INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

CHOOSING THE RIGHT TOOL

UNDERSTANDING WHEN TO USE PROGRESS REPORTS VS. VIOLATION REPORTS

Once supervision responsibilities are transferred to the receiving state, status information and supervision updates are shared with the sending state using INSITE. There are two reporting mechanisms states can use when they need to send formal communications through INSITE on a Compact case: Progress Reports and Violation Reports. While both serve as essential mechanisms for conveying information, they operate within distinct contexts and fulfill unique purposes.

Progress Report (PR)

Receiving states use progress reports to document:

- Supervision updates
- New conditions imposed
- Status of conditions
- Recommendations for early termination or extension of supervision
- Compliant behavior
- Non-Compliant behavior including:
  - New arrests.
  - **Pending** felony or violent crime charges. (Rule 5.101-1)
  - When an individual's behavior is non-compliant, and the receiving state imposes corrective actions, including jail sanctions. (Rule 4.106)
  - New convictions not requiring retaking (options to supervise exist or plan for supervision exists in receiving state.)

Violation Report Requiring Retaking &Addendums (OVR)

Receiving states use OVRs when:

- Options to address non-compliant behavior have been exhausted and it is documented that the receiving state would pursue revocation. (Rescind a supervision term and impose a jail or prison sentence due to an act or pattern of behavior that could not be successfully addressed through documented corrective actions or graduated responses in the community.)
- Invoking mandatory retaking when a supervised individual:
  - Is apprehended in the receiving state after being reported as an absconder. (Rule 5.103-1)
  - Has been convicted of a new felony or violent crime and is **available** for retaking. (Rule 5.102)
  - Engages in behavior requiring retaking AND efforts to redirect the behavior are unsuccessful, which would result in proceedings to revoke supervision. (Rule 5.103)

Frequently Asked Questions

IMPORTANT CONSIDERATIONS WHEN REPORTING VIOLATIONS REQUIRING RETAKING:

Q: What is retaking? How is the decision to require retaking made and what activities does it involve?

A. Retaking is the process of physically removing an individual to the sending state for revocation due to their behavior or violation of conditions. It is important to note that retaking should not be used exclusively as a punitive measure, but as a mechanism to ensure public safety and accountability. The decision to initiate a retaking is not made arbitrarily; it should align with established guidelines and be subject to compact office approval.

Per Rule 2.101, Compact Offices are responsible for managing the retaking process and transmitting Violation Reports Requiring Retaking, which involves obtaining nationwide warrants, incarceration and establishing probable cause for a subsequent revocation proceeding in the sending state.

Q: If non-compliant behavior was already submitted on a Progress Report, can a state still use the Violation Report Requiring Retaking?

A: Reporting non-compliant behavior on a Progress Report does not preclude a receiving state from subsequently finding that the behavior has escalated to a level that requires retaking.

Q: How should the receiving state notify when an absconder is apprehended on the sending state's warrant in its jurisdiction to manage retaking?

A: If the supervised individual was previously reported as an absconder and apprehended in the receiving state, the compact case must be reopened upon apprehension. The receiving state should utilize violation addendums to manage the retaking process and document probable cause. Once a previously reported absconder is retaken, the case is re-closed under reason 'retaken.' This ensures direct communication per Rule 2.101 (d) and accurate retaking data. (See AO 1-2019)

Q: How should the receiving state notify of possible revocable behavior when the supervised individual may not be available for retaking due to new pending charges in the receiving state?

A: When supervised individuals exhibit revocable behavior and have pending charges for a new felony or violent crime, they cannot be retaken until the charges are resolved and the individual is available. Per 5.101-1 retaking may not occur if new pending felony or violent crime charges exist in the receiving state.

Frequently Asked Questions

Prior to transmitting an OVR, confirm that the supervised individual is available for retaking. Use a Progress Report at this stage, and once it is determined that mandatory retaking should be invoked and the supervised individual is available, use a Violation Reporting Requiring Retaking. As noted above, reporting non-compliant behavior or violations on a Progress Report does not preclude states from subsequently using a Violation Report Requiring Retaking.

Q: What level of documentation is expected when requiring retaking?

A: As the supervisory authority, the receiving state determines what constitutes grounds for revocation. Therefore, it is important to document the rationale behind why noncompliant behavior, a new felony or violent crime conviction, or absconding would require revocation in the receiving state during the violation retaking process. Receiving states should ensure documentation and communication meet or exceed the level required when pursuing revocation for instate supervised individuals.

In some instances, receiving states may be expected to furnish a 'business records affidavit' or testimony concerning the reliability of such information provided in INSITE. The 'furnishing' state would be considered the 'custodian' of such records and should provide the required affidavit when requested.

Q: My state does not revoke for technical violations. Can technical violations be the basis for retaking?

A: Technical violations are important to address and rectify; however, they generally do not warrant revocation. Best practice principles emphasize the use of graduated sanctions to address technical violations. What constitutes a technical violation may vary by state; as the supervisory authority, the receiving state determines what constitutes grounds for revocation.

Q: How is retaking handled when the supervised individual is also subject to supervision in the receiving state?

A: When supervised individuals are subject to retaking while also under supervision for a criminal offense committed in the receiving state, states must communicate effectively and establish procedures for facilitating the retaking and transferring of the receiving state supervision.

Considerations should be made when a sending state does not plan to pursue revocation upon retaking if no plan of supervision exists in the original sending state. As noted in the question above, retaking should not be used exclusively as a punitive measure.