

# **INTERSTATE COMMISSION FOR JUVENILES**

## **Compliance Committee Meeting**



### ***Minutes***

**August 8, 2019**

**2:00 p.m. ET**

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#### **Voting Members in Attendance:**

1. Jacey Rader (NE), Chair
2. Anne Connor (ID), Designee
3. Amy Welch (KY), Commissioner
4. Julie Hawkins (MO), Commissioner
5. Caitlyn Bickford (NH), Commissioner
6. Charles Frieberg (SD), Commissioner
7. Eavey-Monique James (USVI), Commissioner
8. Jedd Pelander (WA), Commissioner

#### **Members Not in Attendance:**

1. Summer Foxworth (CO), Commissioner
2. Jefferson Regis (DC), Commissioner
3. Angela Bridgewater (LA), Commissioner
4. Traci Marchand (NC), Commissioner

#### **Non-Voting Members in Attendance:**

1. Brodean Shepard (FL)
2. Abbie Christian (NE)

#### **National Office Staff in Attendance:**

1. MaryLee Underwood, Executive Director
2. Jenny Adkins, Operations and Policy Specialist
3. Joe Johnson, Systems Project Manager

#### **Call to Order**

Chair J. Rader (NE) called the meeting to order at 2:00 p.m. ET.

#### **Roll Call**

Executive Director Underwood called the roll and quorum was established.

#### **Agenda**

**J. Pelander (WA) made a motion to approve the agenda. C. Frieberg (SD) seconded. The motion carried.**

#### **Minutes**

**A. Connor (ID) made a motion to approve the June 18, 2019 meeting minutes.  
A. Welch (KY) seconded. The motion carried.**

## **Discussion**

### **o Sanctioning Guidelines**

- Chair J. Rader (NE) presented draft edits to ICJ Compliance Policy: 02-2017 Sanctioning Guidelines and opened the floor for discussion. She said that any proposed changes to the policy approved by the Compliance Committee would be presented at Region Meetings for review and feedback before presenting to the Executive Committee for a vote.
- A. Connor (ID) asked what the policy for the Interstate Compact on Adult Offender Supervision (ICAOS or “the adult commission”) is titled.
- Chair J. Rader (NE) answered that the ICAOS policy is titled ICAOS Administrative Policy: 01-2019 Compliance Sanctioning Guidelines and refer to fines as “monetary penalties.”
- A. Connor (ID) voiced support for editing the policy to assist the Commission with applying sanctions when a state is found in default.
- J. Pelander (WA) said that it makes sense to get our policy more in line with the ICAOS policy, especially regarding first-time penalties when a death results from non-compliance.
- J. Hawkins (MO) clarified that the ICAOS policy assesses a \$10,000 fine for death, if it is the first offense.
- Chair J. Rader (NE) explained that in ICAOS policy, monetary penalties are associated with a state’s first, second, and third or subsequent offense. She further detailed the amount of a monetary fine that can be assessed and the Determining Factors used to assess the fine within the prescribed range. The draft edits to ICJ’s policy incorporate Determining Factors by assigning a value to each item to obtain a score in an effort to guide decisions related to sanctions where a monetary fine is imposed.
- J. Pelander (WA) asked if ICAOS has a definition of what is considered a “serious injury” which would be crucial to eliminate subjectivity, if the policy incorporates a new scoring mechanism.
- Chair J. Rader (NE) commented that there is not a definition for “serious injury” and the policy is vague.
- J. Hawkins (MO) noted that the ICAOS policy is only one page, but includes Determining Factors that allow the committee to assess how a state addresses allegations of non-compliance, such as whether the state was aware of the issue and how they handled it when they were made aware of an allegation of default. She cautioned that edits to the policy should provide consideration for how states address non-compliance so that they are more likely to acknowledge and address issues rather than conceal them for fear of fines and fees, which should not be the first reaction to a state who has been found in default.
- Chair J. Rader (NE) agreed that the intent of the policy changes be aimed at providing assistance to states as a first response. She suggested simplifying the policy to mirror the ICAOS policy.
- A. Connor (ID) asked when the ICAOS policy was developed and what was used prior to that to determine monetary sanctions.
- Chair J. Rader (NE) said the ICAOS was approved February 20, 2019.

- Executive Director Underwood said ICAOS had something else in place prior to this policy and will reach out to ICAOS' executive director for more information.
- Chair J. Rader (NE) commented that she serves on the ICAOS Compliance Committee and has had to apply the policy in two separate situations.
- A. Connor (ID) asked if the draft policy should be distributed to the regions for review.
- Chair J. Rader (NE) said that the intent of today's meeting was to introduce the policy edits to the Compliance Committee and obtain feedback. She would like the committee to review the draft edits and the ICAOS policy to determine how to best move forward. The proposed policy edits will likely take many months of review by the next Compliance Committee before a final version is sent to regions and ultimately recommended to the Executive Committee.
- J. Pelander (WA) said that the committee is on the right track with the proposed policy edits to include a new scoring chart for the Determining Factors but would need to address areas that may be considered subjective, such as what constitutes a serious injury.
- Chair J. Rader (NE) suggested that this task be turned over to the next Compliance Committee.
- J. Hawkins (MO) said that in the current draft, a first-time offense with the lowest score possible could still subject a state to a fine and recommended this be changed to "elective or mandatory training" with no fine considered.
- Executive Director Underwood said that the draft edits to Section II: Policy would state that "*Monetary sanctions may be assessed when all other efforts to assist the defaulting state to come into compliance are exhausted or in cases where such default warrants immediate punitive action*" and therefore the monetary sanctions matrix would only apply when a determination has already been made to assess a monetary sanction, but the policy does not require it as a first response.
- Chair J. Rader (NE) asked Commission Chair A. Connor for recommendations to move forward.
- A. Connor (ID) suggested that the committee review and digest the proposed edits and task the FY2020 Compliance Committee with finalizing a recommendation. The group agreed.
- J. Hawkins (MO) added that the Determining Factors and Monetary Sanctioning Matrix as proposed in the draft policy appear to be merging two separate things: the determination of default and the sanction to be assessed, rather than using the Determining Factors to only define what the monetary sanction should be.
- J. Pelander (WA) suggested adding "*if a monetary sanction has been warranted, refer to the matrix*" for clarity.
- Chair J. Rader (NE) suggested that a first Determining Factor could be added that would be used to warrant whether or not to proceed with the remaining factors to obtain a score and assess a fine.
- J. Hawkins (MO) asked whether the Determining Factors would be used to determine if monetary sanctions would be assessed, or is it to be used only after the decision to find a state in default has been made.

- Chair J. Rader (NE) affirmed that the matrix should only be used after it has been determined that a monetary fine is appropriate.
- J. Pelander (WA) agreed.
- A. Connor (ID) suggested gathering comments on the proposed edits for the next committee to review.
- Executive Director Underwood suggested reviewing comments that have already been received before the end of today's meeting.
- A. Connor (ID) reviewed the comment to Determining Factor 5: "*Whether the state engaged in the violation over an extended period of time*," as submitted by A. Christian (NE).
- A. Christian (NE) asked if the committee should consider only the initial complaint or other instances of default found during subsequent investigations.
- Chair J. Rader (NE) suggested adding "*as determined by the information provided by the complaining state and the foregoing investigation*."
- A. Connor (ID) said that a filed complaint is likely the "tip of the iceberg" and more instances of non-compliance may be found during the investigation or through technical assistance.
- Executive Director Underwood suggested reviewing factors 8 and 9 that may address the concerns.
- Chair J. Rader (NE) asked if Determining Factor 8: "*Whether multiple states were affected*," should be limited to the initial complaint or expanded to include what is uncovered during the investigation. She added that the determinations are made based upon the complaints received and whether multiple states were affected may only come to light during investigations.
- Executive Director Underwood said that if you draw a parallel to the criminal process, charges are taken one at a time; other crimes that may be discovered are handled separately.
- A. Connor (ID) asked the committee to consider past compliance issues to determine if applying the proposed policy edits would produce the intended outcome.
- J. Hawkins (MO) said that she thought the matrix was to be used to make the initial determination and any violations found during an investigation would potentially change the point-value assessed in the proposed matrix.
- J. Pelander (WA) asked if a complaint is filed related to home evaluations and an investigation ensues, are other potential areas of non-compliance, such as returns or travel permits, considered, or is the investigation constrained to the initial complaint?
- A. Christian (NE) said that in her experience providing technical assistance for a state found in default for overdue home evaluations, she found that the entire compact office procedures required an overhaul because overdue home evaluations were a symptom of a systemic problem. She added that ICJ's mission isn't to be punitive but to provide assistance in these situations, and if a state is having an issue in one area it is likely that the problems are more wide-spread.
- J. Hawkins (MO) said that it wouldn't be helpful to a defaulting state to assess new sanctions for every issue found during technical assistance and voiced support for providing help to states with the least amount of penalty

in an effort to encourage and assist them with coming into compliance with the Compact.

- A. Christian (NE) added that the most recent compliance matter was the first time a finding of default had reached this level, and most states are cooperative in providing assistance to other states, rather than filing a complaint for one overdue home evaluation.
- J. Hawkins (MO) commented that the policy changes must be carefully crafted for the future audience so that the intent of the policy is preserved.
- Executive Director Underwood clarified that the determination of default for South Carolina was related to the complaints received and the technical assistance that was provided thereafter was much broader than the initial finding of default. She added that issues discovered during technical assistance came to light only after the determination of default was already made.
- Chair J. Rader (NE) said that it is important to add clarification to this point now, so that future committee members are clear on how to assess this policy as relating to the complaints made and any findings of default.
- Executive Director Underwood asked whether this is covered by Determining Factor 9: *"Whether additional violations were discovered during the investigation."*
- Chair J. Rader (NE) recommended adding language before the matrix section to clarify that the finding of default is based on the filed complaint.
- Executive Director Underwood suggested adding the clarifying language to Section II: Policy.
- Chair J. Rader (NE) added that this will help clarify Determining Factors 8 and 9. She asked committee members to send in comments related to this policy.
- Executive Director Underwood commented that the ICAOS policy is vague, while the suggested changes to ICJ policy would make it more specific. She noted that members of the committee previously commented that the current policy was difficult to apply because it was overly vague. She suggested that determining whether a vague or specific policy is preferred is an essential question.
- Chair J. Rader (NE) said that on the ICAOS side, complaints happen more frequently.

### **Old Business**

There was no old business.

### **New Business**

- A. Connor (ID) thanked Chair J. Rader, A. Christian, Executive Director Underwood, and J. Adkins for their efforts to draft the proposed policy changes.
- Chair J. Rader (NE) added that the intent is to approach policy change transparently, with the goal of doing what is best and fair for the Commission in producing a policy that can be applied with uniformity and consistency.
- J. Hawkins (MO) reiterated an earlier comment related to applying the policy to determine a fine amount versus determining when a fine is appropriate at

all. She asked what is being used to first determine if a fine will be assessed.

- Chair J. Rader (NE) said that compliance is a two-step process to determine 1) when it is appropriate to assess a fine, and 2) what the appropriate fine is.
- J. Hawkins (MO) said that the Determining Factors could possibly be used to determine if a fine should be assessed at all.
- Chair J. Rader (NE) requested J. Hawkins (MO) submit the comment in writing so it is considered in future discussions.
- Executive Director Underwood acknowledged that E. James (VI) joined the committee call.
- E. James (VI) commented that she appreciates the work of the committee.
- J. Rader (NE) echoed the comments made by the Virgin Islands and commended the committee for their hard work.

### **Adjourn**

**A. Connor (ID) made a motion to adjourn. J. Pelander (WA) seconded. Chair J. Rader (NE) adjourned the meeting at 3:01 p.m. ET.**