

**PROBABLE CAUSE HEARINGS AND RETAKING FOR INTERSTATE COMPACT
ADULT PROBATIONERS**

- AUTHORITY:** Interstate Commission for Adult Offender Supervision (ICAOS) Rules 5.101-5.111
- RESCINDS:** Procedure Manual Item 2-3-024, dated 08/11/16
- FORMS:**
- Advisement and Waiver of Probable Cause Hearing
Concerning Allegations of Technical Violation of Terms
and Conditions of Probation (Form IDE 468) (Attachment)
 - Motion/Petition to Set Interstate Compact Probable Cause
Hearing (Form IDE469) (Attachment)
 - Order for Interstate Compact Probable Cause Hearing
(Form IDE470) (Attachment)
 - Order: Probable Cause Interstate Compact (Form IDE471) (Attachment)
- PURPOSE:** To establish a uniform policy and to uphold the rules of the Interstate Commission mandate that an offender subject to retaking receive a Probable Cause hearing in Orange County, CA consistent with basic standards of due process.

I. General Information:

Per the Interstate Commission for Adult Offender Supervision (ICAOS), due process requirements, such as the requirement for a probable cause hearing, must be complied with by both the sending and receiving states. Probationers under supervision through the Interstate Compact, and subject to retaking, are entitled to an on-site probable cause hearing, in the receiving state, as mandated by ICAOS rules. The hearing is generally held before the probationer is returned to a sending state under the ICAOS. This right cannot be waived unless accompanied by the probationer's admission of having committed one or more significant violations. A "significant violation" is defined as a violation that, if it had occurred in the receiving state, would constitute grounds for revocation of supervision.

II. Policies for Probation Violations Under the Adult Interstate Compact:

- A. The sending state should be notified promptly when an Interstate Compact offender has committed a new law violation in Orange County, CA. As the receiving state, we maintain jurisdiction over the offender in prosecuting the new offense. The sending state may seek to retake, or return, the offender after the prosecution process is completed in Orange County. The prosecution of the new criminal offense shall satisfy the probable cause hearing requirement in this instance.
- B. Offenders under supervision through the Interstate Compact, who have allegedly violated terms and conditions of probation (technical violations), wherein these conditions of probation have been explained and provided in writing to them, are entitled to a probable cause hearing prior to notification to the sending state and the return of the offender.

III. Procedures for Probable Cause Hearing:

- A. Notify the sending state as soon as possible if Probation Officer intends to recommend the sending state retake the offender.
- B. Probation Officer may arrest the offender pending a probable cause hearing and detain the offender for no more than 15 days prior to the hearing.
- C. If the offender waives the probable cause hearing, pursuant to the Interstate Compact rules, the offender must also admit the violation of probation.
- D. The offender is entitled to:
 - 1. Notice in writing of the nature and content of allegations.
 - 2. **Disclosure of non-privileged or non-confidential evidence regarding the alleged violation(s);**
 - 3. **The opportunity to be heard in person and to present witnesses and documentary evidence relevant to the alleged violation(s);**
 - 4. Confront and examine any persons who have made allegations against the probationer (unless the hearing officer determines that such confrontation would present a substantial danger or harm to such persons).
 - 5. Admit, deny, or explain the alleged violation and may submit affidavits and other evidence in support of the contentions.
 - 6. Legal representation. **(Bench Book 4.7.2)**
- E. Records of the probable cause hearing shall be made and preserved.
- F. Pursuant to ICAOS, an offender who has been detained in the receiving state, and is subject to retaking proceedings, has no right to bail.
- G. Prior to filing a petition with the Court, the Probation Officer shall inform the offender of the opportunity to waive the probable cause hearing. If the probationer signs the Waiver and Admission form, no petition is filed.
- H. If the offender cannot be contacted or located, and efforts to locate the offender have been exhausted, a warrant shall be requested through the Court.
- I. If the probationer does not waive the probable cause hearing the Probation Officer shall petition the Court for such, or schedule a probable cause hearing with the designated hearing officer. The Probation Officer shall document and cite the violations of the terms and conditions of probation for the sending and/or receiving states. If the offender is detained for the alleged violations, the Probation Officer must file the Motion for Probable Cause hearing within **10** days of the offender's detention.
- J. Upon finding that probable cause exists for finding of a violation of probation or the offender waives a probable cause hearing, the supervising officer should notify the CA Interstate Compact Administrator and obtain direction for informing the sending state.

The Probation Officer must forward the following documents to the sending state and/or the CA Interstate Compact Administrator:

1. Application for Compact Services;
2. Agreement to Return/Waiver of Extradition (signed);
3. Probation Orders (signed);
4. Signed Waiver of Probable Cause hearing and Admission or Signed Order from the Court regarding Probable Cause;
5. Documentation of the violation;
6. Recommendations regarding the disposition to be made on behalf of the probationer by the sending state; and
7. Copies of terms and conditions of probation from sending and receiving state.

IV. Elements of Probable Cause Hearing

- A. Generally held in the receiving state (or state to which offender has absconded) before being returned to the sending state.
- B. Nature of hearing may vary depending on location of offender; location of alleged violations; and circumstances of the case.
- C. Conducted expeditiously, in close proximity, to the location and time of the alleged violations based upon the demand for retaking.
- D. Conducted by a neutral or detached person or administrative body (i.e. someone other than the person alleging the offender's violation(s) and able to not pre-determine the outcome of the hearing).
- E. Has basic elements of due process and fundamental fairness not rising to a level of an adversarial hearing.
- F. Offenders may be entitled to appointment of counsel, where warranted by particular facts/circumstances of the case.
- G. NOT a Revocation hearing.

V. Critical Determinations from a Probable Cause Hearing

- A. To decide whether or not the sending state officials have proper authority to retake the offender.
- B. To determine the correct identity of the offender in custody.
- C. To determine whether or not the offender committed violations (new or technical) in the receiving state (or asylum state).

- D. If, at the conclusion of the probable cause hearing, the critical determinations are met, and the offender is not subject to further criminal proceedings in the receiving state (or asylum state), the offender may be “retaken” by sending state authorities, who are permitted to return the offender, free from interference by authority of any states that are members of the ICAOS.
- E. If it is deemed that there is probable cause to detain the offender, the offender can be held for such reasonable period after the hearing, or waiver, as is necessary to arrange for the offender’s retaking.

VI. Eligibility for Retaking

- A. Usually the decision to retake an offender rests solely with the discretion of the sending state.
- B. However, the sending state **MUST** retake an offender upon the request of the receiving state and conviction for a felony offense and/or a showing that the offender has **committed a pattern of non-compliance with conditions of supervision that could not be successfully addressed through the use of documented corrective action or graduated responses.**

VII. Retaking Process

- A. Under ICAOS, officers of the sending state are permitted to enter the receiving state or any other state to which the offender has absconded, to effectuate the return of the offender.
- B. As formal extradition proceedings are waived by the Compact, the sending state officers need only establish their authority and the identity of the offender.
- C. Once authority of the sending state’s officer(s) is established, and the due process requirement (i.e. Probable Cause hearing) met, authorities in receiving state may not prevent; interfere with; or otherwise hinder the transportation of the offender back to the sending state.
- D. A sending state shall be responsible for the cost of retaking the offender.
- E. A sending state shall retake an offender within 30 calendar days after the decision to retake has been made or upon release of the offender from incarceration in the receiving state.
- F. 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.
- G. Officers authorized by the law of a sending state may take custody of an offender from a local, state, or federal correctional facility, at the expiration of the sentence, or the offender’s release from that facility provided that:
 - 1. No detainer has been placed against the offender by the state in which the correctional facility lies; and
 - 2. No extradition proceedings have been initiated against the offender by a third-party state.

REFERENCES:

Interstate Commission for Adult Offender Supervision (ICAOS) Rules (**April 21, 2020**)

Rule 5.101 Discretionary retaking by the sending state

Rule 5.101-1 Pending felony or violent crime charges

Rule 5.101-2 Discretionary process for disposition of violation in the sending state
for a new crime conviction

Rule 5.102 Mandatory retaking for a New felony or violent crime conviction

Rule 5.103- Offender behavior requiring retaking

Rule 5.103-1 Mandatory retaking for offenders who abscond

Rule 5.103-2 Mandatory retaking for violent offender and violent crimes [Repealed]

Rule 5.104 Cost of retaking an offender

Rule 5.105 Time allowed for retaking an offender

Rule 5.106 Cost of incarceration in receiving state

Rule 5.107 Officers retaking an offender

Rule 5.108 Probable cause hearing in receiving state

Rule 5.109 Transport of offenders

Rule 5.110 Retaking offenders from local, state, or federal correctional facilities

Rule 5.111 Denial of bail or other release conditions to certain offenders

Attachments

D. Bailon

APPROVED BY:

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, California Court address:	
People of the State of California vs. Defendant:	COURT USE ONLY
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. : _____	Case Number: _____ Division _____ Courtroom _____
MOTION/PETITION TO SET INTERSTATE COMPACT PROBABLE CAUSE HEARING	

Pursuant to § _____, this Court is petitioned to set a hearing to determine if probable cause exists to believe that _____ (Defendant) has committed a violation of the terms and conditions of supervision that may lead to a revocation of probation. Defendant was granted probation in the State of _____ for a period of _____ years or _____ months on _____ (date), having been pled or been found guilty of the offense(s) of _____.

Defendant was accepted for Interstate Courtesy Supervision in this District on _____ (date).

AS GROUNDS FOR THIS PETITION, the Probation Department alleges that the Defendant is in violation of the terms and conditions of probation in that on _____ (date), s/he

WHEREFORE, the probation officer requests that this Court issue a Warrant Summons to require the Defendant's presence at a probable cause hearing. At such hearing the probation officer seeks an Order that probable cause exists to believe the Defendant is in violation of the Terms and Conditions of Probation Supervision.

Date: _____ Probation Officer: _____

The Defendant is currently detained on the allegations in this petition therefore the hearing must be held within fifteen (15) days of _____ (date of incarceration).

SUBSCRIBED under oath before me on _____ on the County of _____, State of California. _____ date

My commission expires: _____

 Notary Public

Address _____ City _____ State _____ Zip Code _____

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, California Court address:	
People of the State of California vs. Defendant:	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. : _____	Case Number: _____ Division _____ Courtroom _____
ORDER: PROBABLE CAUSE INTERSTATE COMPACT	

This matter was before the Court on a hearing pursuant to § _____, to determine if probable cause exists to believe the defendant has violated the Terms and Conditions of Supervision that may lead to a probation revocation.

The Court hereby finds:

- Defendant waives probable cause hearing and admits the violation(s) of the Terms and Conditions of Probation.
- Probable cause to believe there was a violation of probation was established.
- Probable cause to believe there was a violation of probation was not established.

Comments: _____

It is further ordered that Defendant be detained for _____ days, not to exceed thirty days, as the Court determines that this is a reasonable period pursuant to § _____ as may be necessary to arrange for the sending state to retake the Defendant.

DATE: _____ Judge _____