



Virginia Department of Corrections

Supervision and Management in the Community

Operating Procedure 920.4

Interstate Transfer of Supervision

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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DEFINITIONS

The Interstate Compact for Adult Offender Supervision is administered by the Interstate Commission for Adult Offender Supervision (ICAOS). It is important to be aware of the following ICAOS definitions (ICAOS Rule 1.101) since they may differ from Virginia definitions. When handling Interstate Compact cases, these definitions prevail.

Abscond - To be absent from the offender's approved place of residence and employment; and failing to comply with reporting requirements

Adult - Both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law

Application Fee - 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 - 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

Behavior Requiring Retaking - An act or pattern of non-compliance with conditions of supervision that could not be successfully addressed through the use of documented corrective action or graduated responses and would result in a request for revocation of supervision in the receiving state

Compact - The Interstate Compact for Adult Offender Supervision

Compact Administrator - 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

Compliance - 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 - 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 - An order to hold an offender in custody

Discharge - The final completion of the sentence that was imposed on an offender by the sending state

Extradition - 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. Offenders not transferred through the ICAOS must be returned through the extradition clause of the U.S. Constitution (ICAOS Dispute Resolution 2-2004).

Interstate Compact Offender Tracking System (ICOTS) - The web-based system used by all states and U.S. Territories to transfer and monitor the supervision of offenders while under Interstate Compact for Adult Offender Supervision.

Interstate Transfer Investigation - A VACORIS investigation type based on a request from another state to evaluate an offender for supervision in Virginia; the P&P District must complete a home visit/investigation within 45 calendar days of receipt of the transfer request by the VA Interstate Compact Unit to determine suitability of the proposed plan of supervision. The P&P District will contact the Victim Services Unit (804-674-3243 or victimservices@vadoc.virginia.gov) prior to final determination of suitability of the proposed plan of supervision if the offender has a VACORIS Victim Registered Alert Flag:  **Victim Registered**.

Offender - 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

Plan of Supervision - 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 - A state to which an offender requests transfer of supervision or is transferred

Relocate - To remain in another state for more than 45 consecutive days in any 12 month period

Reporting Instructions - 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 - A person who:

- Has resided in a state for at least one year continuously and immediately prior to either the supervision start date or sentence date for the original offense who which transfer is being requested; and
- Intends that such state shall be the person's principal place of residence; and
- Has not, unless incarcerated or on active military deployment, 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 - A parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who:

- Has resided in the receiving state for 180 calendar days or longer as of the date of the Transfer Request; and
- Indicates willingness and ability to assist the offender as specified in the plan of supervision

Retaking - The act of a sending state in physically removing an offender or causing to have an offender removed from a receiving state

Rules - 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 affects interested parties in addition to the Interstate Commission

Sending State - 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 - 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 in the sending 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. *Note: If the offender is required to register as a sex offender in the sending state, the instant offense listed on the Transfer Request does not also have to be a sex offense to cause the offender to meet the Compact definition of sex offender.*

Shall - A state or other actor is required to perform an act, the nonperformance of which may result in the imposition of sanctions as permitted by the Interstate Compact for Adult Offender Supervision, its by-laws and rules

Subsequent Receiving State (3rd State) - A state to which an offender is transferred that is not the sending state or the original receiving state

Substantial Compliance - An offender is sufficiently in compliance with the terms and conditions of supervision so as not to result in initiation of revocation of supervision proceedings by the sending state. Pending charge(s) in the receiving state do not equal non-compliance if the sending state has not initiated revocation proceedings (ICAOS AO 7-2004).

Supervision - 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. Offenders not subject to supervision by corrections may be subject to ICAOS if reporting to the courts is required (ex. treatment, community service). (ICAOS AO 3-2005, 3-2010, and 4-2010)

Supervision Fee - A fee collected by the receiving state for the supervision of an offender

Travel Permit - The written permission granted to an offender authorizing the offender to travel from one state to another

Victim - 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

Violent Crime - Any crime involving the unlawful exertion of physical force with the intent to cause injury or physical harm to a person; or an offense in which a person has incurred direct or threatened physical or psychological harm as defined by the criminal code of the state in which the crime occurred; or the use of a deadly weapon in the commission of a crime; or any sex offense requiring registration

Waiver - The voluntary relinquishment, in writing, of a known constitutional right or other right, claim, or privilege by an offender

Warrant - A written order of the court or authorities of a sending or receiving state or other body of competent jurisdiction which is made on behalf of the state or United States issued pursuant to statute and/or rule and which commands law enforcement to arrest an offender. The warrant shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pick-up radius with no bond amount set.

PURPOSE

This operating procedure provides protocols for the transfer and supervision of offenders under community supervision between the Virginia Department of Corrections (DOC) and other participating states of the Interstate Compact for Adult Offender Supervision.

PROCEDURE

- I. Interstate Compact for Adult Offender Supervision (ICAOS)
 - A. The ICAOS was enacted in 2002 and adopted in Virginia on June 19, 2004 under COV §53.1-176.1, *Enactment of the Interstate Compact for the Supervision of Adult Offenders* and COV §53.1-176.2, *Short title; Governor to execute; form of compact*.
 1. All 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are members of the Interstate Compact.
 2. The rules of the Interstate Compact have the force and effect of federal law.
 3. All jurisdictions within Virginia to include the Executive Branch, Courts, Parole Board, law enforcement, magistrates, and state and local probation and parole are subject to ICAOS rules. (4-APPFS-2A-16; 2-CO-4B-02)
 - a. The DOC is bound by the Code of Virginia and the ICAOS and is required to comply with ICAOS rules. Staff assigned to manage Interstate Compact cases must apply the rules as directed by the Compact.
 - b. Each P&P Officer is responsible for making Judges, Commonwealth Attorneys, law enforcement magistrates, jail staff, and other Court staff aware of the Interstate Compact rules.
 - i. A Court Order or other instruction does not supersede the rules of the Interstate Compact.
 - ii. Certain violations mandate the issuance of a fully extraditable, non-bondable warrant entered in the National Crime Information Center (NCIC)
 - B. Resources
 1. The most up-to-date and detailed information is available on the ICAOS website - www.interstatecompact.org.
 2. Virginia-specific documents such as the Virginia's Interstate and ICOTS Reference Guide are available under Offender Management Services in the Operations section of the DOC Intranet under Interstate Compact Community Supervision.
 3. P&P staff should take on-demand training sessions on the Compact rules and the use of Interstate Compact Offender Tracking System (ICOTS) available at www.interstatecompact.org.
 - C. Offenders with 90 calendar days or more of supervised or unsupervised probation, parole, or post release supervision with any conditions, other than financial or good behavior, who will be living in another state for more than 45 consecutive days in a calendar year including treatment programs, school or work, etc. must transfer under an ICAOS.
 1. Offenders do not have a constitutional right to transfer supervision via Interstate Compact. The sending state has discretion to determine if the proposed plan is in the best interest of the offender and public safety.
 2. Inmates nearing release may apply for a transfer of their supervision to another state in accordance with Operating Procedure 820.2, *Inmate Re-entry Planning*.
 - D. 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. (ICAOS Rule 2.101b)
 1. P&P Officers are encouraged to conduct all activities in ICOTS.

2. If communication needs to occur outside of ICOTS, it must be done via email sent to Virginia's Compact Office staff who will communicate with Compact Office staff in the other state.

II. Travel to Other States

- 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. (ICAOS Rule 2.110)
 1. 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.
 2. Upon violation of this policy, the sending state shall direct the offender to return to the sending state within 15 business days of receiving such notice.
 3. 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 a specific area, no later than ten business days following the offender's failure to appear in the sending state.
- B. The Interstate Compact does not require written travel permits for non-Interstate transferred cases. Documentation about approved temporary travel out-of-state e.g., visiting family, sick relative, funeral, or vacation, must be done in accordance with Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*.
 1. Temporary travel cannot be for the purpose of relocation, which is to remain in another state for more than 45 consecutive days in any 12 month period, including treatment programs, school, or jobs.
 2. Temporary travel cannot occur while an *Interstate Transfer Request* is pending, except in an emergency e.g., funeral and deathbed or as outlined in the *Travel Pending Transfer* section of this operating procedure.
 3. There are no ICAOS restrictions on the types of offenders that can temporarily travel to other states.
- C. Travel to Receiving State while Pending Transfer
 1. Offenders requesting an Interstate transfer are allowed to be in the receiving state prior to *Request for Reporting Instructions* or a *Transfer Request* being approved only as follows:
 - a. While awaiting the outcome of a *Request for Reporting Instructions* for a newly sentenced or released offender living in another state at the time of sentencing or after disposition of a violation or revocation proceeding. Travel to another state is allowed for up to seven business days if *Reporting Instructions* have been requested and a reply is pending, when the following conditions are met:
 - i. Offender was living in the receiving state at the time of sentencing (must be verified), and
 - ii. Sentencing occurred in the last seven business days, or
 - iii. Offender served less than six months after sentencing and before being released to supervision in the past seven business days, and
 - iv. Offender is not a sex offender or a parolee
 - b. Offenders who have medical or treatment appointments and/or existing employment in the receiving state may be permitted to commute on a daily basis during the investigation of a *Transfer Request* or *Request for Reporting Instructions*. (ICAOS Rule 3.102c)
 - i. Travel must limited to what is necessary to report to work or appointments, perform job duties, and return to the sending state.
 - ii. The offender must return to the sending state during non-working or non-appointment hours each day.
 - iii. Sex Offenders are not excluded from the daily commuting provision.
 - iv. 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 is being investigated.
 - c. Eligible offenders released from incarceration in the receiving state who request to relocate to the receiving state can remain out of state while the sending state requests *Reporting Instructions* if the

request is made within two business days of the notification of the offender's release. The receiving state shall assist the sending state in acquiring the offender's signature on the *Application for Transfer* and other forms. (ICAOS Rule 3.102d)

2. All other offenders with pending *Request for Reporting Instructions* must wait for *Request for Reporting Instructions* to be granted before being given approval to travel.
3. Offender must sign all forms requiring the offender's signature (*Offender Application*, conditions of supervision, etc.) prior to approving any travel.

D. Travel After Interstate Compact Transfer (ICAOS Rule 3.110)

1. The receiving state shall notify the sending state prior to the issuance of a *Travel Permit* for the offender to travel to the sending state. This is for temporary, overnight travel back to the sending state e.g., vacation, funeral, work, etc. since permanent return by choice, order, or retake would require an approved *Request for Reporting Instructions* along with a *Notice of Departure* and *Case Closure Notice*.
2. Notice will be done via a *Compact Action Request-Travel Permit Specialization* with either a written *Travel Permit* attached or written details regarding verbal travel permission given.
3. This rule does not apply to offenders who are employed or attending treatment or medical appointments in the sending state, provided the following conditions are met:
 - a. Travel is limited to what is necessary to report to work and perform the duties of the job, or attend treatment or medical appointments; and
 - b. The offender shall return to the receiving state immediately upon completion of the appointment or employment

III. Transferring Supervision

A. Eligibility Criteria: (ICAOS Rule 3.101)

1. An offender must have 90 calendar days or more or an indefinite period of supervision remaining at the time the sending state submits the *Transfer Request* for a felony or eligible misdemeanor.
 - a. This requirement includes juveniles sentenced as adults or released to adult supervision.
 - b. Supervision can be in the form of supervised or unsupervised/bench probation or parole as long as there are standard or special conditions, other than monetary or good behavior, that must be monitored e.g., classes, treatment, community service. (ICAOS Advisory Opinions 3-2010, 4-2010, 3-2005)
 - c. Unsupervised/bench probation cases with only monetary conditions or good behavior, do not require transfer under the Interstate Compact.
2. To be eligible, a misdemeanor offender:
 - a. Must have one or more years of supervision for one of the following offenses: (ICAOS Rule 2.105)
 - i. An offense where a person has incurred direct or threatened physical or psychological harm e.g., domestic violence, assault, resisting arrest including where the sending state recognizes the use of an automobile as an element in an assault offense and the offender is so adjudicated (ICAOS AO 16-2006)
 - ii. An offense that involves use or possession of a firearm including hunting violations (ICAOS AO 1-2011)
 - iii. A second or subsequent misdemeanor conviction of driving while impaired by alcohol or drugs
 - iv. A sexual offense that requires the offender to register as a sex offender in sending state
 - b. Misdemeanor offenders could be under local community corrections supervision since this Compact is not solely applicable to offenders under VADOC supervision
3. OR deferred sentence/prosecution where the offender has admitted guilt and the Court defers sentence/final judgment in lieu of supervised probation, treatment, or other program. (ICAOS Rule

2.106 and ICAOS AO 6-2005)

4. AND the offender has a valid plan of supervision (proposed residence, proposed employment or viable means of support, and terms/conditions of supervision)
 - a. The P&P Officer is responsible for verifying the plan of supervision by contacting the homeowner, landlord, employer, sponsor etc. to verify the plan is suitable.
 - b. A VACORIS note should be entered documenting all plan verification dates, methods, and results.
5. AND the offender is in substantial compliance with the terms of supervision in the sending state i.e., violation process has not been started
6. AND the offender can obtain employment in the receiving state or has a means of support

B. Offenders Who Do Not Meet Eligibility Criteria

1. An offender on work release, furlough, pre-release program, pre-trial intervention when no admission of guilt has been made, or bail does not meet the criteria to transfer under the Compact. (ICAOS Rules 2.106 and 2.107)
2. The Virginia Supreme Court has determined that an offender who is adjudicated a sexually violent predator and placed on conditional release pursuant to the Sexually Violent Predator Act, is not eligible for transfer under the Compact; see COV §37.2-912, *Conditional release; criteria; conditions; and reports*.
 - a. Such offenders must reside in Virginia while under conditional release even if they are also serving a period of probation or parole supervision.
 - b. Other states may submit their equivalent conditional release Sexually Violent Predator cases for transfer. (ICAOS AO 9-2004)
3. If an offender has less than 90 calendar days remaining on supervision, has a non-qualifying misdemeanor case, and/or is on unsupervised probation with only financial or good behavior conditions, they can reside in the other state without having to transfer under the Compact. (ICAOS Rule 2.110 b)
 - a. It is suggested that P&P Officers allow the Deputy Compact Administrator to review the case to be sure the case is exempt from the Compact requirements before allowing the offender to depart.
 - b. Ineligible offenders remain subject to the laws and regulations of Virginia and the DOC remains responsible for the offender's supervision while in the other state.
 - c. Misdemeanor offenders not meeting criteria of ICAOS Rule 2.105 may still be transferred as discretionary transfers under ICAOS Rule 3.101-2 (ICAOS AO 4-2005).

C. Transfer Requests

1. Mandatory Acceptance Criteria: 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 eligibility criteria and one of the following categories (ICAOS AO 7-2004):
 - a. Resident: the offender 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 and has not, unless incarcerated or actively deployed in the military, remained in another state for more than six months with the intent to establish a new principal place of residence. (ICAOS Rule 3.101e1)
 - b. Resident Family: the offender has resident, immediate family in the receiving state who have lived there for at least six months and who indicates a willingness and ability to provide support and assistance. (ICAOS Rule 3.101e2)
 - i. Resident family is defined as parent, grandparent, aunt, uncle, adult child, adult sibling, legal guardian, and stepparent.
 - ii. The offender is not required to reside with the resident family if the residence plan is suitable

and the resident family is willing to provide support and assistance to the offender while in the receiving state.

- c. **Military:** the offender is a member of the military and the offender's military post is moved or the offender currently lives with family who are members of the military and their post is moved. (ICAOS Rule 3.101-1a)
 - d. **Employment:** the offender lives with a family member whose existing, full-time employment has been transferred or the offender's existing, full-time employment is being transferred as a condition of maintaining employment. (ICAOS Rule 3.101-1a)
 - e. **Veterans for Medical or Mental Health Services:** an offender who meets the established eligibility criteria and is a veteran of the United States military services eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration, and is referred or accepted for medical and/or mental health services by the Veteran Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for *Reporting Instructions* and transfer of supervision provided the sending state provides documentation to the receiving state of the referral. The transfer will be accepted if the offender is approved for care at the facility. (ICAOS Rule 3.101a)
2. **Discretionary Transfer Requests:**
 - a. A *Transfer Request* for a non-mandatory case can be submitted but it must clearly explain why this transfer would be in the best interest of the offender and would not pose a public safety risk. (ICAOS Rule 3.101-2)
 - b. The receiving state will have the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the Compact specifying the discretionary reasons for rejection. A discretionary case should not be denied solely because it is discretionary.
 3. **Multiple Virginia supervision obligations**
 - a. When there are multiple obligations from the same P&P District's Courts, they should be submitted on one *Transfer Request*.
 - b. When there are multiple obligations from different P&P District Courts, it is preferred that each P&P District submit their obligations as a separate *Transfer Request* and ICOTS case. This allows each P&P District to monitor completion of conditions, early release requests, violations, and case closure directly and independently of other jurisdictions.
 - i. Alternatively, if all involved P&P Districts agree to one *Transfer Request* being submitted, one P&P District will have the responsibility to monitor the ICOTS case, report updates to all involved P&P Districts, and report decisions back to the Receiving State. A VACORIS note documenting this agreement must be made.
 - ii. Community Corrections Alternative Program staff should not submit multiple P&P District supervision obligations in one *Transfer Request* unless an agreement as outlined in 3b has been reached and documented in VACORIS.
 4. **Submission of *Transfer Request* for Offender Supervised Outside Sentencing District**
 - a. When supervising another P&P District's obligation and an eligible offender proposes an out of state plan, the supervising P&P Officer should submit the ICOTS *Transfer Request*.
 - b. If the *Transfer Request* is accepted and the *Departure Notice* has been transmitted, the supervising P&P Officer will transfer the ICOTS case to the sentencing P&P District representative. A list of P&P District representatives who receive incoming transfers is maintained on the Interstate Compact Unit iDOC page.

D. Request for Reporting Instructions

1. *Reporting Instructions* provide temporary permission for the offender to proceed to the receiving state while the *Transfer Request* is being investigated.
2. *Requests for Reporting Instructions* should only be submitted on cases where the offender must leave

- immediately, has nowhere to stay in Virginia while awaiting a transfer investigation, and there was no advance knowledge that the offender intended to transfer to another state, e.g., newly sentenced or revocation resolved, military transfer, job transfer, veteran receiving services in a regional VA medical center, or offenders released from incarceration in a receiving state with a home plan in the receiving state.
- a. Offenders being released from incarceration do not qualify for *Reporting Instructions* if they served more than six months. (ICAOS Rule 3.106)
 - b. Residence and employment must be verified by the sending state.
 - c. Military orders, Veteran Affairs or Health Administration referrals/acceptances, letters from existing full-time employers indicating mandatory employment transfer, and medical documentation must be attached when using these reasons for a request for *Request for Reporting Instructions*.
3. A *Request for Reporting Instructions* for an offender living in the receiving state at the time of sentencing or after disposition of a violation or revocation proceeding must be submitted within seven business days of placement on probation and release from less than six months of post-conviction incarceration. (ICAOS Rule 3.103)
- a. The sending state may grant a seven business day *Travel Permit - Out of State 920_F3* to offenders who meet these requirements with the exception of sex offenders.
 - b. If a *Request for Reporting Instructions* cannot be submitted within the seven day window, the P&P Officer will submit the mandatory *Reason #1-Request for Reporting Instructions* and include a detailed explanation accounting for the delay in submission and the offender must remain in Virginia until reporting instructions are provided.
 - c. This rule does not apply to parolees and does not apply to those who served more than six months prior to release to supervision.
 - d. There are different criteria for *Request for Reporting Instructions* for offenders living in the receiving state at time of sentencing and *Transfer Requests* for offenders who are residents of the receiving state.
4. Except for sex offender cases, the receiving state has two business days to reply to a *Request for Reporting Instructions*.
- a. All sex offender *Request for Reporting Instructions*, with the exception of sex offenders requesting to return to the sending state, have a five business day reply deadline. (ICAOS Rule 3.101-3c)
 - b. This extended deadline is to allow time for the receiving state to investigate the suitability of the home plan for a sex offender, i.e., children in the home, proximity to daycares and schools, etc.
 - c. The receiving state can only deny the *Request for Reporting Instructions* for a sex offender if a similar sex offender sentenced in the receiving state would not be permitted to live in the proposed residence.
5. The sending state must submit a *Notice of Departure* in ICOTS upon offender's departure. (ICAOS Rule 4.105) Be sure the offender has signed the *Offender Application for Interstate Compact Transfer 920_F17*, containing the waiver of extradition prior to departing. Supervisory responsibility is retained in the sending state until the receiving state submits a *Notice of Arrival* documenting that the offender reported as instructed. (ICAOS Rule 3.103b)
6. The receiving state must submit a *Notice of Arrival* once the offender reports. (ICAOS Rule 4.105) Supervision responsibility begins when the offender reports and the *Notice of Arrival* is submitted. (ICAOS Rule 3.103c)
- A VACORIS case must be opened, active, and assigned to a P&P Officer
7. If the offender fails to report within five business days of the date to report, the *Reporting Instructions* may be rescinded by the receiving state. (ICAOS Rule 3.104-1e)
8. A *Transfer Request* must be submitted by the sending state within 15 business days of the approval of

mandatory *Reporting Instructions* or within seven business days of discretionary *Reporting Instructions*. (ICAOS Rule 3.103d)

- a. If a *Transfer Request* is denied for being incomplete, the sending state has 15 calendar days to resubmit a complete *Transfer Request*. If a complete *Transfer Request* is not received within 15 days, the offender can be ordered to return to the sending state and the previously approved *Reporting Instructions* can be withdrawn.
- b. If an offender is in another state on approved *Reporting Instructions* and the *Transfer Request* is denied for something other than missing information or the sending state fails to submit a complete *Transfer Request* within the required time frame of seven or 15 business days, the offender must be instructed to return to Virginia within 15 business days, unless the receiving state offers to allow the offender to remain while a new home plan is developed and submitted.
 - i. The receiving state will submit a *Request for Reporting Instructions*.
 - ii. The sending state will approve the request.
 - iii. A *Notice of Departure* and *Case Closure Notice* will be submitted by the receiving state.
 - iv. The sending state will submit a *Notice of Arrival* and validated *Case Closure Notice Reply*.
- c. If the offender does not return to the sending state, as ordered, the sending state should initiate the retaking of the offender by issuing a warrant that is fully extraditable and effective in all Compact member states no later than ten business days following the offender's failure to appear in the sending state. (ICAOS Rule 3.103f and ICAOS Rule 4.111g)

E. Transfer Request Packets (ICAOS Rule 3.107)

1. A *Transfer Request* for an offender shall be transmitted through ICOTS and shall contain:
 - a. Military orders, Veterans Affairs or Health Administration referrals/acceptances, letters from existing full-time employers indicating mandatory employment transfer, and medical documentation must be attached when using these reasons for a *Transfer Request*.
 - b. A copy of the signed *Offender Application for Interstate Compact Transfer 920_F17*, must be attached to the *Transfer Request*.
 - c. 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 e.g., Pre-Sentence Investigation (PSI), police report, criminal complaint, stipulation of facts, or a written statement from the P&P Officer or Case Management Counselor if no other narrative exists.
 - d. Photograph of offender; participating agencies will make every reasonable effort to ensure that photographs of offenders uploaded to ICOTS meet the following criteria:
 - i. The offender's face is recognizable and visible
 - ii. The photo is displayed in 'portrait' view, height is greater than width
 - iii. The photo is in color and is sharp with no visible pixels or printer dots
 - iv. The background does not detract from the offender's face
 - e. Conditions of supervision, to include gang and/or sex offender conditions if applicable, do not have to be signed but signature is preferred
 - f. Any orders restricting the offender's contact with victims or any other person
 - g. Information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation
 - h. PSI report, unless distribution is prohibited by law or it does not exist, must attach the entire PSI for the instant offense(s) if it exists
 - i. Information as to whether the offender has a known gang affiliation, and the gang with which the offender is known to be affiliated
 - j. Supervision history, if the offender has been on supervision for more than 30 calendar days at the time the *Transfer Request* is submitted, to include a summary of adjustment i.e., results of urine screens, pattern of reporting as well as documentation of any conditions already completed.

- k. 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.
 - l. Summary of institutional discipline and mental health history during the last two years, if available, unless distribution is prohibited by law.
 - i. Applies only to offenders who served time in a state correctional facility; if the offender served jail time only, this requirement does not apply.
 - ii. If the state sentence is shorter than two years, institutional discipline history is required. If the institutional sentence was longer than two years, only the last two years of the institutional discipline history is required.
 - iii. Applies only if this information is available to the sending state and distribution is not prohibited by law.
 - iv. If a Virginia offender has a Mental Health Code of two or higher, six months prior to release, the Case Management Counselor will request the Mental Health Clinician at the facility prepare a *Mental Health Release Summary to Community - DOC MH 9 730_F9* for the *Interstate Transfer Request*. If an offender is MH-X, MH0 or MH1, the P&P Officer can indicate the offender is receiving no mental health treatment and wellness services within the DOC facility.
 - v. According to ICAOS, the submission of medical and mental health information in ICOTS is not a Health Insurance Portability and Accountability Act violation. According to the Virginia Office of the Attorney General, mental health information can be released but substance use information requires a release of information from the offender to be included on the *Mental Health Release Summary to Community - DOC MH 9 730_F9*.
 - vi. The institutional disciplinary report can be generated in VACORIS under Tools - Custom Reports - Discipline - Disciplinary Actions.
 - m. Sex Offender; in addition to the above, the following shall be included in a *Transfer Request* if they exist and distribution is not prohibited by law: (ICAOS Rule 3.101-3b)
 - i. Assessment information completed by the sending state
 - ii. Victim information to include the name, sex, age and relationship to the offender and the statement of the victim or victim's representative
 - iii. The sending state's current or recommended supervision and treatment plan
 2. Additional documents necessary for supervision in the receiving state, such as the Court order, law enforcement report regarding prior sex offense, risk/needs scores, or signed conditions, may be requested following acceptance of the offender. The sending state shall provide the documents no more than 30 calendar days from the date of the request, unless distribution is prohibited by law or a document does not exist.
- F. A transfer fee can only be imposed by the sending state on offenders transferring to Virginia. Virginia does not charge a fee to process a *Transfer Request* or request for *Request for Reporting Instructions*. (ICAOS Rule 4.107)
- G. Transfers to a Subsequent Receiving State (third state)
1. The initial receiving state will inform the original sending state of the offender's request to transfer to a new third state via a *Compact Action Request*. (ICAOS Rule 4.110)
 2. A signed *Offender Application for Interstate Compact Transfer 920_F17*, filled out with information from the originating state and the third state must be attached.
 3. The receiving state shall submit a statement to the sending state summarizing the offender's progress under supervision.
 4. The original sending state will be responsible for initiating the *Transfer Request*, and possibly a *Request for Reporting Instructions*, in ICOTS.
 5. The offender will remain in the original receiving state until the sending state advises that approval has been received for the offender to proceed to the new state.

6. The original receiving state can submit a *Case Closure Notice* when the offender departs on an approved *Transfer Request* to the third state.
- H. Return of an Offender to the Sending State (ICAOS Rule 4.111)
1. A *Request for Reporting Instructions* with the reason “Return to sending state” must be submitted requesting permission for the offender to return and provide the reason(s) for the offender’s return.
 - a. The return could be at the request of the offender, due to a rejection of transfer when the offender is in the receiving state on approved reporting instructions, or when ordered to return in lieu of retake by warrant.
 - b. The request must be approved before the offender can depart.
 - c. The request shall not be submitted if there are pending felonies or violent misdemeanor charges
 2. The sending state is required to provide reporting instructions within two business days when an offender requests to return. This request cannot be denied unless the offender is under active criminal investigation or charged with a subsequent criminal offense in the receiving state.
 3. Once the offender departs, the receiving state should immediately submit a *Notice of Departure* and *Case Closure Notice* in ICOTS.
 - a. The receiving state retains authority to supervise the offender until the offender’s departure date.
 - b. The sending state should submit a *Notice of Arrival* indicating whether the offender reported or did not report and a validated *Case Closure Notice Response*.
 4. If a Virginia offender is returning to Virginia, the offender will be instructed to report to the P&P Office nearest the proposed residence. If the offender is residing in a P&P District outside the original P&P District, the P&P Office of origin will initiate an intra-state transfer to the new P&P District in VACORIS.
- I. Pre-Release Transfer Requests; see Operating Procedure 820.2, *Inmate Re-entry Planning*
1. The P&P Officer can submit an offender’s *Transfer Request* when the offender is 120 calendar days or less to planned release. (ICAOS Rule 3.105).
 - a. Neither the acceptance of a *Transfer Request* by a receiving state nor approval of *Reporting Instructions* can be a condition of granting parole or the basis of the determination of the planned release date. (ICAOS AO 2-2012)
 - b. The sending state shall notify the receiving state if the planned release date changes or if the recommendation to release has been withdrawn or rejected. (ICAOS Rule 3.105b)
 2. No more than six months prior to release, the Case Management Counselor will provide a signed *Offender Application for Interstate Compact Transfer 920_F17*, and an *Interstate Compact Pre-Release Checklist 820_F8* to the Interstate Compact Unit in VACORIS.
 - a. Interstate Compact Unit staff will verify completeness and notify the appropriate P&P Officer(s) of the forms.
 - b. If the offender is in a jail and the *Application* has not been submitted, the P&P Officer will be responsible to obtain the forms from the jail.
 - c. The P&P Officer will be responsible for completing the *Transfer Request* in ICOTS; see Operating Procedure 820.2, *Inmate Re-entry Planning*, for more details and instructions.
 3. The P&P Officer assigned the case in ICOTS must submit a *Notice of Departure* when the offender is released from incarceration, but not before the offender actually leaves the state. If the offender does not report within five business days of the date to report noted in the *Notice of Departure*, the receiving state can withdraw their acceptance.
- J. Transfer Request Replies
1. Upon receipt of a complete *Transfer Request*, the receiving state has 45 calendar days to reply. (ICAOS Rule 3.104) An approved *Transfer Request Reply* is valid for 120 days. (ICAOS Rule 3.104-

- 1d)
 - a. If the offender does not depart the sending state within 120 calendar days, the receiving state may withdraw their approval and close interest in the case.
 - b. If the offender's date of release or departure changes, the P&P Officer shall notify the receiving state via a *Compact Action Request* and change the Intended Departure Date field in ICOTS. (ICAOS Rule 3.104-1)
 - c. The P&P Officer or other designated staff must complete a home visit/investigation to determine the suitability of the proposed plan in response to the assigned VACORIS *Interstate Transfer Investigation*.
 - d. At the time of acceptance, the receiving state may impose a condition on a transferred offender if that condition would be imposed on an offender sentenced in the receiving state. This condition should be noted at the time of acceptance as an additional condition imposed. If determined later, the condition should be noted in a *Progress Report*. (ICAOS Rule 4.103a)
 - i. If an offender does not have to register as a sex offender and is not under sex offender terms and conditions in the sending state, the receiving state can still impose sex offender terms and conditions so long as that action is consistent with similar offenders sentenced and supervised in their state.
 - ii. When approving a discretionary transfer i.e., offender is not a Virginia resident, does not have resident sponsoring family, a condition can be imposed when completing the *Transfer Reply* that if the basis of the discretionary plan e.g., residence/school/treatment program, etc. ceases to be viable the offender must be returned to the sending state.
 - (a) If you impose a condition of this nature and the reason for the discretionary transfer no longer exists i.e. quits school, discharged from treatment, etc., then the sending state must return or retake their offender.
 - (b) Otherwise, there is no obligation of the sending state to retake when requirements of ICAOS Rule 3.101 are no longer met (ICAOS AO 15-2006).
 - iii. A receiving state that is unable to enforce a condition imposed in the sending state shall notify the sending state of its inability to enforce a condition at the time of *Transfer Reply*. If the sending state transfers the offender, they do so knowing the offender will not be monitored for that condition.
2. If the offender's home plan is determined to be in another jurisdiction in Virginia, the ICOTS *Transfer Request* should be transferred to the other P&P District and not rejected by the original investigating P&P District.
3. No offender eligible under the Compact, who has the necessary residence or family qualifications, coupled with employment or a viable means of support, shall be refused for supervision. The Deputy Compact Administrator has the final authority to accept or reject supervision. (ICAOS AO 7-2004)
 - a. Virginia P&P Districts must apply the same home investigation parameters to out of state offenders as are applied to in-state offenders
 - b. The investigation is of the plan and not the offender's behavior
4. A Receiving State can withdraw their approved *Transfer Request Reply* prior to the Sending State's submission of a *Notice of Departure* if the proposed plan is no longer acceptable. The Virginia Interstate Compact Office should be consulted before withdrawal of an approved *Transfer Request Reply*.
5. If denying a *Transfer Request*, the receiving state must provide justification for the denial. Improper denials include denying based on:
 - a. Offender's disability
 - b. Pending charges incurred before or during the investigation, if the sending state is not pursuing revocation, the offender is still in substantial compliance (ICAOS AO 8-2005)
 - c. Undocumented immigrant (ICAOS AO 13-2006)

d. Section 8 housing, not all public housing authorities restrict felons (ICAOS AO 2-2007).

K. VACORIS Procedures for Offenders Transferred out of Virginia under the Compact

1. Once a Virginia offender has been accepted by another state for transfer via a *Transfer Reply*, or has approved *Reporting Instructions*, and has arrived as indicated by a *Notice of Arrival*; the P&P Officer assigned the ICOTS case will retain the VACORIS case, assign a supervision level of “Interstate Out” and add a Community Physical Location of “Interstate Compact” while selecting the state to which the offender is transferred.
2. Entering the Community Physical Location as “Interstate Compact” applies a complete waiver to the case and removes it from COMPAS compliance reports.
3. The case will not be entered as an “Out from DOC” transfer as this will make the VACORIS case inactive. The case must not be transferred to the Administrative P&P location.

IV. Supervision

A. Case Opening

1. A receiving state shall assume responsibility for supervision of an offender upon the offender’s arrival in the receiving state and shall submit a *Notice of Arrival* as required under ICAOS Rule 4.105. Supervision begins when the offender arrives on approved *Reporting Instructions* or *Transfer Request* approval.
2. If the offender fails to report within five business days of the date to report provided on the *Notice of Departure*, the P&P Officer must submit a *Notice of Arrival* marked “failed to report” and a *Case Closure Notice*.
3. All case opening requirements of Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*, are to be applied to offenders being supervised in Virginia under the Interstate Compact.

B. Manner, Degree, and Length of Supervision (ICAOS Rule 4.101 and Rule 4.102)

1. 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.
 - a. This rule does not permit the receiving state to provide no supervision.
 - b. At minimum, the rules of the Compact mandate an offender will be under some supervision for the duration of the conditions placed upon the offender by the sending state. (ICAOS AO 1-2007)
2. A receiving state shall supervise an offender transferred under the interstate compact for a length of time determined by the sending state.
3. Offenders transferred to Virginia will be supervised under the sending state’s conditions in addition to Virginia’s conditions. The Virginia P&P Officer will create an Interstate obligation and generate Interstate conditions in VACORIS for the offender, review them with the offender, and have them sign the conditions.
4. 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. (ICAOS Rule 2.108)

C. Conditions of Supervision (ICAOS Rule 4.103)

1. At the time of acceptance or during the term of supervision, the receiving state may impose a condition on an offender if that condition would have been imposed on an offender sentenced in the receiving state.
2. A receiving state shall notify a sending state that it intends to impose or has imposed a condition on the offender.
3. A receiving state that is unable to enforce a condition imposed in the sending state shall notify the

sending state of its inability to enforce a condition at the time the request for transfer of supervision is made.

4. Conditions imposed by the receiving state must be recognized and violations must be addressed as if it was a condition of the sending state. (ICAOS Rule 4.103-1)

D. Deoxyribonucleic Acid (DNA) (ICAOS Rule 4.104)

1. A receiving state shall require that an offender transferred under the Compact comply with any offender registration e.g., felony, sex offender 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.
2. Offenders being supervised in Virginia under the Compact, felonies and misdemeanors, will have DNA and fingerprints taken in accordance with existing policy and procedures; see COV §19.2-310.2(E), *Blood, saliva, or tissue sample required for DNA analysis upon conviction of certain crimes; fee.*

E. *Progress Reports* (ICAOS Rule 4.106)

1. A receiving state shall provide to the sending state a *Progress Report* within 30 calendar days of such a request.
2. To request a *Progress Report* use a *Compact Action Request* and select the *Request a Progress Report* specialization. This will create a blank *Progress Report* with a due date 30 calendar days in the future.
3. *Progress Reports* are no longer required annually. *Progress Reports* should be used to report all positive behaviors, completion of conditions, additional conditions imposed, incentives given, sanctions applied, violations that do not rise to the level of behavior requiring retake, and to report arrests prior to conviction and sentencing. The receiving state must provide dates, description and documentation of incentives and sanctions, as well as describe the offender's response to such actions.
4. A *Progress Report* shall include:
 - a. Offender's name
 - b. Offender's current residence address
 - c. Offender's current telephone number and electronic mail address
 - d. Name and address of offender's current employer
 - e. Supervising P&P Officer's summary of offender's conduct, progress and attitude, and compliance with conditions of supervision
 - f. Programs of treatment attempted and completed by the offender
 - g. Information about any sanctions that have been imposed on the offender since the previous *Progress Report*
 - h. Supervising P&P Officer's recommendation
 - i. Any other information requested by the sending state that is available in the receiving state

F. Fees, Fines, Costs, and Restitution (ICAOS Rules 4.107 and 4.108)

1. A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed on the offender by the sending state.
2. Upon notice by the sending state that the offender is not complying with family support, restitution obligations, and financial obligations, the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply.
3. The receiving state shall inform the offender of the address to which payments are to be sent.
4. A sending state may impose a fee for each application prepared for their offender but cannot charge incoming offenders the same application fee. Virginia does not charge an application fee.
5. A supervision fee can be imposed upon Virginia offenders being supervised in other states as long as

that state imposes the same fees on their offenders. Virginia does not impose supervision fees on offenders.

6. The sending state may not charge a monthly supervision fee, administrative fee, or any other fee that has the appearance of a supervision fee while the offender is being supervised under the Compact in a receiving state. (ICAOS AO 2-2006) A fee imposed by a sending state for purposes of defraying costs may be collected on Compact offenders for sex offender registration and victim notification. (ICAOS AO 14-2006)

V. Violations

- A. A receiving state shall notify a sending state of an act or pattern of behavior requiring retake within 30 calendar days of discovery or determination of the violation by submitting an *Offender Violation Report*. (ICAOS Rule 4.109)
 1. If reported more than 30 calendar days after discovery of the violation, the sending state does not have to act on the reported violation(s).
 2. A receiving state should not submit an *Offender Violation Report* if they would not request revocation of their own offenders under similar circumstances or they wish to continue to work with the offender despite the violations, including new convictions.
 3. The sending state cannot demand a receiving state submit an *Offender Violation Report* or demand the withdrawal of an *Offender Violation Report*.
 4. Violations do not rise to the level of “behavior requiring retake” until all interventions and sanctions available for similar sentenced offenders in the receiving state have been exhausted. Sanctions available to Virginia offenders that can only be ordered by the Court as part of a revocation proceeding are not required to be made available to out of state offenders.
- B. Arrests without conviction/sentencing or violations not meeting the “behavior requiring retake” threshold should be documented in a *Progress Report*.
 1. A *Progress Report* should be used to document violations for which sanctions or interventions are being imposed rather than requesting retake.
 2. If a violation is discovered and not reported in an *Offender Violation Report* within 30 calendar days of awareness, it should be reported in a *Progress Report*.
- C. An offender in violation of the terms and conditions of supervision may be taken into custody or continued in custody by the receiving state. (ICAOS Rule 4.109-1)
 1. In Virginia, an out-of-state offender can be held on a P&P Officer’s Arrest Authority (PB15) while awaiting a *Response to Violation Report* from the sending state.
 2. When an out-of-state offender is detained on a PB15, an *Offender Violation Report* should be submitted in ICOTS within 30 calendar days of awareness of the violation and a probation cause hearing or probable cause hearing waiver should be conducted.
 3. In Virginia, probable cause hearings are scheduled and held just like parole preliminary hearings.
 4. If an *Offender Violation Report* has already been submitted to the sending state and the hearing officer recommends release with sanctions, the P&P Officer should submit an *Addendum to Violation Report* with the hearing results but must await the sending state’s agreement before releasing the offender.
 5. If no probable cause is found or the Hearing Officer recommends release with sanctions and no *Offender Violation Report* has been submitted to the sending state, the offender should be released and a *Progress Report* should be submitted with the probable cause hearing results attached.
 6. If a warrant is issued by the other state, it is filed against the offender as a detainer and the PB15 is retrieved.
 7. The sending state is then notified via an *Addendum to Existing Violation Report* that the warrant has

been served and whether the offender is available for return i.e., all pending charges/sentences are resolved. The jail location is also to be provided.

D. An *Offender Violation Report* shall contain (ICAOS Rule 4.109b):

1. Date(s) and description of the behavior requiring retaking
 2. 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
 3. Date(s), description(s) and documentation regarding the status and disposition, if any, of offense(s) or behavior requiring retaking
 4. Date(s), description(s) and documentation of previous non-compliance, to include the description of corrective actions, graduated responses or other supervision techniques
 5. Name and title of the P&P Officer making the report
 6. If the offender has absconded, the P&P Officer must:
 - a. Provide the offender notice of appointments, document the date and method of appointment notification, and note any missed appointments in the *ICOTS Offender Violation Report*
 - b. Attempt to contact the offender directly and document in the *ICOTS Offender Violation Report* the dates, methods and results of attempts to contact the offender
 - c. Conduct a field contact at the last known place of residence; field contact can be done with the assistance of law enforcement officer(s) if a P&P Officer would not conduct the home check due to safety concerns and document in the *ICOTS Offender Violation Report* the dates and results of attempted field contacts
 - d. Contact the last known place of employment, if applicable and document in the *ICOTS Offender Violation Report* the dates, methods and results of contact with the employer
 - e. Contact known family members and collateral contacts, to include contacts identified in the *Transfer Request* (ICAOS Rule 4.109-2) and document the results in the *ICOTS Offender Violation Report*
 - f. These attempts to contact must be made within 30 calendar days of submitting the absconding report
 7. Supporting documentation regarding the violation including but not limited to police reports, toxicology reports, and preliminary findings
 8. Information about whether the offender is available for retake must be included.
 - a. Offenders are available for retake if there are no pending felony or violent misdemeanor charges or sentences to be completed and their whereabouts are known.
 - b. Absconders are not available for retake until they are located and placed into custody.
 - c. Offenders serving sentences are not available for retake.
 - d. Updates regarding retake availability should be provided on *ICOTS Addendums to Violation Reports*.
- E. The sending state shall respond to an *Offender Violation Report* no later than ten business days following receipt by the sending state. 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.
- F. 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 conditions or requirement imposed by a receiving state as if those conditions or requirement had been imposed by the sending state. (ICAOS Rule 4.103-1)
1. Failure of an offender to comply with 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.

2. 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.

G. Notifying Virginia Courts of Interstate Violations

1. Upon receipt of an *Offender Violation Report* where the receiving state has indicated the offender is available for retake and probable cause has been found, is an absconder, or is serving a new sentence of 180 days or greater, the P&P Officer should promptly report the alleged violation(s) to the Court per P&P District procedure or order the offender to return to Virginia if only technical violations are reported and the offender is not an absconder.
2. When submitting a *Major Violation Report* to a Virginia Court, the P&P Officer shall include a copy of the signed *Offender Application for Interstate Compact Transfer 920_F17*, which includes the pre-signed waiver of extradition, the ICOTS *Offender Violation Report*, and all supporting documentation attached to the *Offender Violation Report*.
 - a. The cover letter shall indicate that it is a Compact case and as such, any *capias* or bench warrant must be issued with no limits on the pick-up radius and with no bond/bail amount set. The warrant must be entered in NCIC if the offender is not already in custody or filed as a detainer if in custody.
 - b. The cover letter should also explain to the Court that the case requires mandatory retake. If the only violations reported are technical (with the exception of absconding), the court can opt to order the offender to return in lieu of issuing a warrant.
3. Once the sentencing authority has acted, an *Addendum to Existing Response to Violation Report* shall be submitted through ICOTS to the receiving state documenting the action taken by the sentencing authority.

H. Probable cause hearings; see Operating Procedure 920.6, *Violation of Supervision Conditions*, for Virginia-specific directions on how to handle probable cause (preliminary) hearings. (ICAOS Rule 5.108)

1. 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.
 - a. If there is any question regarding the intent of the sending state to revoke an offender's conditional release based on violations in the receiving state, the offender should be given a probable cause hearing.
 - b. Failure to do so may bar consideration of those violations in subsequent revocation proceedings in the sending state.
2. If the sending state requests it after receiving an *Offender Violation Report*, or the offender is detained on a PB15, a probable cause hearing is required.
 - a. The submission of an *Offender Violation Report* in ICOTS does not have to be delayed while waiting for probable cause hearing results. An *Addendum to Existing Violation Report* can be submitted after the hearing to provide the results. Delaying submission to include probable cause hearing results could cause the 30 calendar day awareness period for submitting an *Offender Violation Report* to expire.
 - b. The sending state can only ask for a probable cause hearing if they intend to pursue revocation and if the receiving state is mandating retake via an *Offender Violation Report*.
 - c. The probable cause hearing can only be held on violations reported in the current *Offender Violation Report* and not ones addressed in prior *Offender Violation Reports*.
3. Absconding offenders apprehended within the jurisdiction of the receiving state shall, at a sending state's request, be afforded the opportunity for a probable cause hearing before a neutral, detached Hearing Officer in the receiving state.

4. In Virginia, an Interstate Compact probable cause hearing is conducted in the same manner as a Virginia parole violation preliminary hearing.
 - a. The results are recorded in VACORIS under the *Preliminary Hearing* tab.
 - b. Interstate Conditions on the offender must have been entered in VACORIS to record the hearing results in VACORIS.
5. No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to one or more violations of the terms or conditions of supervision.
 - a. The violation(s) admitted to must be of sufficient gravity to justify revocation.
 - b. If the offender admits to some but not all the alleged violations, the admitted violations must rise to the level of behavior requiring retake in and of themselves otherwise the probable cause hearing cannot be waived.
6. A copy of a Court order for a new felony or misdemeanor conviction by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for probable cause proceedings.
 - a. The new conviction(s) must be the only reported violations and the new conviction is of sufficient gravity to justify revocation in and of itself.
 - b. If the offender has technical violations and a minor misdemeanor conviction that would not itself result in revocation, a probable cause hearing should still be conducted on the technical violations unless the offender waives the hearing by admitting to the technical violations.
7. The offender shall be entitled to the following rights at the probable cause hearing:
 - a. Written notice of the alleged violation(s); must have proof the offender and sending state were advised of conditions imposed by the receiving state
 - b. Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s)
 - c. The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s)
 - d. The opportunity to confront and cross-examine adverse witnesses, unless the Hearing Officer determines that a risk of harm to a witness exists
8. Steps to determine probable cause
 - a. The Hearing Officer must determine whether the offender violated conditions of supervision by reviewing the *Offender Violation Report* and listening to the testimony of the supervising P&P Officer and the offender.
 - b. If it is determined the offender violated conditions of supervision, the Hearing Officer must also determine that the violation would typically result in revocation in the receiving state.
9. The receiving state shall prepare and submit to the sending state, as an attachment to an *Addendum to Violation Report* in ICOTS, a written report of the hearing within ten business days that identifies:
 - a. The time, date and location of the hearing
 - b. List the parties present at the hearing
 - c. 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.
 - d. A list of the conditions found guilty of or admitted to
 - e. The decision as to whether probable cause was found
10. If the Hearing Officer determines that there is probable cause to believe the offender committed the alleged violations of conditions of supervision, the receiving state shall take or continue to 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.

11. If probable cause is established but the Hearing Officer recommends return to supervision with sanctions or other interventions, the offender should be returned to supervision immediately and the sending state notified of the outcome via an *Addendum to Violation Report*, if the following are also true:
 - a. The sending state did not request the probable cause hearing
 - b. The sending state has not issued a warrant
 - c. An *Offender Violation Report* requesting a warrant has not been submitted to the sending state
 - d. If an *Offender Violation Report* has been submitted, the sending state should be consulted and agree to the return to supervision with sanctions.
12. If probable cause is not established, the receiving state shall:
 - a. Continue supervision if the offender is not in custody
 - b. 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
 - c. 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

VI. Warrants, Waiver of Extradition, and Retaking

- A. An offender in violation of supervision may be taken into custody or continued in custody by the receiving state. (ICAOS Rule 4.109-1)
- B. Any violation warrants/capias issued on an Interstate Compact offender must be listed in NCIC with full extradition and filed as a detainer where the offender is detained. Warrants cannot be limited to a specific pick-up radius e.g., Virginia only, surrounding states only, east of the Mississippi, etc.. Offenders detained on interstate warrants are not subject to bail or bond.
- C. 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.
 1. States that are party to this Compact waive all legal requirements to extradition of offenders who are fugitives from justice. (ICAOS Rule 3.109)
 2. Offenders transferred under ICAOS are subject to the alternative procedures for return and not the provisions of the Uniform Criminal Extradition and Rendition Act. (ICAOS AO 2-2005)
 3. If an offender proceeds to the receiving state on approved *Reporting Instructions* or *Reply to Transfer*, the waiver can be used to avoid an extradition hearing when the offender needs to be retaken. If the offender absconds and is located in a state other than the sending or receiving state, the waiver of extradition is still valid.
 4. If the offender signs the *Application* and absconds prior to *Reporting Instructions* or *Transfer Reply* being approved, then the waiver of extradition cannot be used, and the offender must be treated like any other fugitive from justice.
- D. Retaking
 1. The sending state can voluntarily choose to retake their offender at any time unless the offender has a pending felony or violent crime charge in any state and the receiving state does not agree to allow the sending state to retake the offender. (ICAOS Rule 5.101 and 5.101-1)
 - a. If the offender has been charged with a subsequent felony or violent criminal offense in the receiving state, the offender shall not be retaken, without the consent of the receiving state, unless:
 - i. The criminal charges have been dismissed, or
 - ii. Sentence has been satisfied, or
 - iii. Offender has been released to supervision for the subsequent offense
 - b. Staff must keep informed of the status of pending charges in the receiving state. (ICAOS Rule

5.101)

- c. The sending state must notify the receiving state, preferably by *Compact Action Request* within 15 business days of their issuance of a directive to the offender to return and shall submit the *Return to Sending State Request for Reporting Instructions*. If the offender fails to return as instructed, the sending state shall issue a warrant within 30 calendar days of the date the offender failed to appear in the sending state.
 - d. An offender who is returning for a status hearing and is not subject to revocation proceedings can return on a travel permit and does not need to return via a *Request for Reporting Instructions* and closure. The *Compact Action Request* for returns for a status hearing should clearly indicate this is not a return via retake and the ICOTS case should remain open.
2. 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. (ICAOS Rule 5.111)
 3. Retake is required in the following situations when the receiving state requests it:
 - a. Upon the offender's conviction of a new felony offense and completion of term of incarceration or placement under supervision for that felony offense (ICAOS Rule 5.102)
 - b. The offender absconds and a properly completed *Offender Violation Report* is received (ICAOS Rule 5.103-1).
 - c. An offender is convicted of a violent crime (felony or misdemeanor) as defined by the Code of the state in which the new conviction occurred.
 - d. Behavior requiring retaking (ICAOS Rule 5.103)
 - i. An act or pattern of non-compliance with conditions of supervision that could not be successfully addressed using documented corrective action or graduated responses and would result in a request for revocation of supervision in the receiving state.
 - ii. If all interventions and sanctions available to a Virginia offender have been applied and the behavior rises to the level that you would request revocation of a similar Virginia offender, and there are no pending charges or other matters that make the offender not available for retake, an *Offender Violation Report* can be submitted.
 - iii. If the offender has committed behavior requiring retake (technical violations only), the offender shall be ordered to return or alternatively a warrant shall be issued within 15 business days of the receipt of the *Offender Violation Report*.
 - iv. If ordered to return for technical violations in lieu of issuing a warrant, a *Request for Reporting Instructions for Return to the Sending State* must be submitted and approved to document the receipt of instructions to return.
 - (a) A *Notice of Departure* and *Case Closure Notice* shall be submitted by the receiving state.
 - (b) A *Notice of Arrival* and validated *Case Closure Notice Response* shall be submitted by the sending state to track the offender's return.
 - (c) 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 limitations to specific geographic areas, no later than ten business days following the offender's failure to appear in the sending state.
 - (i) The receiving state shall attempt to apprehend the offender on the sending state's warrant.
 - (ii) If unable to locate the offender, the receiving state shall submit a new *Offender Violation Report* for absconding documenting the required attempts to locate the offender.
 4. When a sending state decides or is required to retake an offender, the sending state shall issue a warrant within 15 business days of receipt of an ICOTS *Offender Violation Report*, that is not limited to a geographical area and is not eligible for bond or bail, and upon apprehension of the offender file a detainer with the holding facility where the offender is in custody.
 5. A sentence imposing a period of incarceration on an offender convicted of a new crime that occurred outside the sending state during the compact period may satisfy or partially satisfy the sentence imposed by the sending state for the violation committed. This requires the approval or the sentencing

- or releasing authority in the sending state and consent of the offender. (ICAOS Rule 5.101-2)
- a. Unless waived by the offender, the sending state shall conduct, at its own expense, an electronic or in-person violation hearing.
 - b. The sending state shall send the violation hearing results to the receiving state within ten business days.
 - c. If the offender's sentence to incarceration for the new crime fully satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is no longer required to retake.
 - d. If the offender's sentence to incarceration for the new crime only partially satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is required to retake.
6. Once the Court has directed the offender be retaken and the offender is available for return to Virginia, the P&P Officer will notify the Commonwealth's Attorney or designee of the availability for retake under the Interstate Compact.
- a. The Commonwealth's Attorney or designee is charged with making the necessary arrangements to have the offender returned to Virginia.
 - b. The P&P Officer should advise the Commonwealth's Attorney or their designee of the following:
 - i. Provide a copy of the *Offender Application for Interstate Compact Transfer 920_F17*, and confirmation that the offender signed a waiver of extradition.
 - ii. A wanted person entry with full extradition must be made in NCIC if the offender is not already in custody.
 - iii. The offender must be picked up within 30 calendar days of notification of the offender's availability for retake.
7. A sending state shall retake an offender within 30 calendar days after the offender has been taken into custody on the sending state's warrant and the offender is being held solely on the sending state's warrant. (ICAOS Rule 5.105)
8. A sending state shall be responsible for the cost of retaking the offender. (ICAOS Rule 5.104)
9. The P&P Officer shall notify the Interstate Compact Unit staff if an out-of-state case remains incarcerated awaiting return to the sending state for more than 30 calendar days.
10. 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. (ICAOS Rule 5.106)
11. Retaking an offender as required by the Compact does not mean the sending state must revoke once the offender is returned.
12. Subpoenas of P&P Officers from other states
- a. According to the Virginia Office of the Attorney General, a Court from another state has no subpoena power over a person in Virginia.
 - b. In order to compel a non-incarcerated person in Virginia to appear in another state to testify in a criminal proceeding, the Court of the other state must certify to the Circuit Court of the jurisdiction where the person is located that the person is a material witness in a criminal proceeding and is needed for a specified number of days.
 - c. After a hearing, the Circuit Court may issue a summons directing the person to appear in a Court in the other state; see COV §19.2-272, *Definitions*.

VII. Case Closing

- A. The receiving state may cease supervision and close its interest in supervision of an offender 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. The *Case Closure Notice* must be submitted within ten business days after the Supervision End Date.

2. If a sending state modifies a sentencing order so that the offender no longer meets the definition of supervision, no further jurisdiction exists to supervise the offender under the Compact and qualifies as a discharge requiring a state to close supervision (ICAOS AO 2-2010). This cannot be done when a mandatory retake is pending.
 3. Notification is made to the sending state of the absconding of the offender from supervision in the receiving state. Closing the ICOTS case does not remove the responsibility of the sending state to issue a fully extraditable warrant entered in NCIC. (ICAOS AO 11-2006)
 4. Notification to the sending state that the offender has been sentenced to incarceration for 180 calendar days or longer, including judgment and sentencing documents and information about the offender's location
 5. Notification of death
 6. Return to sending state which includes;
 - a. Offenders granted *Reporting Instructions* to return to the sending state
 - b. Offenders transferred to a third/subsequent state
 7. Offenders retaken by the sending state; the offender must have already been physically picked up
 - a. If the Supervision End Date is reached for an offender in the process of being retaken, the case cannot close until the offender is retaken.
 - i. The Supervision End Date can be extended. For a Virginia case, the Virginia Interstate Office will extend the case when appropriate and/or when requested by the P&P District.
 - ii. The sending state may choose to move the end date into the future.
 - b. If an offender is returned via warrant or ordered to return to Virginia to face revocation, the existing ICOTS case must close and if the offender is placed back on supervision, a new case must be transferred for the offender to leave Virginia again.
- B. A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender. An ICOTS case cannot be closed simply because a warrant has been issued unless the offender has been declared an absconder or is serving a sentence of 180 days or more.
- 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. A *Case Closure Notice Response* is due within ten business days of receipt of a *Case Closure Notice* and must be validated for the ICOTS case to close.
- D. A *Case Closure Notice* should only be submitted when all obligations are completed. If there are multiple obligations on the same case number in ICOTS and one is expired, submit a *Compact Action Request* regarding the expired obligation.
- E. When supervising an out of state case, do not close the VACORIS case until the ICOTS case is closed.

VIII. ICOTS Privacy Policy and User Agreement

- A. The ICOTS Privacy Policy is intended to protect the privacy and an individual's civil liberties while facilitating the appropriate, effective, and efficient use of justice information.
- B. Under the ICOTS Privacy Policy, the Virginia DOC, its staff, contractors and users are required to:
 1. Only seek or retain information that is legally permissible for the participating agency to seek or retain under laws applicable to the participating agency
 2. Only use lawful means to seek information
 3. Only seek and retain information that is reliably accurate, current, and complete, including the complete, relevant context
 4. Take appropriate steps when merging information about an individual or organization from two or more sources to ensure that the information is about the same individual or organization

5. Investigate in a timely manner any alleged errors and correct information found to be erroneous
 6. Retain information sought or received only so long as it is relevant and timely, and delete or return information that is inaccurate, outdated, or otherwise no longer related to known or suspected criminal activities, including terrorist activities
 7. Maintain information and systems containing information in a physically and electronically secure environment protected from natural or man-made disasters or intrusions
 8. Engage in collation and analysis of information in a manner that conforms to generally accepted practices
 9. Establish procedures that comply with the policies and procedures of ICAOS for accessing information through the participating agency
 10. Only allow authorized users to access the information in ICOTS and only for purposes related to the performance of their official duties
 11. Share information with authorized users of other justice system partners based only on a “right to know” and a “need to know” basis
 - a. When there is a question or inquiry about shared data, a participating agency will make information available in response to the query by:
 - i. Providing the requested information directly
 - ii. Responding with the contact information of a person in the responding agency whom the individual making the query can contact
 - iii. Having a person in the responding agency contact the individual making the query
 - iv. Indicating that no information is available
 - b. A participating agency will not disclose information originating from another participating agency except as provided for in this agreement or in the operational policies of ICOTS.
 12. Establish and comply with information retention and destruction schedules
- C. Eligible users, to include P&P staff, Headquarters staff, certain facility staff, certain Court/jail staff, may be granted access to ICOTS after review of the ICOTS Privacy Policy and submittal of a signed *ICOTS User Agreement* approved by their supervisor and submitted to the Interstate Compact Unit.
1. Users other than Interstate Compact Office staff will be assigned either *PO* or *PO Supervisor* access to ICOTS. *PO Supervisor* access will be granted to users who have a documented need to transfer cases between P&P Officers in ICOTS.
 - a. The *ICOTS Compact Staff* role will be assigned only to Interstate Compact Office staff.
 - b. The ICOTS Administrator role will only be assigned to Interstate Compact Office support staff, Interstate Compact Unit supervisor, and the Deputy Compact Administrator
 2. Users must login to ICOTS at least every 90 days to remain active.
 - a. Accounts inactive for more than 90 days may be deactivated by the Virginia Interstate Compact Unit staff.
 - b. Accounts inactive for 12 months or more will be deactivated by the Virginia Interstate Compact Unit staff.

REFERENCES

COV §19.2-272, *Definitions*

COV §19.2-310.2, *Blood, saliva, or tissue sample required for DNA analysis upon conviction of certain crimes; fee*

COV §37.2-912, *Conditional release; criteria; conditions; reports*

COV §53.1-176.1, *Enactment of the Interstate Compact for the Supervision of Adult Offenders*

COV §53.1-176.2, *Short title; Governor to execute; form of compact*



Operating Procedure 820.2, *Inmate Re-entry Planning*

Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*

Operating Procedure 920.6, *Violation of Supervision Conditions*

Interstate Compact Offender Tracking System (ICOTS) Privacy Policy

Virginia's Interstate and ICOTS Reference Guide

ATTACHMENTS

None

FORM CITATIONS

Mental Health Release Summary to Community - DOC MH 9 730_F9

Interstate Compact Pre-Release Checklist 820_F8

Travel Permit - Out of State 920_F3

Offender Application for Interstate Compact Transfer 920_F17