

## 2019 Rule Proposal Summary

Rule(s)	Proposed by	Proposal Description/Justification	RC review Complete?	RC Recommend?	ICOTS Change?	PASS/ FAIL
1.101-Revise Definition of 'Abscond' & 4.109 Absconding Violation	Midwest	Require additional documentation validation for reporting absconders	Yes	Yes	Yes	
1.101-Revise Definition of 'Sex Offender' & 3.101-3 Transfer of supervision of sex offenders; <u>investigation; additional documents and reporting instructions;</u> 3.107 Transfer Request	Rules	Addresses various issues identified through regions and committees with sex offender rules. <ul style="list-style-type: none"> <li>• States set the bar higher for interstate sex offenders than for the locally convicted sex offenders when conducting transfer investigations as well as when reporting violating behavior;</li> <li>• The original rule was drafted before internet crimes became common; and</li> <li>• It should be clarified how someone determines whether or not an offender was registerable in a receiving state when registration in the sending state is not required.</li> </ul>	Yes	Yes	Yes	

Rule(s)	Proposed by	Proposal Description/Justification	RC review Complete?	RC Recommend?	ICOTS Change?	PASS/ FAIL
1.101-Remove Definition of 'Victim-Sensitive' & 'Temporary Travel Permit,' 3.108 Victims' right to be heard and comment; 3.108-1 Victim Notification & <u>requests for offender information</u> ; 3.110 Travel Permits; 4.111 Returning Offenders	Rules	<p>During the 2018 ABM the Commission voted to discontinue the use of IVINS and instructed the Rules Committee to evaluate the effectiveness of victim notification and recommend rule changes. The proposed revisions are the result of the Rules Committee's efforts to meet this charge.</p> <p><i>Motion: Commissioner D. Crook (VT) moved to discontinue the IVINS agreement and instruct the Rules Committee to evaluate victim notification rules and look for other options and solutions needed for this Compact and present it at the next Annual Business Meeting. Commissioner P. Treseler (MA) seconded. Motion carried 42-5</i></p>	Yes	Yes	Yes	
3.101-1 (a) (1) & (a) (2)-Mandatory reporting instructions and transfers of military, families of military, family members employed, employment transfer, and veterans for medical or mental health services	West	Replaces 'deployed by the military' to 'under orders; "Under orders" applies to a Permanent Change of Station	Yes	Yes	No	
3.101-1 (a) (5) (A)-Mandatory reporting instructions and transfers of military, families of military, family members employed, employment transfer, and veterans for medical or mental health services	West	Intended to streamline the referral and acceptance process for VA treatment and decrease any delay with an offender obtaining the necessary treatment and/or services	Yes	Yes	No	

Rule(s)	Proposed by	Proposal Description/Justification	RC review Complete?	RC Recommend?	ICOTS Change?	PASS/ FAIL
Rule 3.103 (a)- Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a <del>violation or</del> revocation proceeding by a court, paroling authority or <u>other criminal justice agency following the retaking of the offender from the receiving state</u>	West (Midwest forwarded similar concept)	For offenders qualifying for this rule after a revocation proceeding, this proposal requires that retaking occurred under the compact rules and that a formal authority of a court or paroling authority heard the proceeding	Yes	Yes <i>Narrowly 3-2 w/ 1 state abstaining</i>	No	
4.106-Progress Reports on offender compliance and non-compliance	West	Require additional documentation validation for reporting imposition of sanctions and incentives on Progress Reports	Yes	Yes	Yes	
4.109 (c) (3)- Violation report(s) requiring retaking	West	Requires copy of warrant to be attached to violation response (via addendum) in ICOTS	Yes	Yes	Yes	
4.111 (a)- Offenders returning to the sending state	Midwest	Current language restricts the ability for a receiving state to initiate return of an offender with ANY pending charges, this change would allow for offenders to be returned when new charges are non-violent misdemeanants	Yes	Yes	No	
5.101- Discretionary retaking by the sending state	West	Establishes additional requirements and timeframes for discretionary return and retake of offenders by the sending state	Yes	Yes	No	
5.103 (d)- Offender behavior requiring retaking	West	Clarifies the receiving state's responsibility to serve warrants issued by the sending state for retaking. When offenders are not located, the receiving state must follow absconder protocol (Rule 4.109-2)	Yes	Yes	No	

Rule(s)	Proposed by	Proposal Description/Justification	RC review Complete?	RC Recommend?	ICOTS Change?	PASS/ FAIL
5.103-1 (a)- Mandatory retaking for offenders who abscond	West	Establishes a timeframe that a warrant is issued for an absconder within 15 business days of Violation Report receipt	Yes	Yes	No	

Proposal to create/amend rules:

### ***Rule 1.101 Definitions***

“**Abscond**” means to be absent from the offender’s approved place of residence ~~or~~ and employment; and failing to comply with reporting requirements—avoiding supervision.

### ***Rule 4.109-2 Absconding Violation***

(a) If there is reasonable suspicion ~~to believe~~ that an offender has absconded, the receiving state shall attempt to locate the offender. Such activities shall include, but are not limited to:

- (1) Communication attempts directly to the offender, including dates of each attempt;
- (2) Conducting a field contact at the last known place of residence;
- (3) Contacting the last known place of employment, if applicable;
- (4) Contacting known family members and collateral contacts, which shall include contacts identified in original transfer request.

(b) If the offender is not located, the receiving state shall submit a violation report pursuant to Rule 4.109(b) (8).

#### **Justification:**

Section (a): the term “reason to believe” could be better defined. The revision is more consistent with policy language and legal terminology.

Section (a)(1): identifies a contact that is oftentimes completed but not necessarily reported to the receiving state. This further validates absconder status.

Section (a)(4): the inclusion of “contacts identified in original transfer” identifies another contact that may be overlooked and have been proven successful in locating offender.

Example cases:

ND utilized additional criteria in this proposal on several absconder reports. Results were successful in locating offender and violation report withdrawn by receiving state on offender numbers 707947, 836069, 871880, 720530 (to name a few).

The following information is drafted by the Rules Committee

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

**ICOTS impact:**

Yes, update screen to match rule language

Violation Information

Select the type of violation: Absconder

- Violation Discovery Date: MM/DD/YYYY

In determining the offender absconded the receiving state shall conduct:

- Date of last attempted field contact at the known place of residence: MM/DD/YYYY
- Date of last conducted field contact at the known place of residence: MM/DD/YYYY or  Not Applicable
- Date of last contact with known place of employment: MM/DD/YYYY or  Not Applicable
- Date of last contact with known family members and collateral contacts: MM/DD/YYYY or  Not Applicable
- Detail how the offender was determined to be an absconder:

► Closure Details

**Scope and Metric**

In 2018, 8,463 absconders were reported in ICOTS. Currently, 60% of violation reports in ICOTS are reports of absconders.

**Region/Committee action:**

Midwest Region Jan 2019: Motion to forward an amendment to Rules 1.101 definition of “abscond” and Rule 4.109-2 to the Rules Committee made by Commissioner D. Matson (IL), seconded by Commissioner S. Andrews (OH). Motion approved unanimously.

Rules Committee Feb 2019: Commissioner R. Maccarone (NY) moved to forward and recommend the approval of proposal to Rule 1.101 & 4.109-2 submitted by the Midwest Region. Commissioner J. Lopez (WI) seconded. Motion passed.

**Effective date:**

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Proposal to create/amend rules:

### **Rule 1.101 Definitions**

“**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 registered or required to register as a sex offender either in the sending or receiving state or is under sex offender terms and conditions in the sending state and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

### **Rule 3.101-3 Transfer of supervision of sex offenders: eligibility and reporting instructions, investigation, and supervision**

- (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 and Investigation*-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 the investigation of the transfer request of a sex offender supervising the offender:
- ~~(1)~~ (1) All assessment information completed by the sending state; 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)~~ (2) victim information if distribution is not prohibited by law
    - (A) the name, sex, age and relationship to the offender;
    - (B) the statement of the victim or victim’s representative; and
  - ~~(6)~~ (3) the sending state’s current or recommended supervision and treatment plan.
- (c) Additional documents necessary for supervision in the receiving state, such as a law enforcement report regarding the offender’s prior sex offense(s), sending state’s risk and needs score, or case plan may be requested from the sending state following acceptance of the offender. If available, the sending state shall provide the documents within 30 calendar days from the date of the request unless distribution is prohibited by law.

- (d) A sending state shall provide the following for reporting instructions requests submitted pursuant to this section:
- (1) A narrative description of the instant offense in sufficient detail to describe the circumstances, type and severity of offense and whether the charge was reduced at the time of imposition of sentence;
  - (2) Conditions of supervision;
  - (3) Any orders restricting the offender's contact with victims or any other person; and
  - (4) Victim information to include the name, sex, age and relationship to the offender, if available and if distribution is not prohibited by law.
- (e) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state; except as provided in Rule 3.102 (c).
- (f) Reporting instructions for sex offenders living in the receiving state at the time of sentencing, transfers of military members, families of military members, employment transfer of the offender or family member, or veterans for medical or mental health services - Rules 3.101-1 & 3.103 and 3.106 apply to the transfer of sex offenders, as defined by the compact, except for the following:
- ~~(1) The receiving state shall have issue reporting instructions no later than 5 business days following the receipt of such a request from the sending state unless similar sex offenders sentenced in the receiving state would not be permitted to live at the proposed residence. to review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instructions.~~
  - ~~(2) If the proposed residence is invalid due to existing state law or policy, review the proposed residence to ensure compliance with local policies or laws prior to issuing reporting instructions.~~
  - ~~(3) No travel permit shall be granted by the sending state until reporting instructions are issued by the receiving state; except for Rule 3.102 (c).~~
- (g) Expedited reporting instructions for sex offenders – Rule 3.106 applies to the transfer of sex offenders, as defined by the compact; except, the receiving state shall provide a response to the sending state no later than 5 business days following receipt of such a request.



### **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) A narrative description of the instant offense in sufficient detail to describe the circumstances, type and severity of offense and whether the charge ~~has been~~ was reduced at the time of imposition of sentence;
  - (2) photograph of offender;
  - (3) conditions of supervision;
  - (4) any orders restricting the offender's contact with victims or any other person;
  - (5) any known orders protecting the offender from contact with any other person;
  - (6) information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;
  - (7) pre-sentence investigation report, unless distribution is prohibited by law or it does not exist;
  - (8) information as to whether the offender has a known gang affiliation, and the gang with which the offender is known to be affiliated;
  - (9) supervision history, if the offender has been on supervision for more than 30 calendar days at the time the transfer request is submitted;
  - (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.
  - (11) summary of prison discipline and mental health history during the last 2 years, if available, unless distribution is prohibited by law.
- (b) A copy of the signed Offender Application for Interstate Compact Transfer shall be attached to the transfer request.
- (c) Additional documents necessary for supervision in the receiving state, such as the Judgment and Commitment, may be requested from the sending state following acceptance of the offender. If available, the sending state shall provide the documents within 30 calendar days from the date of the request unless distribution is prohibited by law. ~~The sending state shall provide the documents within no more than 30 calendar days from the date of the request, unless distribution is prohibited by law or a document does not exist.~~

#### **Justification:**

Rule 1.101-Definition of "Sex Offender": The current definition is often misinterpreted. It is not clear whose responsibility it is to determine registration in the receiving state; often offenders are allowed to proceed if they were living in the receiving state at the time of sentencing and not required to register in the sending state. The receiving state would still be able to impose registration requirements and sex offender conditions (Rule 4.101).

## 2019\_1101\_3101-3\_3107RULES

Rule 3.101-3-(b): Clarify this section is applicable to information to be provided for the investigation of a transfer request for a sex offender, remove undefined and vague terms and move requests for documents that may be needed to supervision to new section (c)

(c): Breaks out documentation that may be needed to supervision consistent with Rule 3.107 versus an investigation to ensure investigation is not delayed.

(d): Require relevant information related to the offender's crime, conditions, restrictions and victim information when reporting instructions are requested.

(e): Consistent with current rule, no travel permits are allowed for sex offenders without reporting instructions.

(f): Clarify that the 5 days to respond to a request for reporting instructions for sex offenders who meet mandatory criteria for transfer is for the receiving state to review the proposed residence. The new language ensures that denials of reporting instructions are only transmitted when the receiving state documents that a similar sex offender convicted in the receiving state would not be permitted to live at that residence. This will assist an offender in coming up with a new plan for a resubmittal.

(g): Clarify that Rule 3.106 applies to sex offenders except that the receiving state has 5 days to respond to a request for reporting instructions.

Rule 3.107 (a)(1)-Grammatical change

Rule 3.107 (c)-Make language consistent with new language as proposed to Rule 3.101-3.

*The following information is drafted by the Rules Committee*

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

Title change for Rule 3.101-1: *Mandatory reporting instructions and transfers of military members, families of military members, employment transfer of the offender or family member, ~~s-employed, employment transfer and-or~~ veterans for medical or mental health services*

### **ICOTS impact:**

Yes.

Registration Management, changes to Transfer Request/RFRI, Transfer Reply/RFRI Reply, Offender profile, various PDFs

### **Scope and Metric**

## **2019\_1101\_3101-3\_3107RULES**

As of April 24, 2019, 'sex offenders' (as currently defined) make up 9,160 (or 8%) of all compact offenders under active supervision in the receiving state.

### **Region/Committee action:**

Rules Committee October 2018: Motion to recommend adoption of revised definition of 'sex offender' at the 2019 ABM made by Commissioner D. Littler, seconded by Commissioner B. Burks. Motion approved.

Rules Committee April 2019: Motion to include modification to Rule 3.107 (c) as part of the sex offender proposal to be presented at the 2019 ABM for commission vote made by J. Lopez, seconded by D. Littler. A friendly amendment to include a grammatical change to Rule 3.107 (a)(1) was offered and approved. Motion carried.

Motion to finalize proposal and recommend adoption of revised definition of 'sex offender' under Rule 1.101, Rule 3.101-3 and 3.107 in regards to the transfer processes for sex offenders made by D. Littler, seconded by C. Moore. Motion carried.

### **Effective date:**

XXXX

Proposal to create/amend rules:

### **Rule 1.101 Definitions**

~~“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 calendar days. A temporary travel permit shall include a starting and ending date for travel.~~

~~“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.~~

### **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 15 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 5th 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 victim related 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~~ special conditions of supervision on the offender to address victim related concerns. ~~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 5 business days following receipt of victims' related concerns. ~~comments, indicating how victims' concerns will be addressed when transferring supervision of the offender.~~

**Rule 3.108-1 Victim notification and requests for offender information**

- (a) *Notification to victims upon transfer of offenders-* Within 1 business day of the issuance of reporting instructions or acceptance of transfer by the receiving state, the sending state shall initiate notification procedures to known victims 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) The receiving state shall respond to requests for offender information from the sending state no later than the 5th business day following the receipt of the request.
- (c) *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) Engages in behavior requiring retaking;
  - (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.~~

**New Rule 3.110 Travel Permits**

Notification of travel permits - The receiving state shall notify the sending state prior to the issuance of a travel permit for an offender traveling to the sending state.

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

- (a) For an offender returning to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The receiving state shall provide the sending state with the reason(s) for the offender's return. The offender shall remain in the receiving state until receipt of reporting instructions.

- (b) If the receiving state rejects the transfer request for an offender who has arrived in the receiving state with approved reporting instructions under Rules 3.101-1, 3.101-3, 3.103 or 3.106, the receiving state shall, upon submitting notice of rejection, submit a request for return reporting instructions within 7 business days, unless 3.104 (b) or (c) applies or if the location of the offender is unknown, conduct activities pursuant to Rule 4.109-2.
- (c) Except as provided in subsection (e), the sending state shall grant the request no later than 2 business days following receipt of the request for reporting instructions from the receiving state. The instructions shall direct the offender to return to the sending state within 15 business days from the date the request was received.
- (d) The receiving state shall provide the offender reporting instructions and determine the offender's intended departure date. If unable to locate the offender to provide the reporting instructions, the receiving state shall conduct activities pursuant to Rule 4.109-2.
- (e) ~~In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.~~
- (f) The receiving state retains authority to supervise the offender until the offender's directed departure date or issuance of the sending state's warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 (a) and submit a case closure as required by Rule 4.112 (a)(5). The sending state shall notify the receiving state of the offender's arrival or failure to arrive as required by Rule 4.105 (b) prior to validating the case closure notice.
- (g) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than 10 business days following the offender's failure to appear in the sending state.

**Justification:**

During the 2018 ABM the Commission voted to discontinue the use of IVINS and instructed the Rules Committee to evaluate the effectiveness of victim notification and recommend rule changes. The proposed revisions are the result of the Rules Committee's efforts to meet this charge.

*Motion: Commissioner D. Crook (VT) moved to discontinue the IVINS agreement and instruct the Rules Committee to evaluate victim notification rules and look for other options and solutions needed for this Compact and present it at the next Annual Business Meeting. Commissioner P. Treseler (MA) seconded. Motion carried 42-5*

The Rules Committee relied on three key areas in the review of the effectiveness of the current victim related definitions and rules: 1) The 2018 ABM decision to discontinue

the use of IVINS 2) The 2018 IVINS Survey Results and 3) How the current rules fit in with the purpose of the Compact, which states, in part:

*“It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community.”*

The majority of states surveyed responded that there should be effective communication between the receiving states and sending states but that the sending states are solely responsible for victim notification as prescribed by processes they have established. The compact supports this communication between states by the very nature of our business of tracking offender movement and providing active supervision via the authorized electronic information system known as ICOTS.

***Breakdown of proposals and their justifications:***

Rules 1.101 Definitions of “Victim sensitive” and “Temporary travel permit”: Proposal to strike both definitions because they only occur in subsection (b) of Rule 3.108.

Justification: These definitions only occur in subsection (b) of Rule 3.108 so the recommendation to strike them must be included in the proposal package.

Rule 3.108-1 Victims’ right to be heard and comment: Proposal to revise the rule number to 3.108 and minor suggestions to simplify and clean up antiquated language.

Justification: Simplify language and clean up antiquated language such as “telefax.”

Rule 3.108 Victim notification: Proposal to revise the rule number to 3.108-1 and add “requests for offender information” to the title. Proposal to strike subsection (b) in its entirety, including any definitions contained solely therein.

Justification: The proposals to strike subsection (b) and the definitions contained therein relies heavily on the facts that victim notification involving compact offenders has been and remains the responsibility of the sending states and that 4 out of 5 of the notifications to the sending states contained in (b) are not necessary since they are governed under separate rules. The receiving state need not know which sending state cases involve a victim since notification of the activities listed are provided in “all” cases under existing rules.

For example, when an offender engages in behavior requiring retaking, notification is made to the sending state under Rule 5.103 and via a violation report in ICOTS; notification to the sending state of changes to the offender’s primary address occurs via automated ICOTS email notifications; offenders returning to the sending state

is governed under Rule 4.111; offenders departing to a subsequent receiving state is governed under Rule 4.110. Sending states are currently making required victim notifications when any of these activities are received under these existing rules.

Rule 3.110 Travel Permits: Proposal to create a new rule that would require the receiving state to notify the sending state of the issuance of a travel permit that allows travel back to the sending state. The notification must be made prior to the issuance of the permit.

Justification: This new rule would replace subsection (b) (1) (E) of existing Rule 3.108 and would make this notification stand alone. This proposal is in keeping with the purposes of the compact and with providing effective communication about offender movement between states. If a sending state is notified that their offender is traveling back to their state on a travel permit, the sending state is better equipped to notify any victims associated with the case. This proposal limits the notification to travel permits issued for travel to the sending state only; this is not believed to be burdensome on the receiving states.

Rule 4.111 Offenders Returning to the Sending State: Proposal to strike section (e)

Justification: With the removal of the ‘victim sensitive’ definition/special status and clarification that the sending state is responsible to manage and provide victim notification, section (e) should be struck.

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

TBD

**ICOTS impact:**

Remove ‘Victim Sensitive’ special status.

**Scope and Metric**

**Region/Committee action:**

Rules Committee April 2019: Motion to remove ‘victim sensitive’ definition and indicator in ICOTS made by Commissioner C. Moore, seconded by D. Littler. Motion approved (4-1)

Motion to forward proposals to Rules 1.101, 3.108, 3.108-1, 3.110 and 4.111 to be presented for adoption as recommended by the Rules Committee made by D. Littler, seconded by C. Moore. Motion approved unanimously.

**Effective date:**



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Proposal to create/amend rules:

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

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

- (1) *Transfers of military members*- An offender who is a member of the military and is under orders in ~~has been deployed by the military to~~ another state, shall be eligible for reporting instructions and transfer of supervision. A copy of the military orders ~~or other proof of deployment for the military member~~ shall be provided at the time of the request.
- (2) *Transfer of offenders who live with family who are members of the military*- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who is under orders in ~~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. A copy of the military orders ~~or other proof of deployment for the military member~~ shall be provided at the time of the request.
- (3) *Employment transfer of family member to another state*- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state. Documentation from the current employer noting the requirements shall be provided at the time of the request.
- (4) *Employment transfer of the offender to another state* – An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of

supervision. Documentation from the current employer noting the requirements shall be provided at the time of the request.

(5) *Transfers of veterans for medical or mental health services-* An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:

(A) the sending state provides documentation to the receiving state of the medical and/or mental health referral; and

(B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.

(b) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

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

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

**Justification:**

Deployed as a term left too much up to interpretation, and in military terms is actually used for combat assignments/temporary stations in a combat zone. "Under orders" applies to a Permanent Change of Station (a more "permanent" assignment to a base in a non-combat situation) and more clearly delineates that it is based upon where the military has stationed them and not that they were necessarily deployed from a sending state to a receiving state.

*The following information is drafted by the Rules Committee*

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

**ICOTS impact:**

None.

**Scope and Metric**

In 2018, 29 compact transfers were submitted under reason ‘Military Member’ of which 24 were accepted by the states. In 2018, 125 compact transfers were submitted under reason ‘Family of Military Member’ of which 108 were accepted by the states.

**Region/Committee action:**

West Region October 2018: Commissioner S. Arruti (NV) asked all region chairs whether states around the country encountered issues with interpreting Rule 3.101-1 in particular the definition of deployed and stationed. No states have reported any issues with the interpretation of this part of Rule. An East Region state suggested proceeding with a rule change because *deployed* and *stationed* have different meanings.

Commissioner D. Littler (AZ) suggested creating a new definition of *deployed* instead of making changes to Rule 3.101-1.

Commissioner J. Hudspeth (UT) suggested using language *under orders* instead of *deployed* or *stationed*.

**Commissioner D. Littler (AZ) moved to amend Rule 3.101-1 to replace deployed with under orders and to make the other rules consistent with new language. Commissioner C. Gordon (MT) seconded. Motion passed.**

Rules Committee Jan 2019: Commissioner D. Littler (AZ) moved to forward the West’s proposal to Rule 3.101-1(a)(1) & (2) to the Commission for comment and to recommend for Commission adoption. Commissioner B. Burks (TX) seconded. Motion passed

**Effective date:**

XXXX

Proposal to create/amend rules:

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

- (a) At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer for:
- (1) *Transfers of military members*- An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision. A copy of the military orders or other proof of deployment for the military member shall be provided at the time of the request.
  - (2) *Transfer of offenders who live with family who are members of the military*- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who has been deployed to another state, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state. A copy of the military orders or other proof of deployment for the military member shall be provided at the time of the request.
  - (3) *Employment transfer of family member to another state*- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state. Documentation from the current employer noting the requirements shall be provided at the time of the request.
  - (4) *Employment transfer of the offender to another state* – An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of supervision. Documentation from the current employer noting the requirements shall be provided at the time of the request.

(5) *Transfers of veterans for medical or mental health services*- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:

(A) the sending state provides documentation to the receiving state of the medical and/or mental health referral or acceptance; and

(B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.

- (b) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.
- (c) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender's return to the sending state under the requirements of Rule 4.111.
- (d) If the sending state fails to send a completed transfer request by the 15<sup>th</sup> business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state may initial the offender's return to the sending state under the requirements of Rule 4.111.

**Justification:**

This rule was passed to assist veterans, with obtaining the necessary treatment/services, as to assistance with completing the terms of supervision. This amendment will streamline the referral and acceptance process for VA treatment and decrease any delay with an offender obtaining the necessary treatment and/or services. The amendment cuts down on duplicating efforts, while still providing supporting documentation of acceptance, for services. The majority of acceptances are based on a referral from another state's VA Hospital. It can be somewhat difficult gathering information from any VA Hospital, in addition to gathering possible duplicated information. The majority of the VA hospitals will only hold a bed for a short period of time. Any delay may result in an offender losing that bed space. The acceptance letter covers the length and type of treatment and the sending state may add information addressing the sending state's VA hospital referral.

*The following information is drafted by the Rules Committee*

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

**ICOTS impact:**

None. Documentation is added as a general attachment.

**Scope and Metric**

In 2018, 141 compact transfers were submitted under reason ‘Transfer of Military Veteran for medical or mental health services’ of which 127 were accepted by the states.

**Region/Committee action:**

West Region June 2018: Commissioner M. McGrath (CO) moved to forward the proposal to Rule 3.101-1 to the Rules Committee for consideration. Commissioner C. Belden (AK) seconded. Motion passed.

Rules Committee Jan 2019: Commissioner D. Littler (AZ) moved to forward the West’s proposal to Rule 3.101-1 (a)(5) to the Commission for comment and to recommend for Commission adoption. Commissioner J. Nimer (FL) seconded. Motion passed

**Effective date:**

XXXX

Proposal to create/amend rules:

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding by a court, paroling authority or other criminal justice agency following the retaking of the offender from the receiving state**

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



(e)

- (1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender's directed departure date from the receiving state or issuance of the sending state's warrant.
- (2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender's failure to appear in the sending state.

**Justification:**

For a retaken offender to qualify for return reporting instructions under this rule proposal, a revocation proceeding, not just a violation proceeding, must take place and must be heard by a formal authority of a court or paroling authority. Under the current rule offenders are retaken and officers are often making the decision not to file with their local authority and offenders are allowed to return to the receiving state with no notice or regard to public or victim safety. This rule needs a higher enforcement aspect if this portion is to remain in effect. The proposed addition of the language about "following the retaking of the offender from the receiving state" helps to clarify that this rule is only for compact offenders who have been retaken and request to return to the same receiving state. This rule does not cover "non-compact" absconders who are apprehended, returned to supervision and ask to return to the state where they absconded. That was never the intent of this language and would reward non-compact absconders with mandatory reporting instructions prior to approval to return to a plan that was created while on a "fugitive from justice" status.

*The following information is drafted by the Rules Committee*

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

**ICOTS impact:**

None.

**Scope and Metric**

## **2018\_3103WEST**

In FY2018, 485 cases involved retaking and a subsequent re-transfer to the receiving state. Of those, were considered under mandatory reasons for transfer as follows:

329 'Residents'

108 'Resident family'

Of the 485 cases, 348 are currently (as of July 24, 2018) 'accepted,' 64 are 'closed,' 26 are 'pending,' and 13 are 'rejected.'

### **Region/Committee action:**

West Region May 2018: Commissioner J. Stromberg (OR) moved to forward the alternative language proposal to Rule 3.103 to the Rules Committee for consideration. Commissioner J. Hudspeth (UT) seconded. Motion passed.

Rules Committee Jan 2019: Commissioner D. Littler (AZ) moved to forward the West's proposal to Rule 3.103 to the Commission for comment and to recommend for Commission adoption. Commissioner D. Clark (SD) seconded. Motion passed 3 (AZ, FL, SD)-2 (TX, WI) with Georgia abstaining from vote.

### **Effective date:**

XXXX

**Proposal to create/amend rules:**

***Rule 4.106 - Progress reports on offender compliance and non-compliance***

(a) A receiving state shall submit a progress report to the sending state within 30 calendar days of receiving a request.

(b) A receiving state may initiate a progress report to document offender compliant or noncompliant behavior that does not require retaking as well as incentives, corrective actions or graduated responses imposed. The receiving state shall provide: date(s), description(s) and documentation regarding the use of incentives, corrective actions, including graduated responses or other supervision techniques to address the behavior in the receiving state, and the offender's response to such actions.

(c) A progress report shall include—

1. offender's name;
2. offender's current residence address;
3. offender's current telephone number and current electronic mail address;
4. name and address of offender's current 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:**

When Rules 4.109 and 4.106 were revised in June 2017 to include the language regarding the use of incentives, corrective actions and graduated responses, the requirement to include specific dates, descriptions and documentation was added to 4.109, but not 4.106. This proposal will mandate the same requirements for specifics and documentation in both rules when reporting compliant, non-compliant or behavior requiring retaking behaviors.

*The following information is drafted by the Rules Committee*

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

None.

**ICOTS impact:**

*Yes-Current screens not intuitive for the end user..*

Progress Report

**Incentive and Corrective Actions for Bob smiley**

Does your state wish to update the Incentive and Corrective Actions being used for this offender?

Yes  
 No

• Select all the incentive actions taken to address the offender's behavior:

<input type="checkbox"/> None	<input checked="" type="checkbox"/> Decreased reporting requirements	<input type="checkbox"/> Submitted positive letter to the court
<input type="checkbox"/> Written letter of recognition	<input checked="" type="checkbox"/> Fewer drug screens	<input type="checkbox"/> Verbal praise
<input type="checkbox"/> Modification of supervision condition	<input type="checkbox"/> Waived program fees	

Other, describe: 0 successfully completed opiate treatment at the XYZ ranch. 0 will only be required to report 2 times per month instead of weekly

• Select all the corrective actions taken to address the offender's behavior:

<input type="checkbox"/> None	<input checked="" type="checkbox"/> Travel Restriction	<input type="checkbox"/> Community service
<input type="checkbox"/> Verbal reprimand/Warning	<input type="checkbox"/> Behavioral Contract	<input type="checkbox"/> GPS/House Arrest/EM
<input type="checkbox"/> Report violation to sending state through Progress Report	<input type="checkbox"/> Increased drug screens	<input type="checkbox"/> Brief period of incarceration
<input type="checkbox"/> Increased office reporting	<input type="checkbox"/> Imposed curfew	<input type="checkbox"/> Cognitive behavioral intervention
<input type="checkbox"/> Loss of privilege	<input type="checkbox"/> Treatment referral	<input type="checkbox"/> Increased field/home visits

Other, describe: May no travel more than 50 miles from residence without written permission from this PO

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**Scope and Metric**

In 2018, 61,170 Progress Reports were transmitted by states.

**Rules Committee action:**

**West Region Jan 2019:** Commissioner D. Littler (AZ) moved to forward a proposal to Rule 4.106 to the Rules Committee for consideration. Commissioner J. Stromberg (OR) seconded. Motion passed.

**Rules Committee Feb 2019:** Commissioner D. Littler (AZ) moved to forward and recommend the approval of proposal to Rule 4.106 (b) submitted by the West Region. Commissioner R. Maccarone (NY) seconded. Motion passed.

**Effective date:**

XXXX

**Proposal to create/amend rules:**

***Rule 4.109 Violation report(s) requiring retaking***

- (a) A receiving state shall notify a sending state of an act or pattern of behavior requiring retaking within 30 calendar days of discovery or determination by submitting a violation report.
- (b) A violation report shall contain-
  - (1) offender's name and location;
  - (2) offender's state-issued identifying numbers;
  - (3) date(s) and description of the behavior requiring retaking;
  - (4) date(s), description(s) and documentation regarding the use of incentives, corrective actions, including graduated responses or other supervision techniques to address the behavior requiring retaking in the receiving state, and the offender's response to such actions;
  - (5) date(s), description(s) and documentation regarding the status and disposition, if any, of offense(s) or behavior requiring retaking;
  - (6) date(s), description(s) and documentation of previous non-compliance, to include a description of the use of corrective actions, graduated responses or other supervision techniques;
  - (7) name and title of the officer making the report;
  - (8) 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; and
  - (9) supporting documentation regarding the violation.
- (c)
  - (1) The sending state shall respond to a report of a violation made by the receiving state no later than 10 business days following 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) The sending state shall provide a copy of the warrant, when one is issued or required, to the receiving state per Rule 2.104 (a.)

**Justification:**

This will codify what many states are already doing; there is no reason not to provide a copy of the sending state's warrant to the receiving state. Receiving states often (almost always) ask for copies of the sending state's warrants via email and outside of ICOTS for their local law enforcement agencies. Providing a copy in the Response to Violation Report makes good sense and will aid to further streamline the retaking process.

*The following information is drafted by the Rules Committee*

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

**ICOTS impact:**

New ICOTS ‘Retaking/Warrant’ Status to be added to offender profile linked from the violation/violation response.

New disclaimer language for warrant verification as once added into ICOTS, attachment cannot be removed.

\$\$ TBD

**Scope and Metric**

Affects all violation reports requiring retaking in which a warrant is required (does not apply to returns after behavior requiring retaking in which the offender was ordered to return in lieu of retaking.) In 2018, 14,014 violation reports were transmitted of which 12,929 required a warrant for retaking.

**Rules Committee action:**

West Region May 2018: Commissioner J. Hudspeth (UT) moved to forward proposal to Rule 4.109 to the Rules Committee for consideration. Commissioner D. Littler (AZ) seconded. Motion passed.

Rules Committee Jan 2019: Commissioner D. Littler (AZ) moved to forward the West’s proposal to Rule 4.109 (c)(3) to the Commission for comment, recommend for Commission adoption and request a statement of work from Appriss for ICOTS modification. Commissioner B. Burks (TX) seconded. Motion passed.

**Effective date:**

XXXX

Proposal to create/amend rules:

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

- (a) For an offender returning to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent ~~criminal offense~~ felony or violent crime in the receiving state. The receiving state shall provide the sending state with the reason(s) for the offender's return. The offender shall remain in the receiving state until receipt of reporting instructions.
- (b) If the receiving state rejects the transfer request for an offender granted reporting instructions under Rules 3.101-1, 3.101-3, 3.103 or 3.106, the receiving state shall, upon submitting notice of rejection, submit a request for return reporting instructions within 7 business days.
- (c) Except as provided in subsection (d), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state. The sending state shall direct the offender to return to the sending state within 15 business days of the reporting instructions request.
- (d) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.
- (e) The receiving state retains authority to supervise the offender until the offender's directed departure date or issuance of the sending state's warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 (a) and submit a case closure as required by Rule 4.112 (a)(5).
- (f) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than 10 business days following the offender's failure to appear in the sending state.

**Justification:**

This rule amendment would align rule 4.111(a) and Rule 5.101-1 so that the language matched regarding eligible returns. It is believed that it was an oversight that rule 4.111 was not amended when Rule 5.101-1 was adopted. The way rule 4.111(a) is currently written would suggest that an offender could not return to the sending state if charged with any new offense, not just felonies and violent crimes. This leads to confusion when requesting and responding to reporting instructions.

*The following information is drafted by the Rules Committee*

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

None.

**ICOTS impact:**

None.

**Scope and Metric**

N/A

**Region/Committee Action:**

Midwest Region October 2018: Motion to forward an amendment to Rule 4.111 (a) to the Rules Committee made by Commissioner S. Andrews (OH), seconded by Commissioner D. Matson (IL). Motion approved unanimously.

Rules Committee Jan 2019: Commissioner D. Littler (AZ) moved to forward the West's proposal to Rule 4.111 (a) to the Commission for comment and to recommend for Commission adoption. Commissioner C. Moore (GA) seconded. Motion passed

**Effective date:**

XXXXX



Proposal to create/amend rules:

***Rule 5.101 Discretionary retaking by the sending state***

- (a) Except as required in Rules 5.101-1, 5.102, 5.103 and 5.103-1 at its sole discretion, a sending state may ~~retake or~~ order the return of an offender. The sending state must notify the receiving state within 15 business days of their issuance of the directive to the offender to return. The receiving state shall request return reporting instructions under Rule 4.111. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant no later than 30 calendar days following the offender's failure to appear in the sending state.
- (b) ~~If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant no later than 10 business days following the offender's failure to appear in the sending state.~~ Except as required in Rules 5.101-1, 5.102, 5.103 and 5.103-1 at its sole discretion, a sending state may retake an offender via warrant. The sending state must notify the receiving state within 15 business days of the issuance of their warrant. The receiving state shall assist with the apprehension of the offender and shall notify the sending state once the offender is in custody on the sending state's warrant.

**Justification:**

The current rule is silent on notification and tracking of offenders who are retaken by sending states at their own discretion. The result is the loss of tracking of offenders returning to sending states either on their own or via a warrant. This can pose risks to the public, to officers and to victims. The proposed revisions to this rule will close the notification and tracking loopholes that exist and that have been previously addressed by the Commission in other retaking rules, such as Rule 5.103.

*The following information is drafted by the Rules Committee*

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

None. This proposal will make this rule consistent with others.

**ICOTS impact:**

None.

**Scope and Metric**

**2019\_5101WEST**

N/A

**Region/Committee action:**

West Region Jan 2019: Commissioner D. Littler (AZ) moved to forward proposals to Rule 5.101(a) and 5.101 (b) to the Rules Committee for consideration. Commissioner C. Gordon (MT) seconded. Motion passed.

Rules Committee Feb 2019: Commissioner D. Littler (AZ) moved to forward and recommend the approval of proposal to Rule 5.101 submitted by the West Region. Commissioner R. Maccarone (NY) seconded. Motion passed.

**Effective date:**

XXXX

**Proposal to create/amend rules:**

***Rule 5.103 Offender behavior requiring retaking***

- (a) Upon a request by the receiving state and documentation that the offender's behavior requires retaking, a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the violation report.
- (b) If the offender is ordered to return in lieu of retaking, the receiving state shall request reporting instructions per Rule 4.111 within 7 business days following the receipt of the violation report response.
- (c) The receiving state retains authority to supervise until the offender's directed departure date. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender's failure to appear in the sending state.
- (d) If the sending state issues a warrant under subsection (c) of this rule, the receiving state shall attempt to arrest the offender on the sending state's warrant and provide notification to the sending state. If the receiving state is unable to locate the offender to affect the arrest, the receiving state shall follow Rule 4.109-2 (a) and (b).

**Justification:**

Receiving states are not attempting to arrest offenders who have warrants issued by the sending state under Rule 5.103. The warrants stay active and often times CARS are sent stating that the offender cannot be located. Rule 5.103 should give direction on what to do next when a warrant is issued and then when the offender is not located to be arrested. This will close the loophole currently in this rule.

*The following information is drafted by the Rules Committee*

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

**ICOTS impact:**

Training only: Receiving state should use addendums to report custody status when offenders are arrested for retaking. Violation Addendums are designed to allow the receiving state to communicate changes in location, availability and PC status.

**2018\_5103WEST**

**Scope and Metric**

N/A

**Region/Committee action:**

West Region May 2018: Commissioner J. Stromberg (OR) moved to forward proposal to Rule 5.103 to the Rules Committee for consideration. Commissioner J. Hudspeth (UT) seconded. Motion passed.

Rules Committee Jan 2019: Commissioner D. Littler (AZ) moved to forward the West's proposal to 5.103 (d) to the Commission for comment and to recommend for Commission adoption. Commissioner C. Moore (GA) seconded. Motion passed

**Effective date:**

XXXX

**Proposal to create/amend rules:**

***Rule 5.103-1 Mandatory retaking for offenders who abscond***

- (a) ~~Upon~~ Within 15 business days of receipt of an absconder violation report and case closure, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.
- (b) 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).
- (c) Upon a finding of probable cause the sending state shall retake the offender from the receiving state.
- (d) If probable cause is not established, the receiving state shall resume supervision upon the request of the sending state.
- (e) The sending state shall keep its warrant and detainer in place until the offender is retaken pursuant to paragraph (c) or supervision is resumed pursuant to paragraph (d).

**Justification:**

The current language of "upon receipt" is a mandate that is hard to comply with, especially with probation cases. "Upon receipt" is also open to interpretation. Other ICAOS Rules provide time frames for warrants (Rule 5.103, within 15 business days, for example). A time frame for the warrant should be clear in this rule.

*The following information is drafted by the Rules Committee*

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

**ICOTS impact:**

None.

**Scope and Metric**

## **2018\_51031WEST**

In 2018, 8,463 absconders were reported in ICOTS. Currently, 60% of violation reports in ICOTS are reports of absconders.

### **Region/Committee action:**

West Region July 2018: Commissioner D. Littler (AZ) moved to forward proposal to Rule 5.103-1 to the Rules Committee for consideration. Commissioner R. Cohen (NM) seconded. Motion passed.

Rules Committee Jan 2019: Commissioner B. Burks (TX) moved to forward the West's proposal to 5.103-1 (a) to the Commission for comment and to recommend for Commission adoption. Commissioner J. Lopez (WI) seconded. Motion passed

### **Effective date:**

XXXX