



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

**Opinion Number: 1-2014  
Issued: 2014-02-12**

**Requested by:** Vermont

**At Issue:** Whether an offender under supervision in the receiving state, who is charged with a new criminal offense in the receiving state and arrested but released on bail on the new offense, may be subsequently arrested and detained for retaking by the sending state pending the resolution of the new criminal charge.

## **ADVISORY OPINION 1-2014**

**Issued by:** Harry E. Hageman, Executive Director & Richard L. Masters, Legal Counsel

### **Background**

Pursuant to Commission [Rule 6.101\(c\)](#), the State of Vermont has requested an advisory opinion regarding the requirements of the Compact and ICAOS Rules on the following issue:

The State of Vermont was supervising a Florida offender who was the subject of a Violation Report concerning a new criminal charge in Vermont. Florida responded to the violation report with an arrest warrant. However, by the time the warrant was received, the offender was released on bail on the new criminal charge. While the Vermont probation office confirmed that the Florida warrant was 'extraditable,' Vermont is asking if it is permissible to arrest and detain the offender until consent is given to Florida to retake the offender or until criminal charges are dismissed, or the sentence is satisfied, or the offender is released on supervision for the commission of the subsequent offense.

### **Applicable Rules and Statutes**

[Rule 4.109-1](#) provides:

"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."

[Rule 5.101](#) (c) in relevant part provides<sup>1</sup>:

Rule 5.101 Retaking by the sending state

*c) 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.*

[Rule 5.111](#) provides:

“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 state or receiving state shall not be admitted to bail or other release conditions in any state.”

## **Analysis and Conclusion**

In this case application, the above referenced rules appear to be in conflict, since the arrest on the new charge in Vermont resulted in an arrest warrant being issued and Florida seeking to retake the offender since the new criminal charge constitutes a violation of the terms and conditions of probation in the State of Florida. However, the Vermont court released the offender after being informed by the State of Florida that the warrant was not “extraditable,” although Florida subsequently clarified that the warrant was in fact “extraditable.” As a matter of practice, if a receiving state is not seeking retaking, but simply informing a sending state of pending charges or new violations, a progress report should be initiated as a violation report triggers the retaking process.

Since the offender is not ‘available’ for retaking under ICAOS Rule 5.101(c), due to the fact that the appropriate authorities in Vermont did not consent to retaking, the criminal charges weren’t dismissed, nor was the sentence satisfied and the offender had not been released to supervision for the subsequent offense, Florida cannot retake the offender.

Vermont further asks whether it may permissibly arrest and detain the offender on the Florida arrest warrant. As in other cases of statutory construction, the provisions of the Compact statute and rules should be interpreted in harmony with other sections of the statute, or in this case the above referenced ICAOS rules, and “*plain meaning is examined by looking at the language and design of the statute as a whole.*” See, *Lockhart v. Napolitano*, 573 F.3d 251 (6th Cir. 2009). Consistent with such a “harmonious” interpretation, a literal reading of Rule 5.101(c) and Rule 5.111 reveals a clear intent that the process of ‘retaking’ under 5.101(c) is not permitted to continue, even if such process has been instituted by the sending state, unless and until one of the prerequisites of Rule 5.101(c) are satisfied.

Moreover, since the time frame in which any of those prerequisites will be satisfied by Vermont cannot be determined, it seems inconsistent with the demands of due process that the offender should be detained indefinitely. See *Morrissey v. Brewer*, 408 U.S. 471, 481, 488 (1972)(“*The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, as respondents suggest occurs in some cases, would not appear to be unreasonable*”). See also, *Doggett v. U.S.*, 505 U.S. 647, 651 (1992)(“*delays of less than a year (between indictment and trial) are as a general matter constitutionally adequate . . .*”) See also *Barker v. Wingo*, 407 U.S. 514, 530 (1972). For the same reason, it is also inconsistent with the above ICAOS rules for a sending state, such as Florida in this case, to issue a warrant for the arrest of the offender until he or she is available for retaking.

It is worth noting that circumstances such as this prompted the Commission to amend ICAOS Rules by adding [Rule 5.101-1](#) to clarify when such an offender is ‘available’ for retaking and an arrest warrant may be appropriately issued by the sending state. Thus, Vermont would be permitted to arrest and detain the offender on Florida’s arrest warrant in the event one of the four requirements for retaking referred to in Rule 5.101 (c) (*now Rule 5.101-1*) are met. As the U.S. Supreme Court has held, “[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.” *Nixon v. Missouri Mun. League*, 541 U.S. 125 (2004); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

## Summary

In summary, based upon the terms of the compact, the above referenced rules, and the legal authorities cited herein, since an offender under supervision in the receiving state who is charged with a new criminal offense cannot be retaken until one of the prerequisites of ICAOS Rule 5.101(c) has been satisfied, it is inconsistent with both the ICAOS rules and due process for a warrant to be issued by the sending state or for the offender to be arrested and detained indefinitely, if subsequently released to bail on a new criminal charge. However, once the provisions of Rule 5.101(c) have been satisfied, both arrest and detention of the offender without bail on the compact warrant are required.

<sup>1</sup>

On August 28, 2013, the Commission amended rule 5.101 and created 5.101-1. The language in 5.101 (c) is now reflected in 5.101-1. Language was added to this rule clarifying that the pending charges must be a felony or violent crime and that the terms of 5.101-1 be met "unless the sending and receiving states mutually agree to the retaking or return."