

Proposal to create/amend rules:

Rule 1.101 Definitions

“Resident” means a person who—

1. has resided in a state for at least 1 year continuously and immediately prior to either the supervision start date or sentence date for the original offense for which transfer is being requested ~~has continuously inhabited a state for at least 1 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 or under active military orders deployment, remained in another state or states for a continuous period of 6 months or more with the intent to establish a new principal place of residence.

Justification:

The current definition of resident in Rule 1.101 is overly restrictive and does not address the circumstances of individuals who have resided in a receiving state for an extended time, especially between commission of the offense and placement on supervision. Moreover, the current definition makes it particularly challenging for the sending state to provide proper documentation to support residency in such circumstances. The misapplication and limitations of the current definition often result in unnecessary delays or denials of the transfer request because the individual does not meet the current criteria of “resident”, despite having a valid plan of supervision in the receiving state. This proposal maintains the protections provided to the receiving state under the existing “resident” rule, while recognizing individuals who have established themselves with the requisite supports in the receiving state. Lastly, this proposal ensures that the request for transfer under the qualifying reason remains tied to the commission of the offense for which the offender is placed under supervision.

The following information is drafted by the Rules Committee

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

Benchbook updates required. Possible AO footnotes/changes needed.

ICOTS impact:

Technology Committee June 2021: Discussion on updating the definitions listed on Transfer Request & Transfer Reply PDF ICOTS generated forms questioned whether these serve a practical purpose as help points already exist to assist the user. Motion to recommend removal of the definitions listed on the generated forms made by Commissioner S. Turner (KY), seconded by M. Pevey (WA.) Motion carried.

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* Resident of receiving state - 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 (2) with the intent that such state shall be the person's principal place of residence and (3) who has not, unless incarcerated, relocated to 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 - 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; and 2) indicates willingness and ability to assist the offender as specified in the plan of supervision.

Cost: \$1,020

Scope and Metric

Definition change is expected to increase the number of offenders qualifying as a 'resident' as well as increase the acceptance rate.

As of 11/18/2020 the number of active compact cases transferred as 'resident' = 54,099 or 49% of total compact offenders

Acceptance Rates:

2018: 86.5%

2019: 87.5%

2020: 86.5%

Region/Committee action:

Rules Committee March 2021: Motion to forward and recommend NY's version of the proposed amendment to the definition of 'resident' made by Commissioner R. Maccarone (NY), seconded by Commissioner R. Brunger (AK). Motion carried.

Rules Committee June 2021: Upon review of comments received, revisions were made to add 'continuously and immediately' to section 1 clarifying the trigger for when the 1-year timeframe for qualification for a resident starts as well as the committee decided not to strike section 3 referencing military duty and incarceration. Motion to amend proposal for Rule 1.101 definition of 'resident' and approve for final version for Commission vote at the ABM made by Commissioner R. Maccarone (NY), seconded by Commissioner D. Littler (AZ). Motion carried.

Effective date:

April 1, 2022