrator or a panel of arbitrators not to exceed three members. These arbitrators shall be selected from a list of arbitrators maintained by the commission staff.
 - (C) The arbitration may be administered pursuant to procedures customarily used in arbitration proceedings and at the direction of the arbitrator.
 - (D) Upon the demand of any party to a dispute arising under the compact, the dispute shall be referred to the American Arbitration Association and shall be administered pursuant to its commercial arbitration rules.
 - (E)
 - (i) The arbitrator in all cases shall assess all costs of arbitration, including fees of the arbitrator and reasonable attorney fees of the prevailing party, against the party that did not prevail.
 - (ii) The arbitrator shall have the power to impose any sanction permitted by this compact and other laws of the state or the federal district in which the commission has its principal offices.
 - (F) Judgment on any award may be entered in any court having jurisdiction.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 6.103 Enforcement actions against a defaulting state

- (a) If the Interstate Commission determines that any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Interstate Commission may impose any or all of the following penalties-
 - (1) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;
 - (2) Remedial training and technical assistance as directed by the Interstate Commission;
 - (3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state; the majority and minority leaders of the defaulting state’s legislature, and the state council.
- (b) The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension.
- (c) Within sixty days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state’s legislature and the state council of such termination.
- (d) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
- (e) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state.

- (f) Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

History: Adopted November 4, 2003, effective August 1, 2004.

Rule 6.104 Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices to enforce compliance with the provisions of the Compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

History: Adopted November 4, 2003, effective August 1, 2004.