INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Bench Book for Judges

& Court Personnel

Version 7.0

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- Advisory Opinion 03-2009 (August 31, 2009)
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- Advisory Opinion 01-2010 (January 25, 2010)
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MISSION & ACKNOWLEGEMENTS

Mission Statement

The Interstate Commission for Juveniles, the governing body of the Interstate Compact for Juveniles, through means of joint and cooperative action among the compacting states, preserves child welfare and promotes public safety interests of citizens, including victims of juvenile offenders, by providing enhanced accountability, enforcement, visibility, and communication in the return of juveniles who have left their state of residence without permission and in the cooperative supervision of delinquent juveniles who travel or relocate across state lines.

Given that cooperative action is at the heart of ICJ's mission, we deeply appreciate all who collaborated on this and previous version of the ICJ Bench Book for Judge and Court Personnel. We are extremely fortunate that the nation's leading legal experts on interstate compact law dedicated their considerable knowledge and skills to this work. Many thanks to attorneys Michael L. Buenger, Richard L. (Rick) Masters, and Jeffrey Litwak. Thanks also to Nathan Hardymon, University of Kentucky, College of Law, Class of 2018, for his assistance.

We would also like to acknowledge the special contributions of ICJ Commissioners and Officers, especially 2018 Chair Anne Connor (ID) and 2018 Vice-Chair Natalie Dalton (VA). Finally, we greatly appreciate the efforts of former and current staff members: Ashley Lippert, Morgan Wolford, Jennifer Adkins, Emma Goode, Monica Gary, and MaryLee Underwood.

LATEST DEVELOPMENTS IN THE ICJ

2018

Since the last update of the ICJ *Bench Book for Judges and Court Personnel* in 2016, the body of law regarding the Interstate Compact for Juveniles has continued to evolve. This update reflects amendments to 18 rules and adoption of one new rule. Additionally, four new advisory opinions have been issued, 13 have been revised, and six have archived as superseded.

Rule changes include:

- Amendments to the following definitions in Rule 1-101:
  - "Deferred Adjudication" – amended to better define the term as it applies to ICJ.
  - "Runaways" – amended to clarify that runaways can include non-adjudicated and non-status offender juveniles.
- Rescindment of the following definition in Rule 1-101:
  - Non-Adjudicated Juveniles
- Amendment to Rule 2-103 "Adoption of Rules and Amendments" for clarity and consistency.
- Amendment to Rule 2-104 "Communication Requirements between States" for clarity and consistency.
- Amendment to Rule 2-105 "Victim Notification" for clarity and consistency.
- Adoption of new Rule 2-106 "Request for Juvenile Information"
- Amendment to Rule 4-102 "Sending and Receiving Referrals" to clarify the expectation that supervision has been approved prior to travel and to clarify what constitutes the completion of the Form IA/VI by adding that the juvenile's signature may be left blank when the juvenile has already relocated.
- Amendment to Rule 4-104 "Authority to Accept/Deny Supervision" for clarity and consistency regarding the notification and return within five business days and to clarify that the time frame refers to the return not the arranging of travel.
- Amendment to Rule 5-103 "Reporting Juvenile Non-Compliance, Failed Placement and Retaking" to require sending states to provide a response to violation reports only when revocation or discharge is recommended, and to clarify time frames for returning a juvenile. In addition, information regarding the "authority to transport juveniles through any and all states party to this Compact without interference" was relocated to Section 700 "Additional Return Requirements for Sections 500 and 600," Rule 7-106(7).
- Amendment to Rule 5-104 "Closure of Cases" to clarify that the receiving state may close a supervision case when a juvenile is admitted for a long term stay in a residential facility and how to handle re-opening the case upon release.
- Amendment to Rule 6-103 "Non-Voluntary Return of Non-Delinquent Runaways and/or Accused Status Offenders" for clarity. In addition, information regarding the "authority to transport juveniles through any and all states party to this Compact without interference" was relocated to Section 700 "Additional Return Requirements for Sections 500 and 600," Rule 7-106(7).

- Amendment to Rule 6-103A "Non-Voluntary Return of an Escapee, Absconder or Accused Delinquent" to clarify the time frame for returning a juvenile. In addition, information regarding the "authority to transport juveniles through any and all states party to this Compact without interference" was relocated to Section 700 "Additional Return Requirements for Sections 500 and 600," Rule 7-106(7).
- Amendment to Rule 7-101 "Financial Responsibility" to clarify the time frame for returning a juvenile and the holding state's financial obligations.
- Amendment to Rule 7-103 "Charges Pending in Holding/Receiving State" to specify that juvenile shall only be return after pending charges are resolved unless both states' courts and ICJ Offices consent to the return.
- Amendment to Rule 7-106 "Transportation" to add information removed from Rules 5-103, 6-103, and 6-103A regarding of the authority to transport juveniles through any and all states party to this Compact without interference.
- Amendment to Rule 8-101 "Travel Permits" to clarify the criteria for juveniles who are required to have a travel permit.

The Commission issued four new advisory opinions concerning the Compact and its rules.

- Advisory Opinion 01-2016 regarding "Pre-adjudicated Home Evaluation Requests"
- Advisory Opinion 01-2017 regarding "Demanding/Sending State's authority to seek return of a juvenile in cases where charges are pending in the Receiving/Holding State under ICJ Rule 7-103" (However, this Advisory Opinion has since been archived as superseded. Thus, it is not published herein.)
- Advisory Opinion 02-2017 regarding "Out-of-State Juvenile Sentenced to Incarceration"
- Advisory Opinion 01-2018 addressing the questions "Is a sending state required to transfer supervision of a juvenile adjudicated there for an offense but who resides with a parent in the receiving state in a case where the parent may be homeless? If so, can enforcement action be taken if the sending state refuses to implement the transfer under the ICJ?"

All previously issued advisory opinions were reviewed for consistency with the current rules.

The following 13 advisory onions were revised.

- Advisory Opinion 01-2010 regarding "Receiving state's ability to sanction juveniles under ICJ Rule 5-101(1)"
- Advisory Opinion 05-2010 regarding "Clarification for juveniles who are undocumented immigrants"
- Advisory Opinion 03-2011 regarding "Pleas and abeyance cases for non-adjudicated juveniles"
- Advisory Opinion 04-2011 regarding "Non-adjudicated juveniles held in secure detention for a failed supervision"
- Advisory Opinion 01-2012 regarding "Whether the law enforcement exemptions from the provisions of HIPAA would apply to transfers and returns of juveniles involving non-member states"

- Advisory Opinion 02-2012 regarding "Detention and supervision fees associated with new charges"
- Advisory Opinion 03-2012 regarding "Whether the holding state's laws regarding the age of majority apply when detaining and returning a person serving a juvenile probation or parole sentence that absconds or flees to avoid prosecution and has the status of an adult in the home/demanding state"
- Advisory Opinion 05-2012 regarding "Whether adjudicated juvenile delinquents who are referred to residential treatment program in another state, but do not qualify for transfer under the ICPC, may be transferred under the ICJ"
- Advisory Opinion 03-2014 regarding "Provisions for cooperative detention within ICJ"
- Advisory Opinion 04-2014 regarding "ICJ authority in cases where approval of supervision may violate court orders"
- Advisory Opinion 01-2015 regarding "ICJ authority to conduct records checks for another state for Juveniles not subject to ICJ"
- Advisory Opinion 02-2015 regarding "Signatures on the IA/VI Form"
- Advisory Opinion 01-2016 regarding "Pre-adjudicated Home Evaluation Requests"

Six advisory onions were archived because they were superseded.

- Advisory Opinion 02-2010 regarding "Which rules apply according to effective date"
- Advisory Opinion 03-2010 regarding "Rule 5-101: The sending state's ability to 'override' a denial; who has decision making authority to 'override' a denial; and, Adam Walsh Act implications"
- Advisory Opinion 02-2011 regarding "Determining which juveniles the new ICJ applies"
- Advisory Opinion 04-2012 regarding "Issuing a travel permit for a juvenile subject to a delinquency petition but who is not yet adjudicated"
- Advisory Opinion 02-2014 regarding "Whether or not the term 'sanctions' used in Rule 5-101(3) includes detention time"
- Advisory Opinion 02-2017 regarding "Demanding/Sending State's Authority to seek return of a juvenile in cases where charges are pending in the Receiving/Holding State under ICJ Rule 7-103"

INTRODUCTION
INTERSTATE COMPACTS -- A HISTORICAL PERSPECTIVE

Interstate compacts are not new legal instruments; they are rooted in the nation's colonial past where agreements similar to modern compacts were utilized to resolve inter-colonial disputes, particularly boundary disputes. The colonies and crown employed a process by which disputes would be negotiated and submitted to the crown through the Privy Council for final resolution. This created a long tradition of resolving state disputes through negotiation followed by submission of the proposed resolution to a central authority for its concurrence. The modern "compact process" was formalized in the Articles of Confederation, Article VI, which provided: "No two or more states shall enter into any treaty, confederation or alliance whatever without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue."

The Founders were so concerned with managing interstate relations, and the creation of powerful political and regional allegiances, that they barred states from entering into "any treaty, confederation or alliance whatever" without the approval of Congress. The Founders also constructed an elaborate scheme for resolving interstate disputes. Under the Articles of Confederation, Article IX, Congress was to "be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever[.]"

The concern over unregulated interstate cooperation continued during the drafting of the U.S. Constitution and resulted in the adoption of the "compact clause" found in Article I, sect. 10, cl. 3. This clause provides that "No state shall, without the consent of Congress…may enter into any agreement or compact with another state, or with a foreign power[.]" This wording is important because the Constitution does not so much authorize states to enter into compacts *as it bars* states from entering into compacts without congressional consent. Unlike the Articles of Confederation, however, in which interstate disputes were resolved by appeal to Congress, the Constitution vests ultimate resolution of interstate disputes in the Supreme Court either under its original jurisdiction or through the appellate process. For a thorough discussion on the history of interstate compacts from their origins to the present, *see generally*, Michael L. Buenger & Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 ROGER WILLIAMS U. L. REV. 71 (2003); Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution–A Study in Interstate Adjustments*, 34 YALE L.J. 685 (1925); MICHAEL L. BUENGER, JEFFREY B. LITWAK; RICHARD (RICK) L. MASTERS; & MICHAEL H. MCCABE, THE EVOLVING USE LAW AND USE OF INTERSTATE COMPACTS: A PRACTITIONER'S GUIDE (2016).

CHAPTER 1
GENERAL LAW OF INTERSTATE COMPACTS: UNDERSTANDING & IMPLEMENTING INTERSTATE COMPACTS

Overview

It is important for judges and individuals working with juvenile offenders under the Revised ICJ to have a sound understanding of the law of interstate compacts. The legal environment for compacts involves an amalgamation of compact texts and case law from federal and state courts throughout the country. Because there are relatively few court decisions establishing legal principles in any particular court, courts frequently consider other federal and state court decisions for their interpretation and application of a compact, and the texts of other compacts and case law involving other compacts for generally applicable principles of compact law. Section 1.9 at the end of this chapter contains suggested additional reading on interstate compacts and interstate compact law.

As noted in the introduction and explained in this chapter, interstate compacts are not mere agreements between the states subject to parochial interpretations or selective application. First and foremost, they are statutory contracts that bind the member states, their agencies and officials, and their citizens to an agreed set of principles and understandings. They are not a series of recommended procedures or discretionary proposals that may be disregarded for convenience, and they are not uniform, model, or suggested state laws, or administrative agreements between agencies or executive officials. Understanding the unique standing of interstate compacts in the American legal system is important to applying their terms and conditions correctly and avoiding costly mistakes that may land a state in legal jeopardy *vis-à-vis* fulfilling its contractual obligations.

1.1 Who Must Comply with an Interstate Compact?

As explained in section 1.2 below, interstate compacts are binding on the signatory states. This means that once a state legislature adopts a compact, it binds all agencies, state officials and citizens to the terms of that compact. Since the very first compact case, the U.S. Supreme Court has consistently held that a compact is an enforceable agreement governing the subject matter of the compact. *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 89 (1823); *see also Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 106 (1938); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30-32 (1951); *Alabama v. North Carolina*, 560 U.S. 330, 334 (2010) (applying contract law principles to compact interpretation).

In the case of the Revised ICJ, the states have agreed to a binding compact that governs the movement of delinquent and status offense juveniles.[1] The Revised ICJ is not discretionary; it binds the member states, state officials (including judges, court personnel, and probation and parole authorities) and citizens to the compact requirements determining the circumstances,

[1] As used in this Bench Book, the term "status offender" and "status offense juveniles" refers to that class of juvenile who has committed an offense that if committed by an adult would not constitute a crime. They are specific offenses that apply to individuals on account of their age and their status as a minor.

procedures, and supervision applicable to interstate transfers. *See, e.g., In re Crockett*, 71 Cal. Rptr. 3d 632, 639 (Cal. Ct. App. 2008) (stating, "The terms of the [Revised] ICJ do not confer any special authority on a California court to require sex offender registration in California based upon the order of a Texas state juvenile court. To the contrary, it actually prohibits California authorities from applying different supervision standards on petitioner than it would on its own juvenile probationers."); *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 111 (3d Cir. 2008) (stating, "Once New Jersey granted permission for Doe to return to Pennsylvania, Pennsylvania was required to assume supervision over Doe and to treat him as in-state offenders. The Commission has not done so and in treating Doe and other out-of-state parolees differently, it violates its own agreement failing to do precisely what it promised . . . ."). The failure to comply with the compact can have significant consequences for a non-complying state, including being enjoined from taking actions in contravention of the compact. *See, e.g., Interstate Comm'n for Adult Offender Supervision v. Tenn. Bd. of Prob. & Parole*, No. 04-526-KSF (E.D. Ky. June 13, 2005) (order granting permanent injunction) ("[T]he defendants, their respective officers, agents, representatives, employees and successors, and all other persons in active concert and participation with them, are hereby permanently restrained and enjoined from denying interstate transfers . . . ."). In short, the Revised ICJ and its rules do not create a recommended process but rather create a binding process that must be followed in applicable cases.

1.2 Nature of Interstate Compacts

Historically, beginning with the Articles of Confederation, states used compacts to settle boundary disputes. In 1918, Oregon and Washington enacted the first compact to jointly manage and regulate an interstate resource (fishing on the Columbia River), and in 1921, New York and New Jersey enacted the first compact that created an interstate commission (now known as the Port Authority of New York and New Jersey). Today, there are more than 200 interstate compacts that directly regulate or recommend policy for a range of matters as diverse as water allocation and use, land use, natural resource management, environmental protection, transportation systems, regional economic development, professional licensing, crime control, and child welfare. The U.S. Supreme Court has long encouraged states to resolve their disputes through compacts rather than litigation. *E.g., Colorado v. Kansas*, 320 U.S. 383, 392 (1943); *Vermont v. New York*, 417 U.S. 270, 277–78 (1974). A seminal law review article observed, "The combined legislative powers of Congress and of the states permit a wide range of permutations and combinations of power necessary for governmental action." Frankfurter & Landis, *supra*, at 688.

Like the 1955 ICJ, the Revised ICJ is part of a long history and recently accelerating use of interstate compacts that address multilateral state issues beyond state boundaries.

1.2.1 Interstate Compacts are Formal Agreements Between States

Understanding the legal nature of an interstate compact begins with this basic point: interstate compacts are *formal agreements between states* that are both (1) statutory law, and (2) contracts between states. They are enacted by state legislatures adopting reciprocal laws that substantively mirror one another, which gives a compact its contractual nature. There is (1) an offer (the presentation of a reciprocal law to two or more state legislatures), (2) acceptance (the

actual enactment of the law by two or more state legislatures), and (3) consideration (the settlement of a dispute or creation of a joint regulatory scheme). *See* BUENGER, ET AL., *supra*, at 42–48. The exception to this is where states retain authority to unilaterally alter a reciprocal agreement, the agreement will generally not rise to the level of a compact enforceable as a contract between the states. *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985).

An interstate compact and federal statutory and regulatory law are the only mechanisms to bindingly resolve interstate policy issues. And of those, an interstate compact is the only formal mechanisms by which individual states can reach beyond their borders and collectively regulate the conduct of multiple states and the citizens of those states. Compacts are one of the only exceptions to the general rule that a sitting state legislature cannot irrevocably bind future state legislatures. BUENGER, ET AL., *supra*, at 48. Compacts are aptly described as instruments that regulate matters that are sub-federal, supra-state in nature. BUENGER, ET AL., *supra*, at xxi.

The binding nature of interstate compacts comes from their contractual character on the basis of which there is judicial recognition that compacts must supersede conflicting state laws in order to be effective under applicable constitutional law. These subjects are discussed below.

1.2.2 Compacts Are Not Uniform Laws Because of Their Contractual Nature

An interstate compact is not a "uniform law" as that term is typically construed and applied. Unlike interstate compacts, uniform laws are not contracts, a state adopting an interstate compact cannot pick and choose which provisions of an interstate compact to adopt, and a state cannot adapt the provisions of an interstate compact to address solely intra-state concerns. Also, unlike uniform laws, once adopted, a state cannot unilaterally amend or repeal an interstate compact unless the language of the compact authorizes such an act, and even then, states may only amend or repeal the compact in accordance with the terms of the compact. *See, e.g., West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30-32 (1951). The terms and conditions of the states' agreement define the obligations of each member state and the effect a compact may have on individual state law. For example, in *Nebraska v. Central Interstate Low-Level Radioactive Waste Commission*, the court held that Nebraska did not have the unilateral right to exercise a veto over actions of an interstate commission created by a compact. 207 F.3d 1021, 1026 (8th Cir. 2000). Similarly, in *C.T. Hellmuth & Assocs., Inc. v. Wash. Metro. Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976), the court held that, "Further, when enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories."

Where states retain authority to unilaterally alter a reciprocal agreement, the agreement will generally not rise to the level of a compact enforceable as a contract between the states. *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985). No state can act in conflict with the terms of the compact as the compact defines the members' multilateral obligations. *See, e.g.*, *U.S. Trust Co. v. New Jersey*, 431 U.S. 1 (1977) (contract clause applied to state's obligation to bondholders in connection with interstate compact); *Wroblewski v. Commonwealth*, 809 A.2d 247 (Pa. 2002) (terms of an interstate compact contain the substantive

obligations of the parties as is the case with all contracts; Contracts Clause of the Federal Constitution protects compacts from impairment by the states; although a state cannot be bound by a compact to which it has not consented, an interstate compact supersedes prior statutes of signatory states and takes precedence over subsequent statutes of signatory states). Compacts stand as probably the only exception to the general rule that a sitting state legislature cannot irrevocably bind future state legislatures. *See* MICHAEL L. BUENGER, JEFFREY B. LITWAK, MICHAEL H. MCCABE & RICHARD L. MASTERS, The Evolving Law and Use of Interstate Compacts 35-43 (2016).

Therefore, compacts have standing as both binding state law *and* as a contract between the member states. A state law that contradicts or conflicts with a compact is unenforceable, absent some reserve of power to the member states. *See McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991) ("Having entered into a contract, a participant state may not unilaterally change its terms. A compact also takes precedence over statutory law in member states."). The terms of the compact take precedence over state law even to the extent that a compact can trump a provision of a state's constitution. *See, e.g., Wash. Metro. Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312, 1319 (4th Cir. 1983) (explaining that the WMATA's "quick take" condemnation powers under the compact are superior to the Maryland Constitution's prohibition on "quick take" condemnations). By entering a compact, the member states contractually agree that the terms and conditions of the compact supersede state considerations to the extent authorized by the compact and relative to any conflicting laws or principles. In effect, compacts create collective governing tools to address multilateral issues. As such, they also govern multilaterally subject to the collective will of the member states but not under the control of any single member state.

Even the presence of an unusual application of an interstate compact does not make it invalid; the combined legislative powers of Congress and of the several states permit a wide range of permutations and combinations for governmental action. *See Seattle Master Builders v. Nw. Power Planning Council*, 786 F.2d 1359 (9th Cir. 1986). The subject matter of an interstate compact is not, therefore, limited by any specific constitutional restrictions; rather as with any "contract," the subject matter is largely left to the discretion of the parties, in this case the member states and Congress in the exercise of its consent authority. *See Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 110 (3rd Cir. 2008) ("Here the Interstate Compact reflects the collective wisdom not only of the Pennsylvania General Assembly and the New Jersey Legislature, but also that of the other signatory states and the United States Congress as to how best to deal with the interstate movements of adult offenders.") *Id.*

1.2.3 Compacts Are Not Administrative Agreements

Compacts differ from administrative agreements in two principal ways. First, states, as sovereigns, have inherent authority to enact compacts. *See Rhode Island* v. *Massachusetts*, 37 U.S. (12 Pet.) 657, 725 (1838). Thus, states do not need any express authority to enact a compact. In contrast, states must authorize their agencies and executive officials to enact administrative agreements both intrastate and with entities in other states. All states have such express authority in their constitutions, in generally applicable statutes, or in statutes that expressly authorize administrative agreements for specific purposes. These authorities

commonly refer to administrative agreements as interlocal, intergovernmental, intermunicipal, or interagency agreements.

The second way that compacts differ from administrative agreements is that state legislatures enact compacts, whereas the executive branch of state government enacts administrative agreements. However, the executive branch may enact compacts if the compact authorizes executive enactment; for example, article VII(b)(1) of the Nonresident Violator Compact specifically authorizes, "Entry into the compact shall be made by a Resolution of Ratification executed by the authorized officials of the applying jurisdiction . . . ." Courts do not enforce compacts that states have improperly enacted. *E.g., Sullivan v. Pa. Dep't of Transp.*, 708 A.2d 481 (Pa. 1998) (Driver License Compact called for legislature to enact reciprocal statutes; power to enact laws cannot be delegated to executive agency and thus the compact was not "enacted" in Pennsylvania under an administrative agreement executed by state Department of Transportation even though authorized by statute to do so).

Administrative agreements enacted by the executive branches of state government may also bind the executive entities enacting them, but do not have the same force and effect to bind a state legislature as statutorily enacted compacts. *See, e.g., Gen. Expressways, Inc. v. Iowa Reciprocity Bd.*, 163 N.W.2d 413, 419 (Iowa 1968) ("We conclude the uniform compact herein was more than a mere administrative agreement and did constitute a valid and binding contract of the State of Iowa.").

1.3 Delegation of State Authority to an Interstate Commission

One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commissions through an interstate compact**.** *See, Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994); *Dyer*, 341 U.S. at 30–31 (1951). Obligations imposed by an interstate commission pursuant to an interstate compact are enforceable on the member states. An interstate compact may also provide that its interstate commission is empowered to determine when a state has breached its obligations and sanctions on a non-complying state. *See, e.g., Alabama v. North Carolina*, 560 U.S. at 342–44 (2010) (interstate commission had such power but was not the sole arbiter of disputes regarding a state's compliance with the compact).

1.4 Congressional Consent

The Courts have not specifically determined whether the revised ICJ has received congressional consent. Juvenile matters have traditionally rested within the authority of the states and juvenile delinquency is not technically a criminal matter. *See* discussion *infra* Section 2.6. Nevertheless, the states have long understood the important role in the interstate transfer of supervision of both adults and juveniles played by the federal Crime Control Act of 1934, which provides, "The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such

agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts." 4 U.S.C. § 112(a) (2012).

The control of crime through the lawful transfer of supervision of a criminal offender on probation or parole, as well as the return of such offenders when they abscond, was a central purpose of the Interstate Compact on Probation and Parole ("ICPP") and its successor compact the Interstate Compact for Adult Offender Supervision "ICAOS"). Because the purpose of the ICPP and ICAOS are to control and prevent crimes, not only through the transfer of supervision of offenders convicted of crimes, but also to return them to a state from which they have absconded, the Extradition clause of the U.S. Constitution is implicated in that both compacts are alternatives to extradition under the Constitution. *See* U.S. CONST. art. IV, § 2, cl. 2. Therefore, the invocation of the consent of Congress, granted by means of the Crime Control Act, was required. This was also the assumption of the District of Columbia Court of Appeals in the case of *In Re O.M.*, in which the Court considered the underlying purposes of the predecessor compact to the current ICJ and determined that "the Compact was created and adopted by the states precisely because the Extradition Clause of the Constitution did not operate [regarding supervision transfers] with respect to juveniles." 565 A.2d 573, 582-583 (D.C. 1989). This rationale is the same as that cited in support of the determination for Congressional Consent granted to the Interstate Compact for Adult Offenders. *See Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 99, 103 (3rd Cir. 2008); *M.F. v. N.Y. Exec. Dept. Div. of Parole*, 640 F.3d 491, 493 (2nd Cir. 2011); *Carchman v. Nash*, 473 U.S. 716, 719 (1985).

1.4.1 When Consent is Required

The Compact Clause of the U.S. Constitution states, "No State shall, without the consent of Congress, . . . enter into any agreement or compact with another State . . . ." U.S. CONST. art. I, § 10, cl. 3. Although a strict reading of the Compact Clause appears to require congressional consent for every compact, the Supreme Court has determined that "any agreement or compact" does not mean every agreement or compact. The Compact Clause is triggered only by those agreements that would alter the balance of political power between the states and federal government, intrude on a power reserved to Congress, or alter the balance of political power between the compacting states and non-compacting states. *Virginia v. Tennessee*, 148 U.S. 503, 518 (1893) (agreements "which may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States . . . ."); *U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 495–96 (1978) (non-compact states placed at competitive disadvantage by the Multistate Tax Compact); *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 176 (1985) (statute in question neither enhances the political power of the New England states at the expense of other states or impacts the federal structure of government).

Where an interstate agreement accomplishes nothing more than what the states are otherwise empowered to do unilaterally, the compact does not intrude on federal interests requiring congressional consent. *See U.S. Steel Corp.*, 434 U.S. at 472–78. Even where congressional consent is not required, the compact continues to be a contract between the states.

Congress does not pass upon a compact in the same manner as a court decides a question of law. Congressional consent is an act of political judgment about the compact's potential impact on national interests, not a legal judgment as to the correctness of the form and substance of the agreement. *See Detroit Int'l Bridge Co. v. Gov't of Canada*, No. 10-476 (RMC), 2016 U.S. Dist. LEXIS 80369, at *34 (D.D.C. June 21, 2016).

Consent can be implied when actions by the states and federal government indicate that Congress has granted its consent even in the absence of a specific legislative act. *See Virginia v. Tennessee*, 148 U.S. 503, 524-25 (1893). As noted in Section 1.4 above, the states believed they were acting with congressional consent pursuant to the Crime Control Act, 4 U.S.C.§ 112 (1965), and have specifically premised the enactment of the revised ICJ on the recognition that the federal act authorized such compacts and incorporated it by reference in the compact statute enacted by all 50 states, Washington D.C. and the U.S. Virgin Islands. INTERSTATE COMPACT FOR JUVENILES, art. I (2008)

Further, the process of drafting the Revised ICJ and assisting states in the replacing the prior compact with the Revised ICJ was supported and funded largely by a governmental grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP). *See* Press Release, Council of State Gov'ts, States Enact New Juvenile Compact (Mar. 24, 2003) (on file with author) ("The Council of State Governments and the federal Office of Juvenile Justice and Delinquency Prevention have led the effort to draft the new compact which will more effectively facilitate state autonomy and national cooperation in the supervision transfer process of juveniles."). In addition, the OJJDP has continued to publicize and support the work of the Revised ICJ. Congress is not only aware of the revised compact but has solicited input from the ICJ administrators concerning the reauthorization of the Juvenile Justice and Delinquency Prevention Act and the inclusion of specific reference to the ICJ exemption concerning the detention of runaways on several occasions. *See* 42 U.S.C. 5633(a)(11)(A)(iii). Moreover, during the last ten years in which the Revised ICJ has been in effect, no action has been taken by Congress which is inconsistent with the presumption of congressional consent as invoked in the compact statutes enacted by every state in the union.

Thus, it seems clear that congressional consent to the Revised ICJ can be readily implied, even if one were to argue that the Crime Control Act does not expressly grant consent to it. It is also important to note that the presumption of congressional consent has never been legally challenged or judicially determined to be inapplicable. As stated in Section 1.4, *supra*, the control of crime through the orderly transfer of supervision, as an alternative to extradition of both adult offenders on parole and probation, as well as their juvenile 'counterparts,' is the rationale articulated by the Court in *In Re O.M.*, 565 A.2d 573, 582-583 (1989), and is the same as that cited in support of the determination for congressional consent granted to the Interstate Compact for Adult Offenders. *See Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 99, 103 (3rd Cir. 2008); *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491, 493 (2nd Cir. 2011); *Carchman v. Nash*, 473 U.S. 716, 719 (1985).

Congress may attach conditions to its consent. Conditions can be proscriptive involving the duration of the agreement, compulsory in the sense of requiring the member states to act in a certain manner before the compact is activated, or substantive in actually changing the purposes

or procedures mandated by a compact. The only limitation is that the conditions must be constitutional. *New York v. United States*, 505 U.S. 144, 167 (1992). States that adopt an interstate compact to which Congress has attached conditions are deemed to have accepted those conditions as a part of the compact. *Petty v. Tenn.-Mo. Bridge Comm'n*, 359 U.S. 275, 281-82 (1959) (mandated provisions regarding suability of bridge commission were binding on states because Congress was within its authority to impose conditions as part of its consent and the states accepted those conditions by enacting the compact).

States' amendment of a compact with consent requires Congress' consent to the amendment. *See, e.g.*, Joint resolution granting consent to amendments to the compact between Missouri and Illinois, Pub. L. 112-71, 125 Stat. 775 (2011); *Int'l Union of Operating Eng'rs, Local 542 v. Del. River Joint Toll Bridge Comm'n*, 311 F.3d 273, 280 n.7 (3rd Cir. 2002) (suggesting that where a compact contains no provision for amendment, congressional consent to any modification would be necessary).

PRACTICE NOTE: Article X., C of the Revised ICJ authorizes the Interstate Commission for Juveniles to proposed amendments to the Revised ICJ for the states to adopt, and all compacting states must enact the amendment before it becomes effective. Congressional consent to an amendment would not be necessary unless the amendment conflicts with a condition of Congress's consent under the Crime Control Act or any actions that support Congress's implied consent.

1.4.2 Withdrawal and Modification of Congressional Consent

Once Congress grants its consent to a compact, the general view is that it cannot withdraw its consent. Although the matter has not been resolved by the U.S. Supreme Court, two federal circuit courts of appeal have held that congressional consent, once given, is not subject to alteration. *Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962) (stating, "such a holding would stir up an air of uncertainty in those areas of our national life presently affected by the existence of these compacts. No doubt the suspicion of even potential impermanency would be damaging to the very concept of interstate compacts.); *see also Mineo v. Port Auth. of N.Y & N.J.*, 779 F.2d 939 (3d Cir. 1985) (following *Tobin*).

Notwithstanding *Tobin* and *Mineo*, Congress has specifically reserved the right to alter, amend, or repeal its consent as condition of approval in several compacts. *See, e.g.*, Congress's consent to the Tahoe Regional Planning Compact, Pub. L. No. 96-551 § 7, 94 Stat. 3233, 3253 (1980). In another example, Congress's consent to low-level radioactive waste disposal compacts specifically provides that, "Each compact shall provide that every 5 years after the compact has taken effect that Congress may by law withdraw its consent." 42 U.S.C. § 2021d(d) (2012). These express reservations provide prior notice to the states, so Congress's withdrawal of consent may not raise the D.C. Circuit's concerns in *Tobin*.

Notwithstanding the courts' concerns in *Tobin* and *Mineo*, Congress may legislate within the subject matter of a compact to which it has previously granted consent, which could have the effect of changing the landscape in which a compact operates or making a compact obsolete.

BUENGER, ET AL., *supra*, at 89; *Arizona v. California*, 373 U.S. 546, 565 (1963) (Congress within its authority to create a comprehensive scheme for managing the Colorado River, notwithstanding its consent to the Colorado River Compact). There is one exception to this general rule. The territorial integrity of the states is guaranteed by Article IV of the Constitution; thus, once Congress consents to a state boundary compact, it may not subsequently adopt legislation undoing the states' agreement.

If Congress modifies a condition of its consent, the states would need to enact that modification into their compact. BUENGER, ET AL., *supra*, at 89. There is no case law on this issue, but a compact requiring consent cannot be valid if it conflicts with Congress's conditions of consent.

1.4.3 Implications of Congressional Consent

Congressional consent can significantly change the nature of an interstate compact. "[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause." *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Although most clearly articulated in *Cuyler v. Adams*, the rule that congressional consent transforms the states' agreement into federal law has been recognized for some time. *See id*. at 438 n.7.

As federal law, disputes involving the application or interpretation of an interstate compact with congressional consent may be brought in federal court under 28 U.S.C. § 1331 (federal question jurisdiction), except where a compact specifically authorizes suit only in state court. Federal court jurisdiction is not exclusive; under the Supremacy Clause of the U.S. Constitution, state courts have the same obligation to give force and effect to the provisions of a congressionally approved compact as do the federal courts. The U.S. Supreme Court retains the final word on the interpretation and application of congressionally approved compacts no matter whether the case arises in federal or state court. *Del. River Joint Toll Bridge Comm'n v. Colburn*, 310 U.S. 419, 427 (1940) ("[T]he construction of such a [bi-state] compact sanctioned by Congress by virtue of Article I, § 10, Clause 3 of the Constitution, involves a federal 'title, right, privilege or immunity,' which when 'specially set up and claimed' in a state court may be reviewed here on certiorari under § 237(b) of the Judicial Code.").

Because the ICJ regulates the supervision of juveniles on probation and parole pursuant to state adjudication of delinquency or return of absconders and runaways who are primarily under the jurisdiction of state courts, most of the case law in this regard is state rather than federal. This creates the above referenced obligation of state courts to give force and effect to ICJ statutory provisions and rules as a congressionally approved compact under the Supremacy Clause. *See* U.S. CONST. art. VI, cl. 2.

Courts apply the Supremacy Clause in situations where there is a conflict between an interstate compact with consent and state law or state constitutions. *See, e.g., Hinderlider v. La Plata River & Cherry Ditch Co.*, 304 U.S. 92, 106 (1938) (holding that states may, with congressional consent, enact compacts even if those compacts would conflict with rights granted

under a state constitution); *Wash. Metro. Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312, 1321-22 (4th Cir. 1983) (Maryland may confer on an interstate agency federal quick-take condemnation powers not available to state agencies under Maryland's constitution); *Jacobson v. Tahoe Reg'l Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977) (holding that "causes of action based on state constitutional provisions must fail because the Compact, as federal law, preempts state law."); *Frontier Ditch Co. v. Se. Colo. Water Cons. Dist.*, 761 P.2d 1117, 1124 (Colo. 1998) ("Thus, to the extent that there might be some arguable conflict between [the compact's] Article VI B's grant of exclusive jurisdiction to Kansas and the Colorado water court's jurisdiction [granted in that state's constitution], Article VI B is the supreme law of the land and governs the rights of the parties in this case.").

PRACTICE NOTE: Article XIII of the Revised ICJ specifies "All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict." This provision limits the application of the Supremacy Clause only to conflicts between the Revised ICJ and state legislation, regulations, guidance documents, etc. which is discussed below in section 1.6.

Courts also construe compacts with consent under federal law and using federal law methods for interpreting the compact and review of interstate commission interpretation and application of the compact. *See, e.g., Carchman v. Nash*, 473 U.S. 716, 719 (1985); *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 507 F.2d 517, 519 (9th Cir. 1974) ("[A] congressionally sanctioned interstate compact within the Compact Clause is a federal law subject to federal construction"); *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 213 P.3d 1164, 1170–74, 1189 (Or. 2009) (applying the federal *Chevron* method for reviewing the interstate commission's interpretation of federal law granting consent to the compact, and the federal *Auer* method for reviewing the interstate commission's interpretation of its own administrative rules).

Consent can also make federal remedies available for violation of a compact. For example, the Interstate Agreement on Detainers (to which the United States is also a signatory) is considered a law of the United States whose violation is grounds for habeas corpus relief under 28 U.S.C. § 2254. *See, e.g., Bush v. Muncy*, 659 F.2d 402, 407 (4th Cir. 1981), *cert. denied*, 455 U.S. 910 (1982).

Finally, unrelated to the federal law character of a compact with consent, Congress can use the consent process to substantively alter the application of federal law in compact situations. *See, e.g., McKenna v. Wash. Metro. Area Transit Auth.*, 829 F.2d 186, 188–89 (D.C. Cir. 1987) (Congress's consent to Title III of the Washington Metropolitan Area Transit Regulation Compact effectively altered the application of the Federal Employers' Liability Act to the Washington Metropolitan Area Transit Authority and exempted it from liability under that act).

1.5 Interpretation of Interstate Compacts

Because compacts are statutes and contracts, courts interpret interstate compacts in the same manner as interpreting ordinary statutes, and by applying contract law principles.

PRACTICE NOTE: No court has explained when to apply statutory construction principles versus contract law principles when interpreting an interstate compact.

When determining whether a state or compact agency applied the compact in a permissible manner, courts will generally apply a statutory construction approach. *See, e.g.*, *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 213 P.3d 1164, 1170–74 (Or. 2009) As noted in section 1.4.2 *supra*, for compacts with consent, courts will apply federal law, including federal decisional law unless the consent statute or compact specifically makes state statutory, regulatory, or decisional law applicable. For compacts that do not have consent, courts apply state law.

When interpreting a compact to determine whether a party state has breached the compact, courts typically apply principles governing interpretation of contracts. Where there is an ambiguity, courts apply contract interpretation principles such as negotiating history, *Oklahoma v. New Mexico*, 501 U.S. 221, 235 n.5 (1991); course of performance, *Alabama v. North Carolina*, 560 U.S. 330, 346 (2010); and usage of trade, *id*. at 341–42 (considering compacts that received contemporaneous consent); *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 633 (2013) (considering compacts of the same subject matter, but not receiving consent contemporaneously). In applying contract law principles, courts recognize that a compact represents a political compromise between "constituent elements of the Union," as opposed to a commercial transaction. *Entergy Ark., Inc. v. Nebraska*, 358 F.3d 528, 542 (8th Cir. 2004). For example, the Eighth Circuit stated in one case:

> While a common law contract directly affects only the rights and obligations of the individual parties to it, an interstate compact may directly impact the population, the economy, and the physical environment in the whole of the compact area. A suit alleging that a state has breached an obligation owed to its sister states under a congressionally approved interstate compact also raises delicate questions bearing upon the relationship among separate sovereign polities with respect to matters of both regional and national import.").

Id. at 541–42. Consequently, the right to sue for breach of the compact differs from a right to sue for breach of a commercial contract; it arises from the compact, not state common law.

Courts generally strive to interpret and apply a compact uniformly throughout the states where the compact is effective. *See, e.g.*, *In re C.B.*, 116 Cal. Rptr. 3d. 294, 295 (2010) ("One of the key elements of any interstate compact is uniformity in interpretation."). To achieve a uniform interpretation, courts commonly look to other courts decisions; however, there is often no uniformity. *E.g.*, *id*. at 294–95 (looking at a dozen other state and federal court decisions and finding no uniformity); *Tennessee v. Springer*, 406 S.W.3d 526, 531-34 (Tenn. 2013) (same).

PRACTICE NOTE: Courts help ensure a uniform interpretation of compacts by citing interstate commissions' statements about and interpretations of their compacts. Interstate commissions prepare these statements and interpretations to avoid disputes and to help the states implement the compact uniformly. For example, the Interstate Commission for Adult Offender Supervision (ICAOS) issues advisory opinions and produces a Bench Book similar to this book. Courts commonly cite to ICAOS advisory opinions and the ICAOS Bench Book. *See, e.g., Rhode Island v. Brown*, 140 A.3d 768, 776-777 n.5 (R.I. 2016). Article XIII, § B.3 of the Revised ICJ also authorizes the Interstate Commission for Juveniles to issue advisory opinions. This bench book discusses the ICJ's advisory opinions throughout chapters 2 through 5 and includes copies in Appendix IV.

1.6 Application of State Law that Conflicts with an Interstate Compact

Where state law and a compact conflict, courts are required under the Supremacy Clause (for compacts with consent) and as a matter of contract law to apply the terms and conditions of the compact to a given case. The fact that a judge may not like the effect of a compact or believes that other state laws can produce a more desirable outcome is irrelevant. The compact controls over individual state law and must be given full force and effect by the courts. For a full discussion of giving compacts effect over conflicting state law, see BUENGER, ET AL., *supra*, at 54–66.

Many compacts are silent about how states may apply their own state law. In cases involving such compacts, courts use different analyses that generally reach the same holding. For example, the Ninth Circuit held that states may not apply state law unless the specific state law to be applied is specifically preserved in the compact. *Seattle Master Builders Ass'n v. Pac. Nw. Elec. Power & Conserv. Planning Council*, 786 F.2d 1359, 1364 (9th Cir. 1986); Similarly, the Eighth Circuit held that Nebraska did not have the unilateral right to exercise a veto over actions of an interstate commission created by a compact, reasoning:

> "[W]hen enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories."

Nebraska v. Cent. Interstate Low-Level Radioactive Waste Comm'n, 207 F.3d 1021, 1026 (8th Cir. 2000).

Some compacts with just two or a few member states specifically allow states to apply new state law to a compact provided that the other member states concur with applying that law. Most courts have reasoned that the concurrence of other member states occurs when all of the states have enacted substantively identical law and have expressed an intent that the law applies to a specific compact. *E.g., Int'l Union of Operating Eng'rs, Local 542 v. Del. River Joint Toll*

Bridge Comm'n, 311 F.3d 273, 276-82 (3d Cir. 2002) (citing cases and also noting New Jersey state courts use a less demanding analysis).

Occasionally, courts will invoke the Contracts Clause of the U.S. Constitution in analyzing whether a state may apply its own law to a compact. *See, e.g., U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 25-33 (1977) (**Contracts Clause** applied to state's obligation to bondholders in connection with **interstate compact)**; *Wroblewski v. Commonwealth*, 809 A.2d 247, 258 (Pa. 2002) (terms of an interstate compact contain the substantive obligations of the parties as is the case with all contracts; Contracts Clause of the Federal Constitution protects compacts from impairment by the states). Some courts use a contractual analysis without reference to the Contracts Clause of the federal or any state constitution. *E.g.*, *McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991) ("Having entered into a contract, a participant state may not unilaterally change its terms. A Compact also takes precedence over statutory law in member states.").

By entering a compact, the member states contractually agree that the terms and conditions of the compact supersede parochial state considerations. In effect, compacts create collective governing tools to address multilateral issues and, as such, they govern the multilateral contingent on the *collective will* of the member states, not the will of any single member state. This point is critically important to the success and uniform application of the Revised ICJ.

PRACTICE NOTE: Most compacts expressly preserve some state law or state authority, and states frequently enact statutes and regulations that support and complement their administration of a compact.

1.7 Special Considerations for Litigation Involving Interstate Commissions

1.7.1 Relief Must Be Consistent with the Compact

In *Texas v. New Mexico*, the Supreme Court sustained exceptions to a Special Master's recommendation to enlarge the Pecos River Compact Commission, holding that one consequence of a compact becoming "a law of the United States" is that "no court may order relief inconsistent with its express terms." 462 U.S. 554, 564 (1983). The Court emphasized this principle in *New Jersey v. New York*, stating, "Unless the compact . . . is somehow unconstitutional, no court may order relief inconsistent with its express terms, no matter what the equities of the circumstances might otherwise invite." 523 U.S. 767, 769 (1998). Although these cases were original jurisdiction cases in the U.S. Supreme Court, other courts have applied this principle to consider appropriate relief in cases involving interstate commissions and states' application of compacts. *E.g.*, *N.Y. State Dairy Foods v. Ne. Dairy Compact Comm'n*, 26 F. Supp. 2d 249, 260 (D. Mass. 1998), *aff'd*, 198 F.3d 1 (1st Cir. 1999), *cert. denied*, 529 U.S. 1098 (2000); *HIP Heightened Independence & Progress, Inc. v. Port Auth. of N.Y. & N.J.*, 693 F.3d 345, 357 (3d Cir. 2012).

Where the compact does not articulate the terms of enforcement, courts have wide latitude to fashion remedies that are consistent with the purpose of the compact. In a later *Texas v. New Mexico* proceeding, the Supreme Court stated, "By ratifying the Constitution, the States

gave this Court complete judicial power to adjudicate disputes among them . . . and this power includes the capacity to provide one State a remedy for the breach of another." 482 U.S. 124, 128 (1987). The Court further noted, "That there may be difficulties in enforcing judgments against States and counsels caution, but does not undermine our authority to enter judgments against defendant States in cases over which the Court has undoubted jurisdiction, authority that is attested to by the fact that almost invariably the 'States against which judgments were rendered, conformably to their duty under the Constitution, voluntarily respected and gave effect to the same.'" *Id*. at 130–31; *see also Kansas v. Nebraska*, 135 S. Ct. 1042, 1052–53, 1057 (2015) (stating that within the limits of *Texas v. New Mexico*, "the Court may exercise its full authority to remedy violations of and promote compliance with the agreement, so as to give complete effect to public law" and allowing a disgorgement remedy not specified in the compact).

1.7.2 Eleventh Amendment Issues for Interstate Commissions

The Eleventh Amendment guarantees state sovereign immunity from suit in federal court. The Eleventh Amendment ensures that states retain certain attributes of sovereignty, including sovereign immunity. *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). Over the years, the U.S. Supreme Court has established a clear approach to determining whether an interstate commission is a "state" or political subdivision thereof such that it enjoys immunity under the Eleventh Amendment and if so, then whether the states waived immunity in the compact. The application of the Eleventh Amendment immunity to interstate commissions is now well-established.

In *Petty v. Tennessee-Missouri Bridge Commission*, the Supreme Court concluded that the text of the compact stating that the Bridge Commission should have the power "to contract, to sue and be sued in its own name," and Congress's grant of consent to the compact, stating "that nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters . . . " effectively abrogated the states' Eleventh Amendment immunity by reserving the jurisdiction of the federal courts. 359 U.S. 275, 277 (1959)

In *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, the Supreme Court analyzed the interstate commission's claim of immunity in accord with its prior jurisprudence for determining when a non-state entity exercising a state power enjoys Eleventh Amendment immunity. 440 U.S. 391, 400-02 (1979) The Court considered whether the states describe and treat the non-state entity like a state agency, the level of state control over the entity, and whether the states' budgets are the entity's source of funding. *Id.* at 401. The Court concluded that the interstate commission enjoyed the states' Eleventh Amendment immunity, noting that the Tahoe Regional Planning Compact described the interstate commission as a "separate legal entity" and a "political subdivision"; six of the ten board members of the commission were appointed by cities and counties and only four were appointed by the states; and the compact stated that obligations of the commission were not binding on either state, hence the states' treasuries were not directly responsible for judgments against the commission. *Id*.

In *Hess v. Port Authority Trans-Hudson Corp.*, the Supreme Court concluded that when the *Lake Country Estates* factors point in different directions, the Eleventh Amendment's "twin reasons for being"—(1) respect for the dignity of the states as sovereigns, and (2) the "prevention of federal-court judgments that must be paid out of a State's treasury" should be the court's prime guide. 513 U.S. 30, 47-48 (1994).

Although the "sue and be sued" provision in Article IV(14) of the Revised ICJ may constitute a state waiver of immunity from suits against the state in state courts, it does not necessarily constitute a waiver of Eleventh Amendment immunity against suits in federal courts. *See, e.g.*, *Fla. Dep't of Health and Rehab. Servs v. Fla. Nursing Home Assoc.*, 450 U.S. 147, 150 (1981); *Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 39-40 (2d Cir. 1977). Arguably, the Revised ICJ evidences intent by the states to be financially and administratively responsible for the actions of the commission, which may provide Eleventh Amendment immunity under the test articulated in *Hess* 513 U.S. at 47-48. No case, however, has raised the application of the Eleventh Amendment to states applying the Revised ICJ. Even if the Eleventh Amendment does not offer protection, the commission may be immune from suit governed by non-Eleventh Amendment considerations. For example, in *Morris v. Washington Metropolitan Area Transit Authority*, the court concluded that a bare "sue and be sued" clause extends only as far as other more specific partial waivers in the compact, not to any and all suits. 781 F.2d 218, 221 n.3 (D.C. Cir. 1986). Chapter 5 discusses immunity issues associated with application of the Revised ICJ.

1.8 Party State, Interstate Commission, and Third-Party Enforcement of Compacts

Claims for breach of a compact typically involve one party state filing an action against another party state in the U.S. Supreme Court under the Court's original jurisdiction in article III, section 2 of the U.S. Constitution and 28 U.S.C. § 1251(a). *See, e.g., Texas v. New Mexico*, 462 U.S. 554 (1983). However, an interstate commission may join a party state as a plaintiff in an original jurisdiction action provided that it makes the same claims and seeks the same relief or its claims are wholly derivative of the plaintiff states' claims. *Alabama v. North Carolina*, 560 U.S. 330, 354–57 (2010).

Some compacts authorize the interstate commission to seek judicial action to enforce the compact against a party state. *See, e.g.*, Interstate Compact for Adult Offender Supervision, art. XII, § C; *Interstate Comm'n for Adult Offender Supervision v. Tennessee Bd. of Prob. & Parole*, No. 04-526-KSF (E.D. Ky. June 13, 2005) (permanent injunction). The Revised ICJ, art. XI, sec. C, contains a similar enforcement provision as the Interstate Compact for Adult Offender Supervision.

Many cases also involve third-parties seeking to enforce a compact, but the issue of third-party enforcement of a compact does not often arise. *But see Medieros v. Vincent*, 431 F.3d 25 (1st Cir. 2005) (commercial fisherman sought to enforce the Atlantic States Marine Fisheries Compact against a state). In some cases, courts expressly conclude that third parties may enforce the compact. *E.g., Borough of Morrisville v. Del. River Basin Comm'n*, 399 F. Supp. 469, 472 n.3 (E.D. Pa. 1975) (allowing several municipalities to challenge a DRBC resolution that imposed a charge for consumptive use of water, reasoning, "to hold that the Compact is an

agreement between political signatories imputing only to those signatories standing to challenge actions pursuant to it would be unduly narrow in view of the direct impact on plaintiffs and other taxpayers.”).

While courts do not always analyze compacts for implied enforcement by third-parties, the most recent cases from at least two U.S. Courts of Appeals, construing the Interstate Compact for Adult Offender Supervision (ICAOS) have held that where there is no indication from the text and structure of a statute that Congress intended to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action. *See, e.g., Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 103 (3d Cir. 2008) (third-party may not enforce a compact (ICAOS) where the compact does not expressly provide a private right of action); *M.F. v. N.Y. Exec. Dep't Div. of Parole,* 640 F.3d 491, 495 (2d Cir. 2011).

PRACTICE NOTE: Courts do not always analyze compacts for implied enforcement by third-parties, which suggests that parties and courts generally recognize third parties' actions, unless there is good reason to believe that third parties may not bring actions. However, recent case law has clarified that absent language showing an intent to create individual rights they will not be implied.

1.9 Recommended Sources of Compact Law and Information

For additional information on interstate compact law and interstate compacts generally, see MICHAEL L. BUENGER, JEFFREY B. LITWAK, RICHARD L. MASTERS, & MICHAEL H. MCCABE, THE EVOLVING LAW AND USE OF INTERSTATE COMPACTS 2d ed. (2016); JEFFREY B. LITWAK, INTERSTATE COMPACT LAW: CASES AND MATERIALS V.2.0 (2014) (available electronically only at www.semaphorepress.com).

For historical context on intestate compacts, see Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L.J. 685, 688 (1925).

For historical context on compacts and as applicable to transfer of supervision of individuals on probation and parole under the ICAOS, see generally Michael L. Buenger & Richard L. Masters, *The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems*, 9 ROGER WILLIAMS U.L. REV. 71 (2003).

See also the legal analysis concerning the contractual nature of ICAOS as interpreted and applied in *Doe v. Pennsylvania Bd. of Prob. & Parole*, 513 F.3d 95, 105 n.7 (3rd Cir. 2008) (analyzing the contractual nature of ICAOS and citing the foregoing article); James G. Gentry, *The Interstate Compact for Adult Offender Supervision: Parole and Probation Supervision Enters the Twenty-First Century*, 32 MCGEORGE L. REV. 533 *passim* (2001).

For a report on interstate compact agencies and good governance, see U.S. Gov't Accountability Office, No. GAO-07-519, *Interstate Compacts: An Overview of the Structure and Governance of Environment and Natural Resource Compacts* (2007).

CHAPTER 2

THE INTERSTATE COMPACT FOR JUVENILES

2.1 General Principles Affecting the Interstate Movement of Juveniles

2.1.1 Overview of Interstate Movement

As an initial matter, the general principles affecting the interstate movement of juveniles are anything but general. Because juveniles occupy a unique position in our legal system—sometimes adults, frequently not; at once capable of committing crimes and yet subject to special procedures in the resolution of cases—it is difficult to identify a set of universal principles applicable to juvenile delinquents and status offenders when it comes to their interstate movement. Moreover, parental rights issues in many states specifically add a dynamic not applicable in the adult setting. This is a constantly evolving area of law that defies generalizations and for every general principle there is most likely a host of exceptions. Unlike adults, who clearly commit crimes and fall under a wide array of statutes and principles governing their interstate movement, juveniles simply present a more amorphous problem. Practitioners are *strongly encouraged* to consult regularly with available legal resources.

2.1.2 Right of Interstate Movement

The Supreme Court has recognized that the right of interstate movement is a fundamental right protected by the constitution. *United States v. Guest*, 383 U.S. 745, 767 (1966). The freedom of movement "is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing and even thinking." *Aptheker v. Sec'y of State*, 378 U.S. 500, 520 (1964) (Douglas, J., concurring); *see also*, *Saenz v. Roe*, 526 U.S. 489, 501 (1999) (the right to interstate travel is firmly embedded in the Supreme Court's jurisprudence); *Kolender v. Lawson*, 461 U.S. 352, 358-59 (1983).

However, juveniles enjoy reduced freedom of movement due to their legal status and the constitutionally protected interest of their parents in child rearing. The inherent differences between minors and adults, *e.g.*, immaturity, vulnerability, need for parental guidance, have been recognized by the Supreme Court as sufficient to justify treating minors differently from adults under the U.S. Constitution. *See*, *Bellotti v. Baird*, 443 U.S. 622, 634–635 (1979). "So 'although children generally are protected by the same constitutional guarantees … as are adults, the State is entitled to adjust its legal system to account for children's vulnerability' by exercising broader authority over their activities." *Hutchins v. District of Columbia*, 188 F.3d 531, 541 (D.C. Cir. 1999) (quoting *Bellotti*, 443 U.S. at 635). An unemancipated minor does not have the right to freely "come and go at will." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995). "[J]uveniles, unlike adults, are always in some form of custody" *Schall v. Martin*, 467 U.S. 253, 265 (1984). They lack an unfettered right to travel because their right to free movement is limited at least by their parents' authority to consent to or prohibit movement, or by the state's interest in protecting them given their presumed vulnerability. *E.g.*, *Ramos v. Town of Vernon*, 353 F.3d 171, 193 (2d Cir. 2003)

2.1.3 Extradition of Juveniles and Status Offenders

At the time of the drafting of the Constitution, there was no meaningful distinction between juveniles and adults. Federal criminal law did not formally recognize the category of juvenile offenders until the passage of the Federal Juvenile Delinquency Act of 1938. Pub.L. No. 75-666, 52 Stat. 764 (1938); *United States v. Allen*, 574 F.2d 435, 437 (8th Cir. 1978) ("Indeed, prior to the enactment of the Federal Juvenile Delinquency Act of 1938, juvenile offenders against the laws of the United States were subject to prosecution in the same manner as were adults."). Therefore, constitutional provisions and federal legislation governing extradition make no special exception for juveniles. *In re Boynton*, 840 N.W.2d 762, 766 (Mich. Ct. App. 2013) ("The constitutional provision and the legislation governing extradition make no special provisions for juveniles, and the cases, at least by implication if not expressly, recognize that juveniles may be extradited the same as adults."); *see also Ex parte Jetter*, 495 S.W.2d 925, 925 (Tex. Crim. App. 1973); *In re O.M.*, 565 A.2d 573, 583 (D.C. 1989); *A Juvenile*, 484 N.E.2d 995, 997 (Mass. 1985). Article IV, Section 2 of the U.S. Constitution provides the general framework for the interstate movement of individuals charged with a criminal offense and subjects such individuals to extradition upon the demand of the executive authority of the state in which the crime was committed. Even though special criminal procedures may be required for juveniles, special procedures are not constitutionally required when moving juvenile offenders from one state to another. With the exception of returning a minor to his or her guardian, some form of extradition proceeding is considered necessary for juvenile criminal fugitives. The power of a state to try a juvenile is not affected by the manner of his return to a state.

The mechanisms that govern the movement of pre-adjudicated juvenile delinquents are not entirely clear. As there was no distinction between juveniles and adults in federal law for many years, arguably pre-adjudicated delinquents may be subject to transfer under either the Revised ICJ or the Uniform Criminal Extradition Act. The use of formal extradition as envisioned in Article IV, Section 2 may be particularly appropriate when pre-adjudicated juvenile delinquents are facing charges that could subject them to trial as adults in the demanding state, *e.g.*, meeting both age and serious offense criteria as defined by the law of the demanding state. In this case, the demanding state may request formal extradition of the juvenile through the standard process of demand and governor's warrant.

The use of the Revised ICJ is more appropriate in cases involving pre-adjudicated juvenile delinquents who have committed offenses that would not subject them to trial as adults in the demanding state. The Revised ICJ is clearly applicable and controlling in cases involving: (a) post-adjudicated juvenile delinquents who are either (1) under some form of supervision, or (2) already subject to the Revised ICJ through a transfer of supervision, or (b) are status offenders. Therefore, the Revised ICJ and its procedures would appear optional (though preferable) in the pre-adjudication stage. The Revised ICJ should not be considered optional in cases involving post-adjudicated juvenile delinquents (unless they have committed a new offense in another state and that state is demanding formal extradition) or cases involving status offenses.

Historically, the different objective of the juvenile justice system justified relaxed procedural safeguards under both the 1955 ICJ and the Revised ICJ, including: (1) not requiring

formal demand by the executive authority of a state; (2) not requiring verification of charging documents or orders of commitment by governor or judge of a demanding state; (3) allowing detention, pending disposition of requisition with no right to bail; (4) no right to challenge the legality of the proceedings in the asylum state; (5) no right to independent probable cause determination; (6) no right to challenge identity; and (7) no protection of service of process in civil matters. *In Interest of C.J.W.*, 377 So.2d 22, 23 (Fla. 1979). A court has a duty to order the return of a juvenile to the demanding state where the requisition complies with the mandates of the ICJ. *In re Texas*, 97 S.W.3d 746, 747-48 (Tex. App. 2003).

2.2 History of the Interstate Compact for Juveniles (ICJ)

In 1955 several states, recognizing "that juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others" adopted an interstate compact to control the movement of juveniles providing for trans-state supervision, and creating an orderly mechanism for their return. INTERSTATE COMPACT ON JUVENILES art. I (1955). The 1955 ICJ had as its principle objectives: (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return from one state to another of delinquent juveniles who have escaped or absconded; (3) the return from one state to another of non-delinquent juveniles who have run away from home; and (4) to take additional measures for the protection of juveniles and of the public. INTERSTATE COMPACT ON JUVENILES art I, §§ (1) – (4) (1955). See Council of State Governments Web Site at www.csg.org/knowledgecenter/docs/ncic/OriginalCompact-circa1955.pdf. The intent of the 1955 Compact was to bring order to the interstate movement of juvenile delinquents and status offenders and ensure that proper supervision and services were provided to juveniles covered by the compact. See *In re O.M.*, 565 A.2d 573, 582-583 (D.C. 1989). The Revised ICJ continues these goals but with specific and detailed authority for rulemaking and enforcement as well as other important improvements.

2.3 Why the New Interstate Compact for Juveniles?

2.3.1 Problems with the I955 ICJ

The 1955 ICJ was created when states handled relatively few interstate juvenile cases by comparison to today. Today, the number of cases involving interstate movement of delinquent and status offense juveniles exceeds 15,000. The growth in interstate juvenile matters outpaced the capacity of the 1955 ICJ and changing circumstances in the manner in which juvenile offenders are handled added to the complexity of returns, supervision and transfers. Moreover, the compact authority and structure were seriously outdated and incapable of responding to rapidly changing circumstances. Examples of the problems included:

- Limited knowledge of who was moving, and where and when they were going.
- Limited agreement between states regarding what "supervision" meant and the services to be provided to transferees.
- Limited ability and commitment to notify victims, communities, and law enforcement officials of the movement of juveniles.

- The Association of Juvenile Compact Administrators (AJCA) could identify failures to comply with established rules but was severely restricted in its ability to enforce compliance.
- Rules promulgated under the 1955 ICJ were legally questionable because the compact did not delegate rulemaking authority to a governmental body.
- Inconsistent adoption of amendments to the compact which were not enacted by all member states.

Since 1958, three amendments to the 1955 ICJ were drafted and only a few states adopted all three, with a majority adopting only one or two. This lack of uniformity created substantial inconsistency in interpretation and application of the 1955 ICJ. There was no longer a common agreement between states concerning what types of juveniles could be sent to other states for supervision, and no authority to hold other states accountable for following the compact rules. These issues prompted concern that the 1955 ICJ was not meeting its goals and that public safety was at risk.

2.3.2 Drafting the Revised ICJ

Following the initial success of the revision to the Interstate Compact for the Supervision of Parolees and Probationers (now the Interstate Compact for Adult Offender Supervision), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in conjunction with The Council of State Governments (CSG), pursued a similar rewrite of the Interstate Compact for Juveniles. In 1999, OJJDP conducted a detailed survey of the states, uncovering many contentious issues within the compact structure at that time, and asked for recommendations to address these concerns. The Council of State Governments (CSG) and OJJDP developed advisory and drafting groups from stakeholder organizations to review and update the Interstate Compact for Juveniles.

In 2000, a Compact Advisory Group was formed to assess interstate supervision options and alternatives, and to assist in identifying groups having an interest in effective interstate supervision. This group concluded that substantially revising the existing compact as the only option to meet the long-term challenges facing interstate juvenile justice. In 2001, CSG, working with OJJDP and the Association of Juvenile Compact Administrators (AJCA), convened a drafting team of stakeholders to begin the design of a revised juvenile compact. Considering the suggestions of the Advisory Group as well as those comments generated from the field via the OJJDP survey, the drafting team developed, over a period of 12-months, the model compact language. The requisite number of states approved the new compact in 2008. The Revised ICJ now has been adopted in 52 jurisdictions.

2.4 Adoption & Withdrawal

As discussed, the Revised ICJ is adopted when a state legislature passes the compact language enacting the provisions of the agreement. It should be noted that unlike some compacts that are adopted through Executive Order or by delegation of authority to a state official, the Revised ICJ is adopted by enacting a statute that is substantially similar to and contains all pertinent provisions of the model compact language. As of April 2018, the Revised ICJ has been adopted in the following 52 jurisdictions:

STATE	CODE CITE	LAST ACTION
Alabama	ALA. CODE § 44-2-10 et seq.	Signed April 22, 2004
Alaska	ALASKA STAT. § 47.15.010	Signed June 26 2009
Arizona	ARIZ. REV. STAT. § 8-368	Signed April 30, 2003
Arkansas	ARK. CODE ANN. § 9-29-401	Signed April 6, 2005
California	CAL WELF. & INST. CODE § 1400	Signed January 1, 2010
Colorado	COLO. REV. STAT. §§ 24-60-702	Signed April 26, 2004
Connecticut	CONN. GEN. STAT. § 46b-151h	Signed June 18, 2003
Delaware	DEL. CODE ANN. tit. 31, §§ 5203	Signed June 8, 2003
District of Columbia	D.C. LAW 18-362	Signed June 2, 2011
Florida	FLA. STAT. ANN. § 985.802	Signed May 26, 2005
Georgia	O.C.G.A § 49-4b-2	Signed April 28, 2014
Hawaii	HAW. REV. STAT. § 582D-1	Signed June 5, 2009
Idaho	IDAHO CODE § 520116-1901	Signed March 3, 2004
Illinois	45 ILL. COMP. STAT. 11/1	Signed August 26, 2008
Indiana	INDIANA CODE 11-13-4.5-1.5	Signed May 17, 2011
Iowa	IOWA CODE §§ 232.171, 232.172	Signed April 29, 2010
Kansas	KAN. STAT. ANN.§ 38-1008	Signed March 29, 2004
Kentucky	KY. REV. STAT. ANN. § 615.010	Signed March 18, 2005
Louisiana	LA. REV. STAT. ANN. CHC § 1661	Signed July 3, 2003
Maine	ME. REV. STAT. ANN. tit. 34-A, § 9901	Signed June 25, 2003
Maryland	MD. CODE ANN. HUMAN. SERV. § 9-301	Signed May 17, 2007
Massachusetts	MASS. GEN. LAWS	Signed June 30, 2010
Michigan	MICH. CONS. LAWS. § 3.692	Signed July 11, 2003
Minnesota	MINN. STAT §§ 260.515	Signed May 27, 2010
Mississippi	MISS. CODE ANN. § 43-25-101	Signed March 17, 2009
Missouri	MO. REV. STAT. § 210.570	Signed June 21, 2007
Montana	MONT. CODE ANN. § 41-6-101	Signed April 1, 2003
Nebraska	NEB. REV. STAT. § 43-1011	Signed May 27, 2009
Nevada	NEV. REV. STAT. § 62I.01	Signed May 19, 2005
New Hampshire	N.H. REV. STAT. ANN. § 169-A:2	Signed July 5, 2011
New Jersey	N.J. STAT. ANN. § 9:23B-1	Signed September 10, 2004
New Mexico	N.M. STAT. ANN. § 32A-10-9	Signed March 19, 2003
New York	N.Y. EXECUTIVE LAW § 501-E	Signed May 24, 2011
North Carolina	N.C. GEN. STAT. ch. 120A § 1	Signed July 18, 2005
North Dakota	N.D. CENT. CODE § 12-66-01	Signed March 13, 2003
Ohio	OHIO REVISED CODE § 2151.56	Signed June 30, 2011
Oklahoma	OKLA. STAT. tit. 22 § 10-7309-1.2	Signed April 21, 2004
Oregon	OR. REV. STAT. § 417.010 et seq.	Signed August 4, 2009
Pennsylvania	11 PA. CONS. STAT. § 890.2	Signed July 2, 2004
Rhode Island	R.I. GEN. LAWS § 14-6.1-1	Signed July 10, 2003
South Carolina	S.C. CODE ANN. § 20-7-8800	Signed May 24, 2006
South Dakota	S.D. CODIFIED LAWS § 26-12-15	Signed February 13, 2004
Tennessee	TENN. CODE ANN. § 37-4-101	Signed June 20, 2008

Texas	TEXAS FAMILY CODE ANN. § 60.010	Signed June 18, 2005
Utah	UTAH CODE ANN. § 55-12-100	Signed March 16, 2005
Vermont	VT. STAT. ANN. tit. 33 § 5721	Signed May 12, 2010
Virginia	VA. CODE ANN. §§ 16.1-323	Signed March 12, 2007
Washington	WASH. REV. CODE § 13.24.011	Signed May 9, 2003
West Virginia	W. VA. CODE § 49-8A-1	Signed April 6, 2004
Wisconsin	WIS. STAT. § 938.999	Signed March 30, 2006
Wyoming	WYO. STAT. ANN. § 14-6-102	Signed March 5, 2004
U.S. Virgin Islands	V.I. Code Ann § 5-64-701a	Signed April 7, 2010

As of April 2014, the following jurisdictions have not adopted the Revised ICJ:

American Samoa
Guam
Northern Marina Islands
Puerto Rico

Until these states and territories enact the Revised ICJ, the 1955 ICJ remains in effect as to those states and transfers or returns of juveniles between states which have not adopted the Revised ICJ and any new compact state which has repealed the 1955 compact will not be authorized by either compact, as to those states. Thus, the terms and conditions of any such transfers or returns will require negotiation by and between each Revised ICJ state and the 1955 ICJ state seeking to either transfer or return a juvenile on a case by case basis or by means of an individual agreement negotiated between each 1955 ICJ member state and any other Revised ICJ state with which transfers or returns of juveniles are necessary. Only transfers or returns of juveniles between those states which have not adopted the new compact will continue to be governed by the 1955 ICJ. The Revised ICJ specifically recognizes this inevitable consequence in Article VI, Section F. For more information regarding transactions between non-member and member states, *see* discussion *infra* Appendix VII.

Withdrawal from the Revised ICJ is permitted under Article XI, Section A. A state may withdraw by enacting a statute specifically repealing the agreement. The effective date of withdrawal is the effective date of the repeal, provided however that repealing the agreement does not relieve a state of any pending financial obligations it may have to the Commission. Therefore, a state could not avoid paying assessments, obligations or other liabilities, including any financial penalties imposed by the Commission or a court simply by repealing the agreement. Such obligations would extend beyond the date of any repeal and would be subject to judicial enforcement even after a state has withdrawn from the Revised ICJ.

2.5 Purpose and Features of the Revised ICJ

The purpose of the Revised ICJ is defined in Article I of the compact. Among its major purposes are the following:

- Ensure that the adjudicated juveniles and status offenders subject to the compact are provided adequate supervision and services in a receiving state as ordered by the adjudicating judge or parole authority in the sending state.

- Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.
- Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return.
- Establish orderly mechanisms for controlling the movement of juvenile offenders and ensure that authorities in receiving states are properly and timely notified of the presence of such offenders in their states.
- Establish a system of legally enforceable rules that are binding on state authorities.
- Coordinate the operations of the Revised ICJ with other compacts including the Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Adult Offender Supervision (ICAOS).

The Revised ICJ seeks to achieve these purposes by significantly updating the agreement and creating an interstate commission to oversee its implementation. The compact provides enhanced accountability, enforcement, visibility and communication. Among the changes in the Revised ICJ are:

- The establishment of an interstate commission with operating authority to administer ongoing compact activity, including rulemaking authority and enforcement authority.
- Gubernatorial appointments of representatives for all member states to the interstate commission.
- The establishment of state councils to coordinate interbranch activities with respect to juveniles subject to the compact.
- A mandatory funding mechanism sufficient to support essential compact operations.
- Language to compel collection of standardized information on juvenile offenders.
- Dispute resolution and technical assistance mechanisms to ensure timely and efficient compliance with the compact.

2.6 Effect of Revised ICJ on the States

As discussed, the Revised ICJ is not an advisory compact nor is the Commission a purely advisory body. Although the Commission has advisory responsibilities, REVISED INTERSTATE COMPACT FOR JUVENILES, art. XIII(b)(2) (2008), the compact is more appropriately described as a regulatory compact creating a commission with broad rulemaking and enforcement powers. *E.g., In re Dependency of D.F.M.*, 236 P.3d 961, 966 n.41 (Wash. Ct. App. 2010)("RCW 13.24.011 art. IV (providing that the interstate commission for juveniles has the power to '[a]dopt rules to effect the purposes and obligations of [the Interstate Compact for Juveniles] which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.'"). *See generally* REVISED INTERSTATE COMPACT FOR JUVENILES, art. VI-VII (2008). Consequently, the Revised ICJ and its rules constitute a body of binding law. A member state may not impose procedural or substantive requirements on transfer cases unless such requirements comport with the Revised ICJ and its rules.

Whether the Revised ICJ is a "federalized" compact may be a subject of debate, even though the revised compact statute expressly invokes the Crime Control Act as having granted

the advance consent of Congress "for cooperative effort and mutual assistance in the prevention of crime." 42 U.S.C. § 675 (2004). On the one hand, the Revised ICJ regulates in an area that traditionally has been within the authority of the states. *See, e.g., New Hampshire v. Maine*, 426 U.S. 363, 369-70 (1976); *cf., McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991) ("[ICPC] focuses wholly on adoption and foster care of children—areas of jurisdiction historically retained by the states." Congressional consent was not necessary for the compact's [ICPC's] legitimacy). With limited exception, juveniles generally do not commit crimes in the technical, modern sense and thus the management of juvenile offenders has fallen within the general police powers of the states.

On the other hand, Congress has clearly considered juvenile crime a national affair within the ambit of its legislative authority. *See, e.g.,* Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, 42 U.S.C. § 5601 *et seq*. (2012). The intent of this legislation was to create nationwide standards for the handling of juvenile delinquency cases and to, wherever possible, address juvenile delinquency through the state courts not the federal courts. 18 U.S.C. § 5032 (2012); *United States v. Juvenile Male*, 864 F.2d 641, 644 (9th Cir. 1988); *see*, 18 U.S.C. § 5001 (2010); UNITED STATES ATTORNEY'S MANUAL § 9-8.00 *et seq*. Thus, if crime is considered in a broader context of an act and not the status of the perpetrator, the Revised ICJ may be considered a crime control compact to which Congress has given advanced consent pursuant to 4 U.S.C. § 112. This is particularly so given that in 1934 when consent was granted, the federal government maintained no technical legal distinction between juvenile offenders and adult criminals. UNITED STATES ATTORNEY MANUAL, CRIMINAL RESOURCE MANUAL § 116. It was not until the Federal Juvenile Delinquency Act of 1938 that Congress codified in federal law a different legal status for juvenile offenders. Federal Juvenile Delinquency Act of 1938, Pub.L. No. 75-666, 52 Stat. 764 (1938); *see. United States v. Allen*, 574 F.2d 435, 437 (8th Cir. 1978). Additionally, although the Extradition Clause, U.S. CONST. art. IV, § 2, does not explicitly empower Congress to legislate in this area, the Supreme Court has held that the federal extradition legislation is a valid exercise of congressional power. *Roberts v. Reilly*, 116 U.S. 80, 94 (1885) (recognizing that there was no express grant to Congress of legislative power to execute this provision, and that the provision was not, in its nature, self-executing, but declaring that a contemporary construction contained in the Act of 1793 and ever since continued in force had established the validity of Congress's authority to legislate on the subject). Moreover, the constitutional provision and the legislation governing extradition make no special provisions for juveniles, and the cases, at least by implication if not expressly, recognize that juveniles may be extradited the same as adults. Even though special criminal proceedings may otherwise be required for juveniles, it has been held that such special proceedings are not required when extraditing juveniles. *E.g., Ex parte Jetter,* 495 S.W.2d 925, 925 (Tex. Crim. App. 1973) (There is "no limitation in the Uniform Criminal Extradition Act excluding minors from its operation."); *In re O.M.*, 565 A.2d 573, 582-83 (D.C. 1989).

> [I]t has been held that the power of a state to try a juvenile is not affected by the manner of his return to another state . . . .

[T]he cases reveal very little difference between the treatment of a juvenile in extradition proceedings and that of an adult where the process is being conducted under the general extradition statutes. Occasionally, a noteworthy difference has appeared in a case, but

these cases have not developed any following. *In re Boynton*, 840 N.W.2d 762, 767 (Mich. Ct. App. 2013). Based on the foregoing, even though the 'federalized' nature of the Revised ICJ has not yet been judicially affirmed, courts should construe the Revised ICJ as federal law enforceable through the Supremacy Clause of the U.S. Constitution. Given the foregoing analysis on this issue and the fact that Congress has never taken issue with the ICJ's statutory assertion of congressional consent under the Crime Control Act, as well as the trend towards trying many juvenile delinquents as adults (thus the nature of an act and its context leaves open the possibility that such offenses will be treated as a crime except as to very young offenders), state courts and state officials should apply the Revised ICJ as federal law. The Revised ICJ governs in an area within Congress's legislative authority (interstate crime control) and implicates multistate regulation of cross border activity, and has been held to be an alternative to extradition under the federal Constitution. Moreover, a state law that would conflict with or attempt to supersede the Revised ICJ would be unenforceable as either (1) a breach of contract and/or (2) a violation of federal law.

PRACTICE NOTE: An additional feature of the Revised ICJ that is unique among compacts is the effect rules adopted by the Interstate Commission have on state law. The Revised ICJ vests the Commission with authority to adopt binding rules to effectuate the purpose of the agreement. By the terms of the compact, rules adopted by the Commission are statutory in effect. A state law, court rule, or regulation that contradicts or contravenes the rules of the Commission is invalid to the extent of the conflict. REVISED INTERSTATE COMPACT ON JUVENILES, art. V (YEAR).

2.7 Effect of Withdrawal (Article XI)

Under Article XI, a state may withdraw from the Revised ICJ by specifically repealing the statute that created the Compact. The effective date of withdrawal is the effective date of the repeal. The withdrawing state is obligated to notify the Commission, which in turn must notify the member states. The withdrawing state is responsible for all outstanding financial obligations that it incurred while a member.

In addition to the technical consequences of withdrawal is one major substantive consequence. Once a state withdraws from the compact, it effectively repeals between itself and other states the mechanism by which states manage the interstate movement of juvenile offenders and status offenders. In short, a withdrawing state is not bound by the compact but neither are any other states in relation to the withdrawing state. Therefore, a withdrawing state would have no mechanism to coordinate the sending and receiving of juveniles between itself and other states. A withdrawing state would not be limited nor could it limit the interstate movement of juveniles otherwise subject to the Revised ICJ. The consequences could be both the uncontrolled movement out, as well as the uncontrolled movement in, of juvenile delinquents and status offenders. Thus, to manage this movement, a withdrawing state would have to enter into individualized agreements with all other states to ensure coordination and control.

2.8 Key Definitions in the Revised ICJ

Key definitions in the Revised ICJ include the following:

- "Compact Administrator" means: the individual in each compacting state appointed pursuant to the terms of this Compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this Compact.

- "Court" means: any court having jurisdiction over delinquent, neglected, or dependent children.

- "Deputy Compact Administrator" means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this Compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under thisC5ompact.

- "Juvenile" means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

  (1) Accused Delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;
  (2) Adjudicated Delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
  (3) Accused Status Offender – a person charged with an offense that would not be a criminal offense if committed by an adult;
  (4) Adjudicated Status Offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
  (5) Non-Offender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

- "Probation or Parole" means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

- "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

REVISED INTERSTATE COMPACT FOR JUVENILES, art. II (2008). Several observations are in order concerning the definitions. First, as the compact is a contract between the states, the terms must be given their ordinary meaning and interpreted within the "four corners" of the document. Thus, for example, the definition of the term "juvenile" also defines the "universe" of individuals

subject to the Revised ICJ. Second, the terms are defined in very broad terms. This is intended to avoid an overly narrow reading of the Revised ICJ and its application. Finally, the Commission's rules have an extensive list of additional definitions that should be examined in addition to the terms in the Revised ICJ itself. *See* ICJ RULES 1-101 (INTERSTATE COMM'N FOR JUVENILES 2018).

2.9 The Interstate Commission for Juveniles

A significant portion of the Revised ICJ is directed to the establishment of an interstate commission to oversee implementation and compliance with the compact. Article III establishes the Commission, defines its membership and creates its internal structure. Article IV vests the Commission with certain powers, including rulemaking and enforcement powers. Article V sets the organization and operations of the Commission. Article VI defines the rulemaking powers of the Commission. Article VII defines the Commission's oversight, enforcement and dispute resolution powers. The Commission consists of one commissioner from each state, appointed by the appropriate appointing authority of the state, with *the power to act on behalf of the state*.

2.9.1 Primary Powers of the Interstate Commission

The interstate commission created by Article IV of the Compact is vested with both administrative and enforcement powers. Among its key powers are:

- Promulgate rules that are binding on the state and have the force and effect of law within each member state.
- Oversee, supervise, and coordinate the interstate movement of those subject to the Compact.
- Enforce compliance with all rules and terms of the Compact.
- Create dispute resolution mechanisms to resolve differences between the states.
- Coordinate education, training, and awareness of the Commission relative to coordinating the interstate movement of juvenile offenders.
- Establish uniform standards for the reporting, collecting, and exchange of data.
- To perform such other functions as may be necessary to achieve the purposes of the Compact.

2.9.2 Rulemaking Powers (Article VI)

Article VI of the Revised ICJ vests the Commission with broad rulemaking powers. Rules promulgated by the Commission have the force and effect of statutory law within member states and all state agencies and courts must give full effect to the rules. REVISED INTERSTATE COMPACT FOR JUVENILES, art. IV, § 2; *see In re Dependency of D.F.M.*, 236 P.3d 961, 966 n.41 (Wash. Ct. App. 2010) ("RCW 13.24.011 art. IV (providing that the interstate commission for juveniles has the power to '[a]dopt rules to effect the purposes and obligations of [the Interstate Compact for Juveniles] which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.'"). In adopting rules, the Commission is required to substantially comply with the "Model State Administrative Procedures Act," MODEL STATE ADMIN. PROCEDURES ACT (UNIF. LAW COMM'N

2000), or such other administrative procedures act that complies with due process requirements. It should be noted the Commission's rulemaking process must only *substantially comply* with the noted provision and thus there is latitude for some variations.

The Commission's rulemaking authority is also limited by Article VI, Section E, which provides that if a *majority* of state legislatures reject a Commission rule by enacting a statute to that effect, the rule has no force or effect in *any* member state. Consequently, a single state may not unilaterally reject a rule even if it adopts legislation to that effect. Rejection of a rule requires legislative action by a majority of the member states.

The Revised ICJ provides a mechanism for challenging Commission rules. Under Article VI, Section D, not later than sixty days after the promulgation of a rule any interested party may file a petition in the United States District Court for the District of Columbia or the United States District Court in which the Commission has its principal offices (currently the United States District Court for the Eastern District of Kentucky) challenging the rule. If the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record, the court must declare the rule unlawful and set it aside. The Model State Administrative Procedures Act guides the determination as to whether substantial evidence exists to support the Commission's action.

2.10 Enforcement of the Revised ICJ and its Rules

One key feature of the Revised ICJ is the enforcement tools given to the Commission. It should be noted that the tools provided to the Commission are not directed at compelling juvenile compliance. Juvenile compliance is a matter that rests with the member states' courts, paroling authorities and corrections officials. Rather, the tools provided for in the Revised ICJ are directed exclusively at compelling the member states to meet their contractual obligations by complying with the terms and conditions of the Compact and any rules promulgated by the Commission. *See State v. DeJesus*, 953 A.2d 45, 52 n.8 (Conn. 2008) (Acknowledgement of rulemaking authority of Interstate Commission for Juveniles). However, the Revised ICJ, like the ICAOS, does not create a private right of action. *Cf. Doe v. Pa. Bd. of Prob. and Parole*, 513 F.3d 95, 105 (3d Cir. 2008).

2.10.1 General Principles of Enforcement

The Commission possesses significant enforcement authority against states that are deemed in default of their obligations under the Revised ICJ. The decision to impose a penalty for non-compliance may rest with the Commission as a whole or one of its committees depending on the nature of the infraction and the penalty imposed. The enforcement tools available to the Commission include:

- Requiring remedial training and providing technical assistance (REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § B(1)(a); ICJ RULES 9-103);
- Imposing alternative dispute resolution, including mediation or arbitration (REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § B(1)(b); ICJ RULES 9-102);

- Imposing financial penalties on a non-compliant state (REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § B(1)(c); ICJ RULES 9-103);
- Suspending a non-compliant state (REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § B(1)(d));
- Termination from the Compact (REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § B(1)(d)); and
- Initiating litigation to enforce the terms of the Compact, monetary penalties ordered by the Commission, or obtaining injunctive relief. (REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § C).

Grounds for default include, but are not limited to, a state's failure to perform such obligations as are imposed by the terms of the Compact, the By-laws of the Commission, or any duly promulgated rule of the Commission.

2.10.2 Judicial Enforcement (Art. XI § C)

The Commission may initiate judicial enforcement against a non-compliant state by filing a complaint or petition in the appropriate U.S. District Court. A member state that loses in any such litigation is required to reimburse the Commission for the expenses it incurred in prosecuting or defending a suit, including reasonable attorney fees. REVISED INTERSTATE COMPACT FOR JUVENILES, art. XI, § C (prevailing party shall be awarded all costs associated with the enforcement action, including reasonable attorneys' fees); ICJ RULES 9-104 (INTERSTATE COMM'N FOR JUVENILES 2018) (In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.).

PRACTICE NOTE: A state seeking to sue the Commission to challenge a rule or enforce a provision of the Compact must initiate an action in one of two venues, the U.S. District Court for the District of Columbia or federal district where the Commission has its principal office, currently the U.S. District Court for the Eastern District of Kentucky. *See* REVISED INTERSTATE COMPACT FOR JUVENILES, art. VI(D), XI(C).

Courts and executive agencies of the member states must enforce the Compact and its rules by taking all necessary actions to effectuate their purposes. REVISED INTERSTATE COMPACT FOR JUVENILES, art. VII, § A(2). *See In re O.M.*, 565 A.2d 573, 586 (D.C. Cir. 1989) (provisions in compact requiring rendition of a juvenile to another state is required by the terms of the compact which the courts and executive agencies of the District of Columbia must enforce). The Court of Appeals in *In re O.M.* concluded that, "The courts of the District of Columbia have no power to consider whether rendition of a juvenile under the Interstate Compact for Juveniles is in the juvenile's best interests." *Id.* at 581. In the context of a compact, courts cannot ignore the use of the word "shall," which creates a duty, not an option. *Id.*; *see also A Juvenile*, 484 N.E.2d 995, 997-998 (Mass. 1985).

The Commission is entitled to all service of process in any judicial or administrative proceeding in a member state pertaining to the subject of the Compact where the proceedings may impact the powers, responsibilities or actions of the Commission. REVISED INTERSTATE COMPACT FOR JUVENILES, art. VII, § A(2). The Commission also has standing to intervene in

any suit affecting the powers, responsibilities or actions of the Commission. *Id.* It is not clear what impact the failure to provide service to the Commission would have on the enforceability of a judgment vis-à-vis the Commission. However, it is reasonable to assume that because the Revised ICJ mandates service of process whenever litigation impacts a power, responsibility or action of the Commission, the Commission is an indispensable party. The failure to join an indispensable party justifies dismissal of the suit. *See, e.g., Teitelbaum v. Wagner,* 99 Fed. Appx. 272, 273-74 (2d Cir. 2004).

2.11 Immunity, Duty to Defend and Indemnification, Limitation on Damages

2.11.1 Qualified Immunity

The Revised ICJ specifically provides qualified immunity to the executive director and employees of the Commission when acting in good faith and within the scope of the compact. Article V, Section C(1) states,

> The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities[.]

The executive director and employees do not enjoy immunity from any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct. *Id.*

The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U. S. 800, 818 (1982). The protection of qualified immunity applies regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Groh v. Ramirez,* 540 U. S. 551, 567 (2004) (Kennedy, J., dissenting) (citing *Butz v. Economou,* 438 U.S. 478, 507 (1978) (noting that qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law"). Because qualified immunity is "an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis deleted). The purpose behind the creation of the qualified immunity doctrine is a desire to ensure that "'insubstantial claims' against government officials [will] be resolved prior to discovery." *Anderson v. Creighton*, 483 U.S. 635, 640 n.2 (1987); *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) *(per curiam).* For further discussion on immunity considerations, see §1.13, *supra*.

2.11.2 Duty to Defend & Indemnification

In addition to the qualified immunity extended to the executive director and employees of the Commission, the Revised ICJ requires the Commission to defend employees and representatives of the Commission in any civil action arising from the performance of their

duties, whether by act, error or omission. REVISED INTERSTATE COMPACT FOR JUVENILES, art. V, § C(3). Furthermore, subject to the approval of the Attorney General of the state, the Commission shall defend the commissioner of that state in any civil action likewise arising from the performance of their duties as a member of the Commission. *Id.* The Revised ICJ requires the Commission to indemnify and hold harmless a commissioner, employees of the Commission, or the Commission's representatives or employees in the amount of any settlement or judgment arising out of actual or alleged errors, acts or omissions that are within the scope of their duties or responsibilities, provided that the actual errors, omission or acts were not the result of intentional or willful and wanton misconduct. REVISED INTERSTATE COMPACT FOR JUVENILES, art. V, § C(4).

2.11.3 Limitations on Damages

Because the Revised ICJ is a multistate agreement that could subject the Commission, its employees and officials to suit in multiple jurisdictions, the Compact provides a varying limitation on liability. Article V, Section C(2) limits the liability of any commissioner or employees or officials of the Commission to "the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents."

CHAPTER 3
THE REVISED ICJ AND ITS IMPLICATIONS FOR THE COURTS

3.1 General Purposes of the Juvenile Justice System

The general purpose of juvenile delinquency law is to: (a) serve the best interests of the child as a ward of the state by providing care, treatment and guidance towards rehabilitation; and (b) protect public safety. *In re Charles G.*, 9 Cal. Rptr. 3d 503, 507 (Cal. Ct. App. 2004); *In re R.D.R.*, 876 A.2d 1009, 1013 (Pa. Super. Ct. 2005); *see Kirton v. Fields*, 997 So.2d 349, 353 (Fla. 2008) (suggesting that the state's parens patriae authority extends to protection of children in transfers of juveniles in delinquency cases under the ICJ). Generally, the jurisdiction of juvenile courts involves "dependent," "delinquent" or "neglected" children. In many states, the term "delinquent" can be subdivided into two subcategories of youth: (a) delinquent youth; and (b) status offenders, sometimes referred to as unruly children. However, courts recognize the authority of the legislature to determine the class or classes of youth subject to the supervisory authority of juvenile courts. *E.g., Hunt v. Wayne Circuit Judges*, 105 N.W. 531, 540 (Mich. 1905). Consequently, while juvenile courts enjoy significant discretion in making supervisory decisions in the "best interest of the child," that discretion is frequently confined by statute.

The Revised ICJ is concerned exclusively with two categories of youth who can be classified as juvenile delinquents and status offenders, not dependent or neglected youth, and only to the extent that one state is transferring supervision responsibilities to another state. The Interstate Compact on the Placement of Children (ICPC) covers interstate transfers of dependent or neglected youth. In the context of the Revised ICJ transfers, the same two considerations that control juvenile delinquency are also considerations when it comes to transfers: (a) the best interests of the child, and (b) public safety. *Contra In re J.P.*, 511 A.2d 210, 212-13 (Pa. Super. Ct. 1986) (upon receipt of a requisition from the sending state the courts in the receiving state may not inquire into the best interests of the child). Whether both of these considerations are to be given equal weight in the dispositional and transfer process has not been fully and finally determined by the courts. One may argue, however, that recent trends in juvenile justice are giving greater weight to the public safety aspects of the juvenile justice system. *See, e.g., New Jersey in re A.S.*, 999 A.2d 1136 (N.J. 2010) (also note the increased emphasis being placed on punishment as a rationale underlying the juvenile justice system, as opposed to its traditional rehabilitative purposes). Courts should determine whether a proposed dispositional transfer is (a) in the best interests of the juvenile, and (b) suitable. A failure to make such findings may constitute reversible error. *See, In re Welfare of Z.S.T.*, No. A09-324, 2009 WL 4910319, at *4 (Minn. Ct. App. Dec. 22, 2009). In recent years, "public safety" considerations have been given greater weight in determining the appropriate disposition. *See, e.g., In re Ronald C.*, No. A128756, 2010 WL 3897760, at *2 (Cal. Ct. App. Oct. 6, 2010) (court did not abuse its discretion in taking into consideration probation officer's dispositional, a guidance clinic psychological evaluation, and the gravity of the offense and public safety in fashioning the disposition); *Thompson v. Maryland*, 988 A.2d 1011, 1026 (Md. 2010) (one purpose of the juvenile corrections act is public and community safety). Thus, while a receiving state cannot deny a transfer of supervision simply because of the age of the juvenile or the nature of the offense, concerns for community and public safety may be a legitimate consideration.

3.2 Juveniles Covered by the Revised ICJ

Article I of the Revised ICJ provides significant insight into who is subject to the Compact. It states, in part, that "The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others." REVISED INTERSTATE COMPACT FOR JUVENILES, art. I. Broadly speaking, the Revised ICJ applies to all juveniles subject to some form of supervision and fall into one of the following categories:

- Accused Delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;
- Adjudicated Delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
- Accused Status Offender – a person charged with an offense that would not be a criminal offense if committed by an adult;
- Adjudicated Status Offender – a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
- Non-Offender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

Several observations are in order. First, although not stated, a juvenile is not subject to the Revised ICJ if no court-ordered supervision is imposed because of the underlying offense. A predicate for coverage under the Revised ICJ is "supervision".[2] Consequently, a juvenile placed on a form of "bench probation" or "unsupervised" probation probably is not covered by the compact as there is no supervision to transfer. Such juveniles likely have committed minor offenses. As a matter of logic, therefore, juveniles who have committed a minor offense are not subject to the Revised ICJ absent a court or juvenile authority actually imposing some type of on-going supervision.

Second, it is important to note that whether a juvenile falls into one of the above listed categories depends on the laws of the state where the delinquent act or status offense occurred. Both Article II(H) and ICJ Rule 1-101 state, in effect, that the term "juvenile" means any person defined as a juvenile in *any* member state. Because the sentence is written in the disjunctive (that is, not "all" but "any"), this means that the laws of the state where the offense occurred trigger the provisions of the Revised ICJ, even if the individual would not be considered a juvenile in any other member state. *See, e.g., Washington v. Cook*, 64 P.3d 58, 58 (Wash. Ct. App. 2003) ("Under Texas law, adult defendant properly charged with a crime while a child was subject to the jurisdiction of the Texas Juvenile Court, and thus the Washington court was

[2] The ICJ Rules define the term "supervision as "the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile." *See*, ICJ RULES 1-101 (INTERSTATE COMM'N ON JUVENILES 2018).

required, pursuant to the ICJ, to honor Texas's rendition request and return the juvenile to Texas, despite the defendant's claim that he was no longer a juvenile."); *see also, In re Appeal in Coconino Cty. Juvenile Action No. J-10359*, 754 P.2d 1356, 1352-63 (Ariz. Ct. App. 1987) (in cases involving the ICJ, jurisdiction over a juvenile is derivative of the jurisdiction of the sending state; a "sending state" at all times retains jurisdiction over delinquent juveniles sent to institutions of other states; issue is not whether the receiving state can extend its jurisdiction past eighteen, but rather whether the sending state can make such an extension).

Finally, the fact that a juvenile delinquent may be covered by the Revised ICJ does not limit the extradition powers of the states. A juvenile delinquent may be extradited under the Uniform Criminal Extradition Act. *See e.g., Ex parte Jetter*, 495 S.W. 2d 925, 925 (Tex. Crim. App. 1973). However, the Uniform Criminal Extradition Act would not apply to the return of a runaway to their legal guardian or custodial agency. *E.g., A Juvenile*, 484 N.E.2d 995, 997 (Mass. 1985).

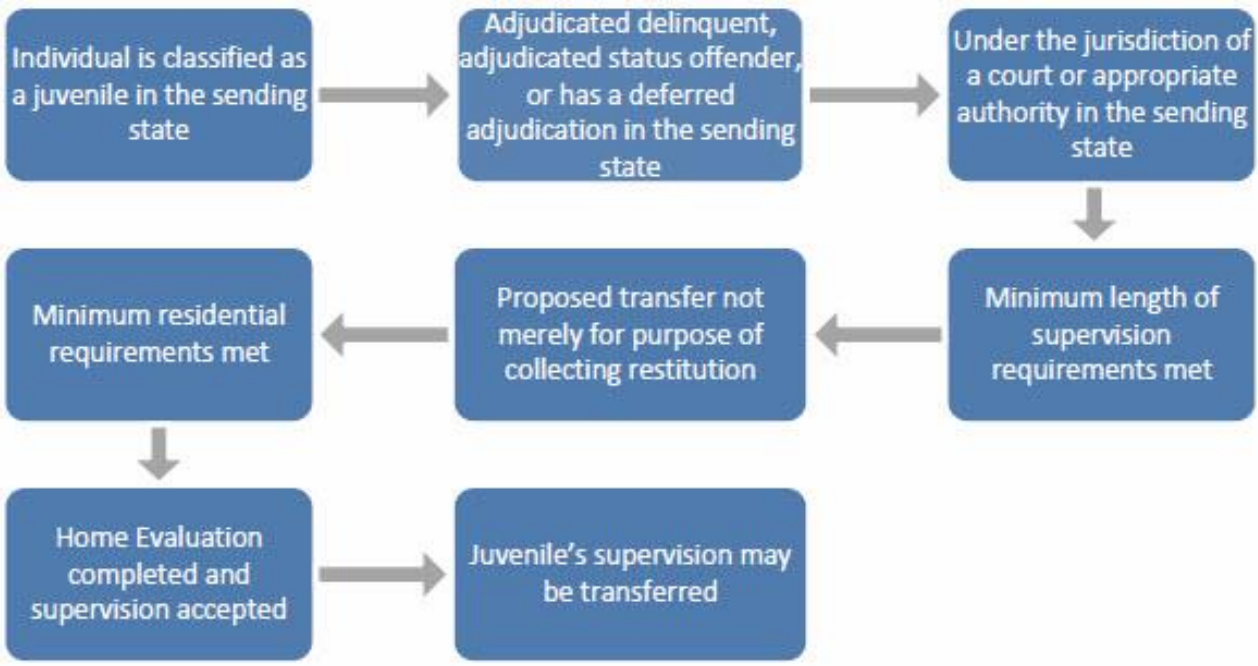
3.3 Eligibility

3.3.1 General Considerations

As noted, because coverage is controlled by reference to the definition of juvenile in the Revised ICJ and its rules, so too eligibility is a broadly defined concept. In theory, any "juvenile" covered by the Revised ICJ is eligible to transfer supervision without, for example, any consideration of the underlying offense. Therefore, the Revised ICJ and its rules weigh greatly in the direction of facilitating the transfer of supervision for a juvenile, regardless of the underlying nature of the offense, so long as the juvenile is subject to some form of supervision that is provided by the supervising state for its own juveniles. As one court has noted, the ICJ is to be liberally construed to effectuate the outcome for which it is designed. *E.P. v. District Court of Garfield Cty.*, 696 P.2d 254, 263-64 n.12 (Colo. 1985). ICJ Rule 4-101(2) defines specific criteria that juveniles must meet to be eligible for a transfer of supervision through the Compact. Specifically, for a juvenile to be eligible for services under the Revised ICJ, the juvenile must fulfill all of the following conditions:

- is classified as a juvenile in the sending state; and
- is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state; and
- is under the jurisdiction of a court or appropriate authority in the sending state; and
- has a plan inclusive of relocating to another state for a period exceeding ninety (90) consecutive days in any twelve (12) month period; and
- has more than ninety (90) days or an indefinite period of supervision remaining at the time the sending state submits the transfer request; and
- will reside with a legal guardian, relative, non-relative or independently, excluding residential facilities; or is a full-time student at an accredited secondary school, accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment.

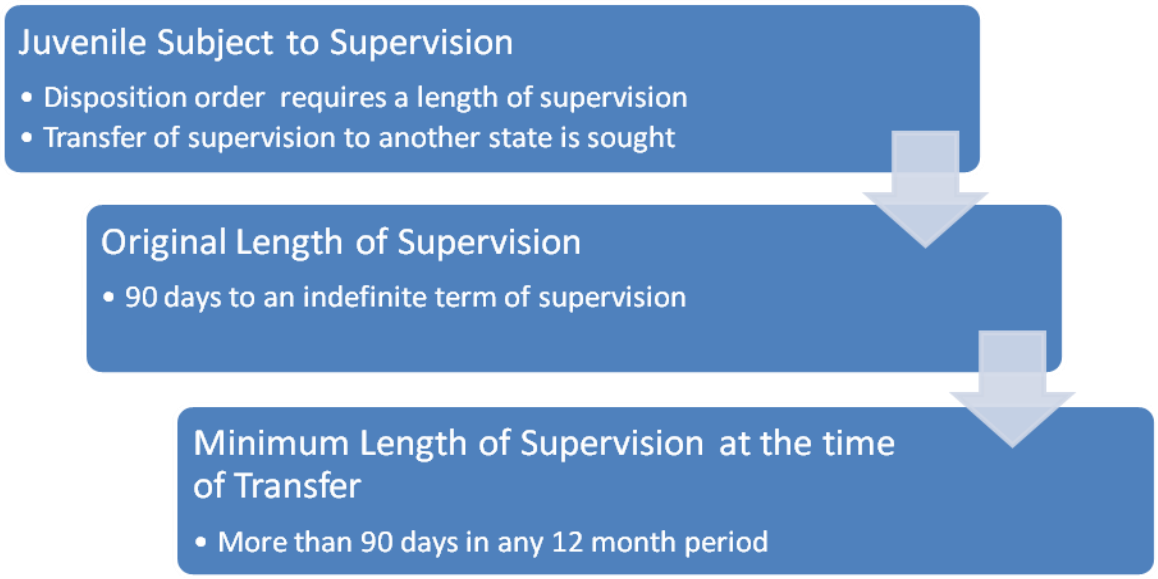
ICJ RULES 4-101(2)(a)-(f) (INTERSTATE COMM'N FOR JUVENILES 2018). Juveniles, who have been accepted as full-time students at an accredited secondary school, or accredited university or college, or state licensed specialized training program and can provide proof of enrollment, shall be considered for supervision by the receiving state. *Id.* 4-101(2)(f). Such juveniles are eligible, subject to the acceptability of the transfer of supervision plan. Nothing in the rules mandates that students enjoy special consideration regarding the suitability of the residence.



3.3.2 Length of Supervision Requirements

While the Revised ICJ and its rules technically cover all juvenile delinquents, status offenders, and non-offenders in need of supervision, ICJ Rule 4-101 establishes a "length of supervision" eligibility requirement. A juvenile is eligible to transfer supervision if:

- The plan of supervision calls for relocating the juvenile to another state for a period exceeding ninety (90) consecutive days in any twelve (12) month period. ICJ RULES 4-101(2)(d) (INTERSTATE COMM'N FOR JUVENILES 2018); and
- The juvenile has more than ninety (90) days or an indefinite period of supervision remaining at the time the sending state submits the transfer request. *Id.* 4-101(2)(e); and
- The transfer is not solely for the purposes of collecting restitution. *Id.* 4-101(4).



It is important to note that the length of supervision requirement is worded in the conjunctive. Therefore, the transfer of supervision to another state is covered by the Revised ICJ if the juvenile will be in the receiving state for more than 90 days *and* there are more than 90 days of supervision remaining. If either of these two lengths of supervision requirements is not met, the juvenile is not subject to the Revised ICJ or its rules.

It is also important to note, that the length of supervision and the age of majority are determined under the laws of the sending state. Consequently, a receiving state may be required to supervise a person over the age of 18 as a juvenile if a sending state provides for such a classification. This remains the case even if the juvenile would be treated as an adult under the laws of the receiving state. It is the age of majority determination of the sending state that sets the status of the juvenile notwithstanding any difference with the laws of the receiving state. *Id.* 5-101. The sending state's classification of juveniles who are treated as adults by court order, statute, or operation of law will also be dispositive of whether the ICJ or the Interstate Compact for Adult Offender Supervision (ICAOS) will be applicable to any transfer of supervision from the sending state to a receiving state. *Cf. Goe v. Comm'r of Prob.*, 46 N.E.3d 997, 999 (Mass. 2016).

3.3.3 Restrictions on Eligibility to Transfer

The expansive definition of juvenile, however, is subject to several limitations. First, ICJ Rule 4-102(1) reads "Each ICJ Office shall develop policies/procedures on how to handle ICJ matters within its state." As a result, each member state retains broad discretion in determining not simply the procedures but also the policies of transfer. Arguably, one member state could set transfer requirements that are different from another member state. As there are no limitations on these internal policies and procedures, sending states retain great latitude in determining the circumstances for interstate transfer.

There are, however, restrictions on the general policy in favor of transfers, the most significant being the right and obligation of a receiving state to determine whether the proposed

residence of a juvenile is suitable. The receiving state may reject a proposed transfer if: (a) the proposed residence is determined to be unsuitable, or (b) the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state. ICJ RULES 4-104(4) (INTERSTATE COMM'N FOR JUVENILES 2018). The term "unsuitable residence" could include any number of situations in which the receiving state could deny transfer of supervision, including one in which the residence might present a danger to other children in the household, *e.g.* sex offenders, or where the residence involved is too near a school, day care center, park or other location where other children might be at risk. The term "substantial compliance" means sufficient compliance by a juvenile with the terms and conditions of his or her supervision so as not to result in initiation of a revocation proceeding by the sending state or receiving state. ICJ RULES 1-101; *see also Minnesota v. Williams*, No. C5-96-1174, 1996 WL 49504, at *2 (Minn. Ct. App. Sept. 3, 1996) (stating that an offender shows commitment to rehabilitation by staying in substantial compliance with the terms and conditions of probation).

A complicating factor with residence, however, is the issue of parental custody (or another person who is entitled to custody of the juvenile), and the conflict between public safety and the welfare of the juvenile. ICJ Rule 4-104(4) allows the receiving state to deny supervision "when the home evaluation reveals that the proposed residence is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state." However, regarding the residence of a juvenile with a person entitled to legal custody, ICJ Rule 4-104(4) effectively allows an "override" of the receiving state's authority to deny a transfer of supervision when there is no legal guardian in the sending state and a legal guardian resides in the receiving state. In this circumstance, the receiving state has no discretion to deny the transfer of supervision, even if there are concerns about the residence.

3.3.4 Delinquency

The Revised ICJ applies to the transfer for supervision of a juvenile delinquent to another state. Both the sending state and the receiving state are obligated to comply in all respects with the terms and conditions of the Revised ICJ and its rules. The transfer of a juvenile delinquent to a receiving state without complying with the Revised ICJ or its rules violates the Compact and exposes the sending state to sanctions as provided in the Compact. That a court, rather than a juvenile authority, is the origin of the interstate disposition is irrelevant. Courts, like state executive authorities, are bound by the terms of the Revised ICJ. Thus, while a court may determine that an interstate dispositional transfer is in the best interests of the juvenile delinquent, it cannot effectuate that disposition outside the terms of the Revised ICJ. REVISED INTERSTATE COMPACT FOR JUVENILES, art. VII, § A(2) (2008) (Member states, their courts and criminal justice agencies are required to take all necessary action "to effectuate the Compact's purposes and intent.").

The laws of each member state define who is a juvenile delinquent. As noted earlier, the status of "juvenile delinquent" (whether accused or adjudicated) can be triggered by the laws of one member state even if another member state would not recognize that designation under its juvenile code. Therefore, it is important for receiving state officials to understand that their state

law is irrelevant for purposes of designating a juvenile as a delinquent when considering whether to accept or reject a proposed transfer; the delinquency designation of the sending state's law is binding on the receiving state. This interpretation also means that a receiving state may be obligated to provide supervision and services to a juvenile even though the juvenile would not be considered delinquent under the laws of the receiving state.

A "delinquent child" is a child who has committed a delinquent act and is in need of treatment or rehabilitation. *See, e.g.*, MODEL JUVENILE COURT ACT § 2(3) (UNIF. LAW COMM'RS 1968). A delinquent act is defined as an act designated as a crime under state law or the laws of another state, or under federal law such that if committed by an adult it would constitute a criminal violation. Ordinarily, a delinquent act does not include minor traffic offenses other than more serious offenses such as drunken driving or negligent homicide. *See, e.g., id.* § 2(2). Whether an act constitutes a delinquent act is defined by (a) the laws of the state in which the act occurred, and (b) the age of the juvenile at the time the act was committed, assuming the juvenile is not declared an adult for purposes of prosecution and trial. State law establishes the age for purposes of delinquency. *See, e.g., In re B.T.*, 82 A.3d 431, 434 (Pa. Super. Ct. 2013).

Under the Federal Juvenile Delinquency Act of 1938, 18 U.S.C. § 5032-5042 *et seq.*, "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his or her 18th birthday which would have been a crime if committed by an adult, 18 U.S.C. § 922(x) (2010), or a violation by such a person of the statute relating to transferring a handgun or ammunition to a juvenile. 18 U.S.C. § 5031 (2010). It is a jurisdictional requirement that the crime with which the juvenile is charged constitute a crime under the laws of the United States.

The transfer of supervision of a juvenile delinquent is not solely affected by the juvenile's age or the nature of the offense. While a receiving state could consider these elements in assessing whether the juvenile's proposed residence is suitable, the age and offense of the juvenile cannot be the sole grounds for denying transfer. Thus, for example, a receiving state could deny a proposed transfer of supervision in a case involving an older sex offender whose proposed residence might put him or her in close proximity to other children or a school. The receiving state could not deny the transfer of supervision simply because the juvenile is an older sex offender. In the first instance, issues of public safety may work against a transfer of supervision. A receiving state would be in violation of the Compact absent considerations such as public safety, the opportunity for rehabilitative services or questions regarding family stability, to name a few. ICJ RULES 4-104(3) (INTERSTATE COMM'N FOR JUVENILES 2018).

For a discussion concerning the procedures for returning a juvenile delinquent to the sending state, *see* discussion *infra* Chapter 4, section 5.

3.3.5 Status Offender

As with juvenile delinquents, the acceptance or rejection of the transfer of supervision or the relocation of a status offender is driven by multiple considerations. Again, the designation of the sending state is binding, notwithstanding the fact that a receiving state might designate a juvenile differently. Consequently, a receiving state may be obligated to provide supervision and services to a juvenile even though the juvenile would not be considered a status offender under

the laws of the receiving state. And, as with delinquents, mere age and nature of the offense cannot be the sole grounds for denying transfer. Moreover, a court or executive authority cannot effectuate the transfer of supervision or the relocation of a status offender outside the procedures provided in the Revised ICJ. To do so would violate the Revised ICJ and expose the state to sanctions. Courts may have wide discretion in fashioning the appropriate dispositional outcome for a status offender; they do not have discretion however in complying with the Revised ICJ.

A status offender may be defined as "Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court." *See, e.g.,* CAL. WELF. & INST. CODE § 601(a) (2010). A status offender may also include juveniles who are habitually truant where it is determined by authorities that "the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities." *See, e.g., Id.* § 601(b) (2010); *see also In re H.E.B.*, 695 S.E.2d 332, 333 (Ga. Ct. App., 2010) ("A 'status offender' is a person 'who is charged with or adjudicated of an offense which would not be a criminal offense if it were committed by an adult, in other words, an act which is only an offense because of the perpetrator's status as a child.'"); ICJ RULES 1-101 (INTERSTATE COMM'N FOR JUVENILES 2018). A status offender is sometimes referred to as an "unruly child" which includes a juvenile who: (a) is habitually and without justification truant from school; or (b) is habitually disobedient of the reasonable and lawful commands of his legal guardian or custodial agency and is ungovernable; or (c) has committed an offense applicable only to a child; and (d) in any of the foregoing is in need of treatment or rehabilitation. *See,* MODEL JUVENILE COURT ACT § 2 (UNIF. LAW COMM'RS 1968).

For a discussion concerning the procedures for returning a status offender to the home or sending state, *see* discussion *infra* Chapter 4, section 5.

3.3.6 Runaways

The Revised ICJ governs the return of runaway juveniles. Runaways are defined as "persons within the juvenile jurisdictional age limit established by the home state, who have voluntarily left their residence without permission of their legal guardian or custodial agency but who may or may not have been adjudicated." ICJ RULES 1-101 (INTERSTATE COMM'N FOR JUVENILES 2018). The Revised ICJ applies to runaways exclusively in the context of returning them to the state where the legal guardian or custodial agency resides. Thus, where the Revised ICJ applies to juvenile delinquents and status offenders in both the transfer of supervision process and the return process, it applies to runaways only in the context of effectuating a return. In the context of runaways, the distinction between sending state and receiving state is replaced by the more appropriate designation of "home/demanding state" and "holding state," the former being where the runaway's legal guardian(s) or custodial agency is located and the latter being the state where the runaway is located.

Although it generally has been held that a runaway is entitled to a hearing prior to being returned to the custodial state, the nature of the hearing need not rise to the level of a full due process hearing. As discussed, a juvenile has never been afforded the same spectrum of procedural rights as adults. *See generally In re C.J.W.*, 377 So.2d 22, 24 (Fla. 1979).

However, there is some conflict in the case law concerning the breadth of the hearing that must be afforded a runaway whose return is being sought under the Revised ICJ. In interpreting Article IV of the earlier version of the ICJ, at least one state Supreme Court has held that courts in the holding state must afford a runaway the right to a hearing. At the hearing a judge must "determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile ... and whether or not it is in the best interest of the juvenile to compel his return to the state." *State ex rel. White v. Todt*, 475 S.E.2d 426, 434 n.8 (W. Va. 1996); *see In Re M.D.*, 298 S.E.2d 243, 245 (W. Va. 1982) (court should determine whether return is in the best interest of the runaway); *Application of Pierce*, 601 P.2d 1179, 1183 (Mont. 1979) (it was not error by the trial court for refusing to return runaway to requisitioning state under the ICJ if court concluded that such return was not in the best interest of the child).

By contrast, in *In re C.P.*, the Pennsylvania Supreme Court held that upon the receipt of a requisition from a demanding state, the courts in the holding state may not inquire into the best interests of the child but are limited to determining whether the person or persons demanding return have legal custody to do so and the requisition complies with all procedural requirements. 533 A.2d 1001, 1002 (Pa. 1987); *see In re J.T. v. State*, 954 P.2d 174, 176 (Okla. Civ. App. 1997) ("No law requires a finding by an Oklahoma court that it is in Appellant's best interests to be returned to Kansas, nor has it been shown that the ICJ is constitutionally infirm for not requiring such a finding."). Other courts have followed a similar rationale, finding that issues related to the "best interest" of the child are reserved to the requisitioning state. *E.g., In re Teague*, 371 S.E.2d 510, 512 (N.C. Ct. App. 1988) (stating that when a judge finds the requisition in order, the juvenile shall be delivered to the demanding state). The Court in the case of *In re Texas* determined that the ICJ Form signed by the requisitioning state was dispositive of both 'endangerment' and 'best interest' of the juvenile in that the form states, "said juvenile's continued absence from legal custody and control is detrimental to the best interest of said juvenile and the public." 97 S.W.3d 744, 746 (Tex. App. 2003).

One additional factor that must be considered is whether the juvenile is emancipated or not. When a juvenile, who has not been adjudicated delinquent, runs away without the consent of the legal guardian or custodial agency entitled to legal custody, such custodian may petition for the issuance of a requisition for the return of the juvenile, but must allege facts in the petition to show that the juvenile is not an emancipated minor. *E.g., People v. Lucas*, 992 P.2d 619, 623 (Colo. App. 1999). By contrast, a custodian and a home/demanding state would have no interest, jurisdictional basis, or nexus to petition for return of a non-delinquent juvenile who is emancipated. A fully emancipated juvenile would be entitled to exercise all rights of adulthood and, absent involvement in the juvenile or criminal justice system, would not need to account to a former custodian or state concerning his or her whereabouts or well-being. *Id.*

3.4 Sentencing Considerations

As an initial matter, it should be noted that the use of the Revised ICJ as a supervision transfer mechanism has no bearing of the discretion of a prosecutor to proceed against a juvenile as an adult. The Revised ICJ does not prevent a prosecutor from exercising discretion under a juvenile code to proceed against a juvenile as an adult where the code unambiguously affords the prosecutor such discretion. *E.g., Menapace v. State*, 768 P.2d 8, 9 (Wyo. 1989)**.** Consequently, the Revised ICJ should be viewed as a supervision transfer mechanism, not as a tool that limits the prosecutor's discretion or the sentencing authority of a judge, so long as that authority does not implicate interstate matters.

More than in the context of adult sentencing, the rehabilitative purposes of the juvenile justice system provide courts with wide discretion in fashioning dispositional outcomes. *E.g., In re Bracewell*, 709 N.E.2d 938, 939-40 (Ohio Ct. App. 1998) ("Because the purpose of maintaining a juvenile court is different from that of the criminal justice system for adults, a juvenile court is given discretion to make any disposition 'that the court finds proper.' The proceedings are considered not criminal but civil in nature, and the dispositions ordered by the court are considered not punitive but rehabilitative*."); see Schall v. Martin*, 467 U.S. 253, 263 (1984). Because of the discretionary nature of the juvenile justice system, courts enjoy wide latitude in addressing juvenile issues, including the use of innovative sentencing, and heightened responsibility to meet dispositional directives. *E.g., In re S.S.*, No. D–8041–01/04D, 2005 WL 502836, at *4800 N.Y.S.2d 356 (N.Y. Fam. Ct. 2005) ("It is incumbent upon the Court to ensure that the agency having custody after formulating a permanency plan must make reasonable efforts to effect that plan."). In fact the failure of a court to "explore the possibility of a child's return to Pennsylvania, (to the home of a grandmother with whom the child had previously lived before moving to Florida where he was adjudicated delinquent), under an interstate compact for juveniles," was reversible error and inconsistent with Florida law which required a "new disposition," consistent with the statutory obligation "[t]o provide an environment that fosters healthy social, emotional, intellectual, educational, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state's care." *D.V. v. State*, 216 So.3d 3, 11 (Fla. Dist. Ct. App. 2017)

Consequently, the Revised ICJ is generally applicable to all manner of dispositional outcomes (that is sentences) without regards to their classification. The use of deferred adjudication, treatment options, custodial placements, and the like do not restrict the application of the Revised ICJ. ICJ Rule 1-101 specifically recognizes deferred adjudications as one form of adjudication that is covered by the Revised ICJ. It defines a deferred adjudication as "a decision made by a court that withholds or defers formal judgment and stipulates terms and/or conditions of supervision." ICJ RULES 1-101 (INTERSTATE COMM'N FOR JUVENILES 2018). As a result, the only differentiation between a deferred adjudication and a non-deferred adjudication for purposes of the Revised ICJ is some requirement of supervision. So long as some element of supervision is involved, the terms of the Revised ICJ are triggered. A court or executive authority cannot avoid the Revised ICJ by simply classifying its disposition as "deferred".

Additionally, because the Revised ICJ also applies in the context of accused delinquents and accused status offenders, the use of deferred prosecutions does not exempt a state from complying with the Revised ICJ. In addition to the status of the individual as a juvenile, the

essential element in triggering the Revised ICJ is the element of supervision. Consequently, an accused juvenile delinquent or accused status offender under some form of supervision would be subject to the Revised ICJ for purposes of transferring supervision and returning an absconder.

3.5 Processing Referrals

ICJ Rule 4-101 requires all member states to process referrals so long as the juvenile is under some form of court or juvenile authority jurisdiction in the sending state. Therefore, to be a valid referral, the juvenile must (a) currently be subject to the jurisdiction of the sending state, and (b) be subject to some form of supervision. Given the rehabilitative purposes of the juvenile justice system, the form of supervision should be liberally construed. ICJ RULES 5-101 (INTERSTATE COMM'N FOR JUVENILES 2018). Consequently, juveniles on probation, parole or any other form of supervision would be subject to the Revised ICJ, assuming the length of time requirements are met.

The Revised ICJ rules allow concurrent jurisdiction of both the Revised ICJ and the Interstate Compact on Placement of Children (ICPC). Therefore, juveniles subject to the Revised ICJ who are neglected or dependent are not precluded from placement and supervision through the ICPC. A juvenile who is not eligible for transfer under Revised ICJ is not subject to the rules. *Id.* 4-101(3).

3.5.1 Authority to Accept/Deny Referrals

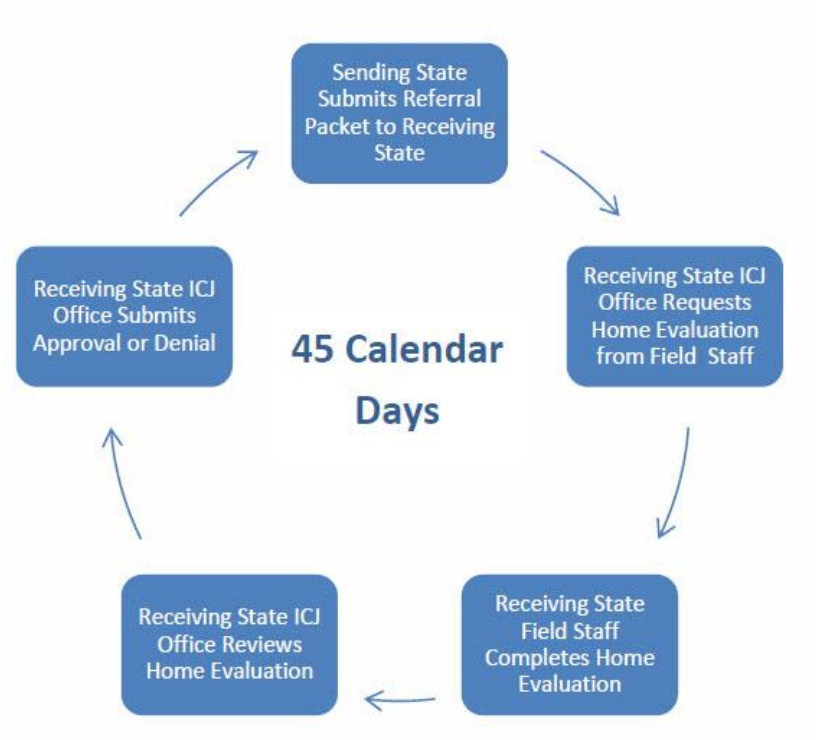
Generally, a receiving state can reject a referral if it finds that the proposed residence is unsuitable. As noted earlier, the age of the juvenile and the nature of the underlying offense *cannot be the sole* reason for denying the transfer of supervision, assuming all other eligibility requirements have been met. There is one exception to this general rule. ICJ Rule 4-104(4) states that supervision may be denied except "when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state." Consequently, once legal guardian nexus between the juvenile and the sending state is terminated and the nexus established in the receiving state, the receiving state *must* accept the transfer. *Cf. In re Welfare of Z.S.T.*, No. A09-324, 2009 WL 4910319, at *3 (Minn. Ct. App., Dec. 22, 2009) (holding that court did not err in refusing to transfer juvenile to another state where it was unsure whether a legal guardian permanently resided in the receiving state).

Under ICJ Rule 4-104, "Only the receiving state's authorized Compact Office staff shall accept or deny supervision of a juvenile by that state after considering a recommendation by the investigating officer." The purpose of this rule is to ensure and maintain state-to-state coordination over the movement of juveniles covered by the compact. Because the rules of the interstate commission are binding on the states, ICJ Rule 4-104 effectively prohibits any authority, other than the authorized Compact Office staff, from accepting or denying supervision of a juvenile. Local authorities, judges or other personnel have no authority to accept or deny a transfer of supervision outside the prior authorization or denial of a state's authorized Compact Office staff.

3.5.2 Sending and Receiving Referrals

ICJ Rule 4-102 governs the sending and receiving of referrals. Supervision shall not be provided without written approval from the receiving state's ICJ Office, and the sending state shall maintain responsibility until supervision is accepted by the receiving state. Different rules apply for juvenile parolees and probationers as to both form and timing. Regardless of whether a juvenile is a parolee or probationer, the ICJ Office in the receiving state should:

- Request its local offices complete a home evaluation; and
- Within forty-five (45) calendar days of receipt of the referral, forward the home evaluation to the sending state along with the final approval or disapproval of the request for supervision.



For a discussion of expedited transfers, *see* discussion *infra* Chapter 3, section 6.4.

3.5.2.1 Juvenile Parolees

In cases involving juvenile parolees, the sending state must complete all necessary documents and forward them to the receiving state **at least forty-five (45) calendar days prior to the juvenile's anticipated arrival date**. The ICJ Office in the sending state must send the following documents:

- Form IV Parole or Probation Investigation Request;
- Form IA/VI Application for Services and Waiver; and
- The Order of Commitment.

The sending state should also forward to the receiving state the following documents if available:

- The petition and/or arrest report(s);
- A legal and social history; and
- Any other information that would benefit the receiving state.

Parole conditions, if not sent to the receiving state beforehand, must be forwarded to the receiving state upon the juvenile's release from a facility.

3.5.2.2 Juvenile Probationers

In cases involving juvenile probationers, the ICJ Office in the sending state must forward the following documents to the receiving state: :

- Form IV Parole or Probation Investigation Request;
- Form IA/VI Application for Services and Waiver;
- Order of Adjudication and Disposition;
- Conditions of Probation and Petition; and
- Arrest Report(s).

The ICJ Office in the sending state should also provide copies (if available) of the following:

- Legal and Social History; and
- Any other pertinent information.

Additionally, Form V Report Of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to transfer of supervision if the juvenile is not already residing in the receiving state.

3.5.3 Summary of Timelines

<table>
<tr><th></th><th>Initial Referral (Sending State)</th><th>Local Referral & Home Evaluation (Receiving State)</th><th>Approve/Deny (Receiving State)</th><th>Relocation and Transfer of Supervision (Sending State)</th></tr>
<tr><td>Parolee</td><td>Submits referral packet 45 days prior to anticipated arrival in receiving state</td><td rowspan="2">Requests home evaluation from field staff</td><td rowspan="2">Submits home evaluation 45 days after receipt of referral from sending state</td><td>Maintains supervision of juvenile until relocation occurs within 90 days</td></tr>
<tr><td>Probationer</td><td>Submits referral packet</td><td>Maintains supervision of juvenile until relocation occurs within 90 days , if not already residing in receiving state</td></tr>
</table>

3.6 Transfer of Supervision

The effect of transferring supervision does not transfer the jurisdiction of the case or relieve sending state authorities of their obligation to take necessary actions to return a non-compliant juvenile. The transfer of supervision should be viewed as a request from one member state to another to provide services and supervision in support of the sending state's dispositional order and the terms of supervision. Consequently, it is important to distinguish between the concepts of jurisdiction and interstate supervision. The latter is transferable while the former is not. The jurisdiction of a case, including the authority to alter the terms and conditions of supervision, remains with the court of the sending state. Violations of the conditions of supervision must be handled by the courts of the sending state upon notice from the receiving state unless the violations constitute new delinquency or status offense conduct under the laws of the receiving state *and* that state decides to prosecute.

3.6.1 Supervision/Services Requirements

The transfer of supervision is not a transfer of jurisdiction and thus supervision in the receiving state is a joint effort between the two states in support of the court's dispositional order. *See In re S.H.*, No. A128298, 2011 WL 2152062, at *5 (Cal. Ct. App. June 1, 2011) ("Article I of the ICJ provides that among its purposes was to 'ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state *as ordered by the adjudicating judge or parole authority in the sending state* . . . .'"). While receiving states have limited discretion to reject a proposed transfer, this fact does not change the underlying nature of the relationship between the sending state and the receiving state. Consequently, until the receiving state agrees in writing to assume supervision, supervision remains with the sending state. *See* ICJ RULES 4-1012 (INTERSTATE COMM'N FOR JUVENILES 2018); *In re A.S.M.*, 325 P.3d 1251, 1255 (Mont. 2014) (requiring that ICJ application for transfer be approved prior to placement). Once the receiving state agrees to assume supervision, the sending state must within five (5) business days prior to the juvenile's departure, if the juvenile is not already residing in the receiving state, issue reporting instructions to the juvenile and provide written notification of the juvenile's departure to the receiving state. ICJ RULES 4-104(5).

Once supervision is transferred, the receiving state may not treat transferred juveniles any differently than it would treat its own juveniles. The express terms of the Revised ICJ prohibit authorities in a sending state from exercising supervision powers under standards that are different from those they apply to their own delinquent juveniles. *E.g.*, *In re Crockett*, 71 Cal. Rptr. 3d 632, 639-40 (Cal. Ct. App. 2008); *Palmer v. Commonwealth*, 632 S.E.2d 611, 615 (Va. Ct. App. 2006) ("ICJ directs each receiving state to assume the duties of . . . supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of . . . supervision that prevail for its own delinquent juveniles released on probation or parole."). Consequently, a state may not require a juvenile sex offender from another state to register if it would not require the same of its own juvenile delinquents even though the courts of the sending state required such registration. *Id.* A receiving state assumes responsibility for conducting visitation and supervision over a juvenile, including juvenile sex offenders. The

receiving state must furnish to the sending state quarterly progress reports. Additional reports should be sent when specific concerns arise. ICJ RULES 5-101(1), (4).

Both the sending and receiving states have authority to enforce the terms of supervision, which may include the imposition of sanctions in the receiving state. *See* ICJ RULES 5-101(3). Costs associated with enforcement actions are the responsibility of the state seeking to impose a sanction. It must be emphasized again, however, that the authority of the receiving state to enforce the terms of supervision does not relieve the sending state of ultimate jurisdiction over the case. Consequently, the age of majority and duration of supervision are controlled by the laws of the sending state. *See* ICJ RULES 5-101(7); *Cf. In re B.W.*, 313 S.W.3d 818, 820 (Tex. 2010) (holding that juvenile who was 13 years old could not legally consent to sex, and thus could not be adjudicated delinquent for offense of prostitution). However, where the receiving state holds a juvenile under the Revised ICJ, the type of secure facility and laws governing age of majority are determined by the laws of the receiving state. *See* ICJ RULES 5-101(7).

3.6.2 New Violations in the Receiving State

Nothing in the Revised ICJ prohibits officials in a receiving state from filing new charges against a juvenile for actions committed in that state. For example, a juvenile whose supervision was transferred commits burglary in the receiving state. The juvenile has (a) violated the terms and conditions of supervision set by officials in the sending state; and (b) committed a new juvenile delinquency act in the receiving state that constitutes a new offense, not merely the violation of supervision. The fact that a juvenile's supervision is transferred under the Revised ICJ does not mean that the juvenile is exempt from complying with the laws of the receiving state. While it is true that the courts of the receiving state may not modify the terms and conditions of the sending state's dispositional order, and thus the juvenile continues to be subject to the jurisdiction of a sending state's court, a juvenile transferred under the Revised ICJ is also subject to the jurisdiction of the receiving state. As such, a juvenile who commits new offenses in the receiving state may be charged in that state without violating or interfering in the jurisdiction of the sending state. Officials in a receiving state thus have two possible courses of action: (a) demand that the sending state return the juvenile for violating the terms and conditions of probation or parole; or (b) advise the sending state that they intend to proceed with new charges in the receiving state.

3.6.3 Restitution Payments

Where a court has ordered restitution payments as part of its dispositional order, the juvenile or juvenile's family are obligated to make such payments directly to the adjudicating court or agency in the sending state. Supervising officers in the receiving state shall encourage the juvenile to make regular payments in accordance with the court order of the sending state. The sending state shall provide the specific payment schedule and payee information to the receiving state. *See* ICJ RULES 5-101(8) (INTERSTATE COMM'N FOR JUVENILES 2018); *J.A.B. v. State*, 25 So.3d 554, 558 (Fla. 2010) (Statute's purpose is to fulfill the goal of providing restitution "wherever possible.").

3.6.4 Expedited Transfers

While the ICJ Rules address the specific timeframes associated with probation and parole transfers of supervision, the rules also provide procedures for conducting expedited transfers of supervision. ICJ Rule 4-102(2)(a) also provides guidance when it is necessary to relocate a juvenile out of state prior to the acceptance of supervision. The sending state determines if the circumstances of the juvenile's immediate transfer of supervision justify the use of a travel permit, including consideration of the appropriateness of the residence. If approved, the sending state provides the receiving state with an approved travel permit.

3.6.5 Travel Permits

As discussed throughout this Bench Book, juveniles, and especially juveniles under supervision, do not enjoy a free right of travel. *E.g.*, *In re Antonio R.*, 93 Cal. Rptr. 2d 212, 215 (Cal. Ct. App. 2000) (holding that the ICJ accords juvenile court broad discretion to restrict travel, which does not "impermissibly burden" the juvenile's constitutional rights). Consequently, the Revised ICJ has put into place special rules governing travel. ICJ Rule 8-101 governs the issuance of travel permits, which are designed to promote public safety and keep track of juveniles under supervision. Travel permits are mandatory for juveniles traveling out-of-state for a period in excess of twenty-four (24) consecutive hours who meet the criteria set forth in 1(a) or 1(b):

a. Juveniles who have been adjudicated and are on supervision for:
    i. Sex-related offenses;
    ii. Violent offenses that have resulted in personal injury or death; or
    iii. Offenses committed with a weapon;

b. Juveniles who are one of the following:
    i. State committed;
    ii. Relocating pending a request for transfer of supervision and who are subject to the terms of the Compact;
    iii. Returning to the state from which they were transferred for the purposes of visitation;
    iv. Transferring to a subsequent state(s) with the approval of the original sending state; or
    v. Transferred and the victim notification laws, policies and practices of the sending and/or receiving state require such notification;

A travel permit cannot exceed ninety (90) calendar days. When a Travel Permit exceeds thirty (30) calendar days, the sending state shall provide specific reporting instructions for the juvenile to maintain contact with the supervising agency.

Out of state travel for a juvenile under Compact supervision is at the discretion of the supervising person in the receiving state. If the sending state wishes to retain authority to approve travel, it shall be done so by notifying the supervising state in writing. When the sending state retains authority to approve travel permits, the receiving state shall request and obtain

approval prior to authorizing the juvenile's travel. *See* ICJ RULES 8-101(4) (INTERSTATE COMM'N FOR JUVENILES 2018).

The sending state's supervising officer is responsible for victim notification in accordance with the laws and policies of that state. The sending and receiving state will collaborate to assure that the legal requirements of victim notification are met and that the necessary information is exchanged to meet the sending state's obligation. *See* ICJ RULES 8-101(5).

For more discussion regarding victim notification requirements, *see* discussion *infra* Chapter 3, section 7.

3.6.6 Transfer of Supervision of Juvenile Sex Offenders

The transfer and supervision of juvenile sex offenders imposes special requirements on both the sending and receiving states. The ICJ Rules define a "juvenile sex offender" as a juvenile having been adjudicated for an offense involving sex or of a sexual nature as determined by the sending state or who may be required to register as a sex offender in the sending or receiving state." ICJ RULES 1-101 (INTERSTATE COMM'N FOR JUVENILES 2018). Such transfers implicate heightened public safety concerns and therefore are subject to more stringent requirements. In general, a juvenile sex offender's supervision may be transferred to another state, which is obligated upon acceptance to supervise the juvenile under the same standards it applies to in-state sex offenders. *E.g., In re Crockett*, 71 Cal. Rptr. 3d 632, 640 (Cal. Ct. App. 2008) ("We think this [the ICJ] bars authorities from requiring juveniles arriving on probation from other states to register as sex offenders based on orders from another state's court, if that requirement would not be imposed on a juvenile adjudicated by a California court under the same facts and circumstances."). Among the key requirements are the following:

- The sending state shall not allow a juvenile sex offender to transfer to the receiving state until the sending state's request to transfer supervision has been approved or the receiving state has issued reporting instructions. ICJ RULES 4-103(1).
- When it is necessary to relocate a juvenile sex offender out of state with a legal guardian prior to the acceptance of supervision, under the provision of ICJ Rule 4-103(3), the sending state shall determine if the circumstances of the juvenile's immediate relocation justify the use of a travel permit, including consideration of the appropriateness of the residence. When the sending state provides the approved travel permit, they must include a written explanation as to why ICJ procedures for submitting the referral could not be followed.
- Within five (5) business days of receipt of the travel permit, the receiving state advises the sending state of applicable registration requirements and/or reporting instructions.
- The sending state maintains responsibility until supervision is accepted in the receiving state. The receiving state shall have the authority to supervise juveniles pursuant to reporting instructions from the receiving state.

- The following documentation should be provided to the receiving state:
    - Form IA/VI Application for Services and Waiver;
    - Form IV Parole or Probation Investigation Request;
    - Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State;
    - Order of adjudication and disposition;
    - Conditions of supervision;
    - Petition and/or arrest report;
    - Safety plan;
    - Specific assessments;
    - Legal and Social History information pertaining to the delinquent behavior;
    - Victim Information, i.e., sex, age, relationship to the juvenile sex offender;
    - The sending state's current or recommended supervision and treatment plan; and
    - All other pertinent materials.

  Id. 4-103(2).
- In conducting home evaluations for juvenile sex offenders, the receiving state shall ensure compliance with local policies or laws to issuing reporting instructions. Id. 4-103(4).
- If the proposed residence is unsuitable, the receiving state may deny acceptance. *Id.* 4-103(4).
- A juvenile sex offender must abide by the offender registration laws of the receiving state, including felony or sex offender registration requirements, notifications, and DNA testing. A juvenile sex offender who fails to register is subject to the laws of the receiving state. *Id.* 4-103(5), (6).

3.7 Victim Notification

Under ICJ Rule 2-105, compliance with victim notification requirements are the responsibility of the sending state in accordance with the laws and policies of that state. When the sending state will require the assistance of the supervising person in the receiving state to meet these requirements, the sending officer shall clearly document such.

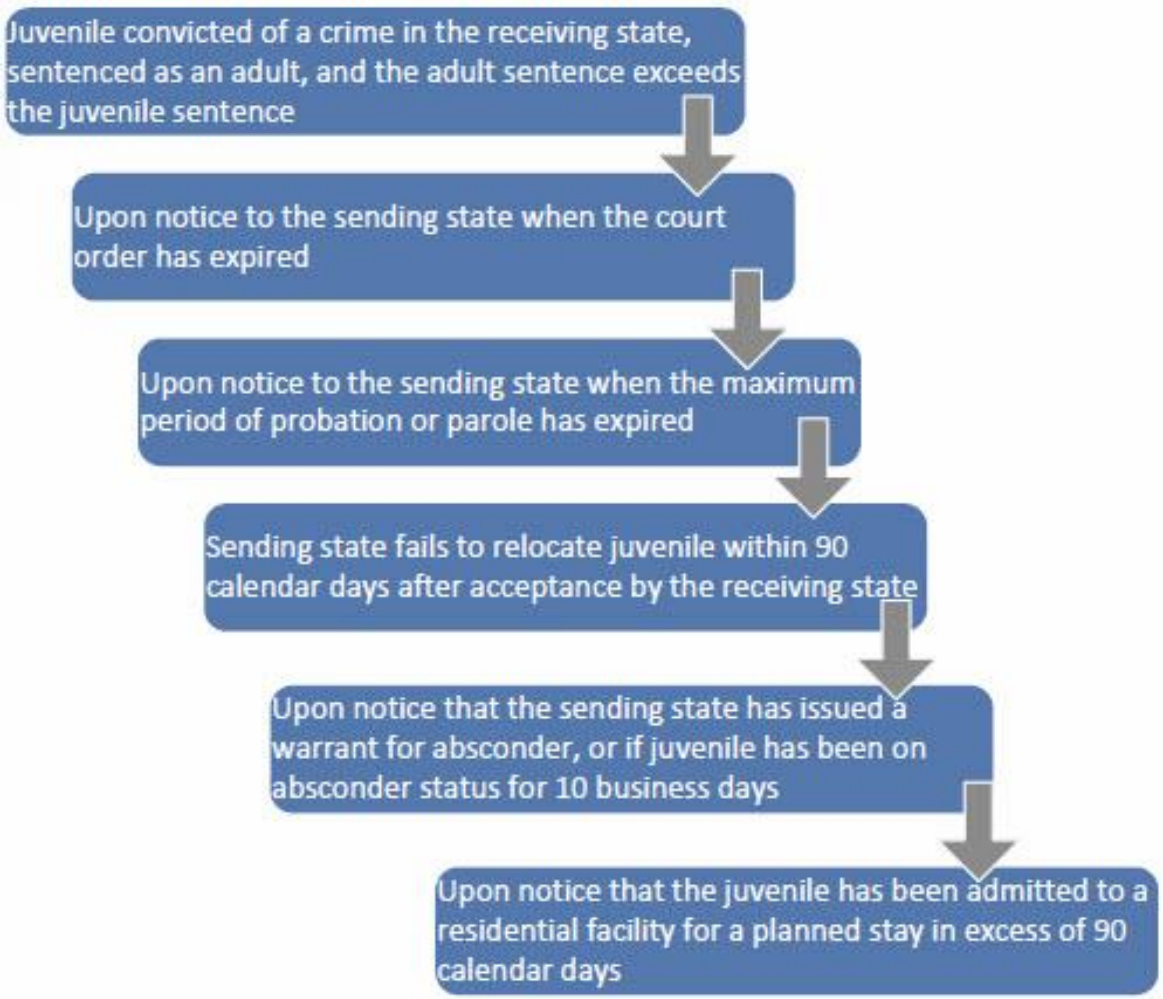
Throughout the duration of the supervision period, the receiving state shall, to the extent possible, provide the sending state with the requested information to ensure the sending state can remain compliant with the laws and policies of the sending state. It is the responsibility of the sending state to update the receiving state of any changes to victim notification requirements. ICJ RULES 2-105 (INTERSTATE COMM'N FOR JUVENILES 2018).

3.8 Closing a Case

Only the sending state has the authority to discharge/terminate supervision of its juveniles. This provision does not prohibit a receiving state from filing and prosecuting new charges against an out-of-state juvenile who has committed a new offense. It merely states the obvious: jurisdiction over a case (and therefore a juvenile) remains with the state court where the charges forming the basis for supervision were prosecuted.

That only a sending state can discharge/terminate supervision does not mean that the receiving state must continue to provide supervision in all cases. As noted earlier, there is a distinction between the concept of jurisdiction (which is fixed in a particular court) and supervision (which can be transferred to another state). A receiving state can close a case under the following circumstances:

- When a juvenile is convicted of a crime and sentenced under the jurisdiction of the adult court of the receiving state *and* the adult sentence issued by that court is longer than the juvenile sentence, the receiving state may close the supervision and administration of the case once it has notified the sending state in writing and provided it with a copy of the adult court order. ICJ RULES 5-104(1)(a) (INTERSTATE COMM'N FOR JUVENILES 2018).
- Upon notice to the sending state, when the court order that formed the basis of supervision expires. *Id.* 5-104(1)(b).
- When a sending state fails to relocate a juvenile within ninety (90) days after acceptance by the receiving state unless a request for extension has been made and an appropriate explanation provided. *Id.* 5-104(2).
- Upon notification that a warrant has been issued by the sending state for a juvenile who has absconded from supervision in the receiving state, or if the juvenile has been on absconder status for ten (10) business days. *Id.* 5-104(4).
- The receiving state may close the supervision case upon notification that the juvenile has been admitted to a residential facility for a planned stay in excess of ninety (90) calendar days. Upon release from the facility, if the juvenile remains on supervision within the sending state and meets eligibility requirements, the sending state shall submit a new referral.



Additionally, a receiving state may submit a request for early release to a sending state articulating the grounds for the request. The sending state must be provided an opportunity to consider the matter, to advise the court of jurisdiction or state agency of the request, and to make known any objection or concern before the case is closed. The decision to release a juvenile from supervision early rests in the exclusive authority of the sending state. If early release is denied, the sending state provides to the receiving state an explanation within sixty (60) calendar days as to why the juvenile cannot be released from probation/parole. *Id.* 5-104(3).

CHAPTER 4
RETURNING JUVENILES

4.1 Extradition

One of the principal purposes for the Revised ICJ is to provide for the effective transfer of delinquent juveniles on probation or parole to other states where they may be cooperatively supervised, and to affect the return of delinquent juveniles who have escaped or absconded, or juveniles who have run away from home, through means other than formal extradition. To this end, the status of juvenile offenders as absconders, escapees or delinquents substantially affects the process to which they are entitled under the Revised ICJ and constitutional principles of due process. Although the Revised ICJ and its administrative rules are relatively new and, therefore, not the subject of robust judicial construction, general principles governing the status of probationers and parolees under the federal Constitution, prior compacts, court decisions and state law are instructive and appear to be controlling on juvenile offenders subject to the Revised ICJ.

The U.S. Supreme Court has held that the granting of probation or parole is a privilege, not a right guaranteed by the Constitution. It comes as an "act of grace" to one convicted of a crime and may be coupled with conditions that a state deems appropriate under the circumstances of a given case. *See Escoe v. Zerbst*, 295 U.S. 490, 492-93 (1935); *Burns v. United States*, 287 U.S. 216, 220 (1932); *see also, United States ex rel. Harris v. Ragen*, 177 F.2d 303, 304 (7th Cir. 1949). Many state courts have similarly found that probation or parole is a "revocable privilege," an act of discretion. *Wray v. State*, 472 So. 2d 1119, 1121 (Ala. 1985); *People v. Reyes*, 968 P.2d 445, 449-50 (Cal. 1998); *People v. Ickler*, 877 P.2d 863, 866 (Colo. 1994); *Carradine v. United States*, 420 A.2d 1385, 1391 (D.C. 1980); *Haiflich v. State*, 285 So.2d 57, 58 (Fla. Dist. Ct. App. 1973); *State v. Edelblute*, 424 P.2d 739, 745 (Idaho 1967); *People v. Johns*, 795 N.E.2d 433, 437 (Ill. App. Ct. 2003); *Johnson v. State*, 659 N.E.2d 194, 198-99 (Ind. Ct. App. 1995); *State v. Billings*, 39 P.3d 682, 685 (Kan. Ct. App. 2002); *State v. Malone*, 403 So. 2d 1234, 1238 (La. 1981); *Wink v. State*, 563 A.2d 414, 417 (Md. 1989); *People v. Moon*, 337 N.W.2d 293, 296 n.6 (Mich. Ct. App. 1983); *Smith v. State*, 580 So. 2d 1221, 1225 (Miss. 1991); *State v. Brantley*, 353 S.W.2d 793, 796 (Mo. 1962); *State v. Mendoza*, 579 P.2d 1255, 1257 (N.M. 1978). The statutory privilege of probation or parole is controlled by the legislature and rests within the sound discretion of a sentencing court or paroling authority. *E.g., People v. Main*, 199 Cal. Rptr. 683, 686 (Cal. Ct. App. 1984). An offender has no constitutional right to conditional release or early release. *Greenholtz v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 7 (1979). Because there is no constitutional right, federal courts "recognize due process rights in an inmate only where the state has created a 'legitimate claim of entitlement' to some aspect of parole." *Vann v. Angelone*, 73 F.3d 519, 522 (4th Cir. 1996); *see also, Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 576 S.E.2d 146, 149 (2002); *In re S.H.*, No. A128298, 2011 WL 2152062, at *5 (Cal. Ct. App. June 1, 2011). A state will only be held to "create" a constitutional liberty interest, if its laws affirmatively create an interest that, if taken, would impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995).

Courts have held that probation, parole or conditional pardon is not something an offender can demand but rather it extends no further than the conditions imposed. Revocation of the privilege generally does not deprive an offender of any legal right. Rather, revocation merely returns the offender to the same status enjoyed before probation, parole or conditional pardon was granted. *E.g., Woodward v. Murdock*, 24 N.E. 1047, 1048 (Ind. 1890); *Commonwelath ex rel. Meredith v. Hall*, 126 S.W.2d 1056, 1057 (Ky. 1939); *Guy v. Utecht*, 12 N.W.2d 753, 759 (Minn. 1943). Other courts have held that probation, parole or conditional pardon is by nature a contract between the offender and the state by which the offender is free to accept with conditions or to reject and serve the sentence. Having elected to accept probation, parole or conditional pardon, the offender is then bound by its terms. *E.g., Gulley v. Apple*, 210 S.W.2d 514, 518-19 (Ark. 1948); *Ex parte Tenner*, 128 P.2d 338, 341 (Cal. 1942); *State ex rel. Rowe v. Connors*, 61 S.W.2d 471, 473 (Tenn. 1933); *Ex parte Calloway*, 238 S.W.2d 765, 766 (Tex. Crim. App. 1951); *Ex parte Paquette*, 27 A.2d 129, 132 (Vt. 1942); *Pierce v. Smith*, 195 P.2d 112, 116 (Wash. 1948), *cert. denied*, 335 U.S. 834 (1948). Still other courts have held that probation, parole or conditional pardon is an act of grace controlled by the terms and conditions placed on an offender as if under contract. *E.g., State ex rel. Bush v. Whittier*, 32 N.W.2d 856, 859 (Minn. 1948). Regardless of the underlying theory (grace, contract, or both) the general proposition is that probation is a privilege such that if a delinquent juvenile (like his counterpart in the adult offender system) refuses to abide by the conditions, a state can deny or revoke it. *People v. Eiland*, 576 N.E.2d 1185, 1191 (Ill. App. Ct. 1991). The rights of a person who is actually or constructively in the custody of state corrections officials due to the conviction of a criminal offense differs markedly from citizens in general, or for that matter citizens under suspicion of criminal conduct. *People v. Gordon*, 672 N.Y.S.2d 631, 636 (N.Y. Sup. Ct. 1998). It should be noted, that although a juvenile does not have a right to supervised release, once granted certain liberty interests, they are entitled to some minimum due process prior to revocation. *See, Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782-83 (1973); *see also People ex rel. Silbert v. Cohen*, 271 N.E.2d 908, 909-10 (N.Y. 1971).

It is not a violation of the Fourteenth Amendment equal protection when the procedures prescribed under a uniform interstate compact are applied. *See, e.g., People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458, 460 (N.Y. 1952). Similarly, in *Ex parte Tenner*, the court upheld the validity of a uniform statute for out-of-state parolee supervision (Interstate Compact on Probation and Parole "ICPP") finding that since the statute applied uniformly to all parolees from states that were members of the Compact, the statute did deprive parolees of the equal protection of the laws. 128 P.2d 338, 343 (Cal. 1942). In *People v. Mikula*, the court held that no violation of the constitution occurred where an out-of-state offender might be eligible for transfer of parole to another state while an in-state offender was not able to obtain such a parole. 192 N.E. 546, 548 (Ill. 1934). The court found that it was within the authority of the legislature to make reasonable classification of prisoners in order to effectuate the purposes of the statute. Pointing out that if the convict was a nonresident, and the law would not permit him to be paroled outside of the state, those reasons would become impotent as to him. *Id.* The court concluded that there was no deprivation of advantage to anyone because of the statutory distinction between resident and nonresident convicts. *Id.*; *cf., Williams v. Wisconsin*, 336 F.3d 576, 582 (7th Cir. 2003) (holding that while offenders have a right to marry, state can impose reasonable travel restrictions which

have the effect of incidental interference with the right to marry; such restrictions do not give rise to a constitutional claim if there is justification for the interference).

Similarly, even warrantless searches of parolees have been held to be permissible, particularly where such searches have been agreed to as a condition of parole. *See, Sampson v. California*, 547 U.S. 843, 848 (2006) ("Under our general Fourth Amendment approach we examine the totality of the circumstances to determine whether a search is reasonable within the meaning of the Fourth Amendment . . . .") In *Sampson*, the Court found that, on the continuum of state-imposed punishments, "parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment." *Id. at* 850; *see also United States v. Stewart*, 213 Fed. Appx. 898, 899 (11th Cir. 2007).

A person's status as an out-of-state offender does not mean that such person possesses no constitutional rights. Offenders may have some minimum rights of due process in limited circumstances. For example, in *Browning v Mich. Dept. of Corr.*, the court held that equal protection rights would be violated if a "dead time" statute were construed so that a person paroled out-of-state was not given credit on his original sentence for time served after his parole and while in prison in other states based on subsequent convictions in those other states. 188 N.W.2d 552, 556 (Mich. 1971) In that case, a parolee, as a result of the imprisonment in Georgia and in Illinois, had accumulated "dead time" totaling nearly 8 years, which was not credited to his Michigan sentence. *Id.* at 553. Noting that the legislature intended for a parole violator to serve sentences concurrently, the court held that in the event of a parole violation, the time from the date of the parolee's delinquency to the date of his arrest should not be counted as any part of the time to be served. *Id.* at 555. However, the court also concluded that a prisoner who is paroled out of state and who subsequently violates parole by committing an offense in another state, does not have his dead time end until declared available by the other state for return to Michigan. *Id.* at 556. The court declared that if construed to operate in this manner, the "dead time" statute not only violated the requirement that consecutive sentences be based upon express statutory provisions, but also invidiously sub-classified an out-of-state parolee solely upon the basis of geography and constituted a violation of equal protection guaranties. *Id.*

As discussed in section 2.1.3, *supra*, because no meaningful distinction between juveniles and adults existed at the time of the drafting of the Constitution, federal criminal law did not formally recognize a special status for juveniles. This was the case until the Federal Juvenile Delinquency Act of 1938 was adopted. Prior to that time, juvenile criminal offenders were subject to prosecution in the same manner as adults. As a consequence of this constitutional and legislative history, neither the constitutional provisions nor statutes governing extradition appear to make a special exception for juveniles.

Recent court decisions interpreting the application of extradition to juvenile offenders are in accord. *See, e.g., State v. J.M.W.*, 936 So. 2d 555, 560, 560 n.9 (Ala. Crim. App. 2005) ("J.M.W. also argues that because he is a juvenile the Interstate Compact for Juveniles, codified at § 44-2-1 et seq., Ala. Code 1975, governs his extradition, and not the provisions of the Uniform Criminal Extradition Act ("UCEA"), codified at § 15-9-1 et seq., Ala. Code 1975 . . . . The constitutional provision and the legislation governing extradition make no special provisions for juveniles, and the cases, at least by implication if not expressly, recognize that juveniles may

be extradited the same as adults." Annot., Extradition of Juveniles, 73 A.L.R.3d 700 (1976)."); *In re Boynton*, 840 N.W.2d 762, 767 (Mich. Ct. App. 2013*)("*Although a juvenile petition does not technically charge a crime, the rendition procedures established by the Compact for juveniles charged with delinquency are designed to be essentially the same as those long established for the extradition of adults charged with crimes")*; Ex parte Jetter,* 495 S.W.2d 925, 925-26 (Tex. Crim. App. 1973) ("Further, we find no limitation in the Uniform Criminal Extradition Act excluding minors from its operation."); *R.L.A.C. v. State*, 823 So. 2d 1288, 1290 (Ala. Crim. App. 2001); *accord In re O.M.*, 565 A.2d 573, 583 (D.C. 1989); *A Juvenile*, 484 N.E.2d 995, 997-98 (Mass. 1985). It is also important to note that a challenge as to whether extradition was proper under the ICJ or the Uniform Extradition Act must be raised prior to being delivered into custody of the charging state after which the legality of the extradition is no longer subject to legal attack. *E.g., R.L.A.C.*, 823 So. 2d at 1290.

Article IV, Section 2 of the U.S. Constitution provides the general provisions applicable to the interstate movement of individuals charged with crimes and subjects them to extradition upon demand of the executive authority of the state in which the crime is committed. While special criminal procedures may be required for juveniles in other contexts, these do not apply to the movement of juveniles from one state to another. Although some form of extradition proceeding is considered necessary for juvenile criminal fugitives, no formal extradition is necessary to return a minor to a guardian. The power of the state to try a juvenile is not affected by the manner of his return to a state.

In addition, Courts considering the question have not been reluctant to recognize that even if extradition does not apply, the Revised ICJ is a useful alternative to permit the lawful transfer of a juvenile across state lines. *See In re Lydell J.*, 583 N.Y.S.2d 1007, 1010 (N.Y. Fam. Ct. 1992) ("The provisions of the Criminal Procedure Law do not apply to Article 3 proceedings unless the applicability is specifically prescribed. [FCA § 303.1]. Thus, the Uniform Criminal Extradition Act contained in Article 570 of the CPL does not apply to juvenile delinquency proceedings as its applicability has not been specifically prescribed. However, the Interstate Compact for Juveniles contained in the Unconsolidated Laws § 1801 (L.1955, ch. 155, § 1, as amended) is applicable and provides the procedure by which a juvenile confined in another state may be returned to the requesting state."). *In re Teague*, 371 S.E.2d 510, 514 (N.C. Ct. App. 1988) ("North Carolina Interstate Compact for Juveniles which applies uniformly and exclusively to juveniles and does not allow court to make best interest determinations for any juveniles, does not violate equal protection, even though it allows no inquiry into juvenile's best interest and does not treat juveniles the same as adults under the Compact. U.S.C.A. Const. Amend. 14; G.S. § 7A-689"); *see also Interest of Storm*, 223 N.W.2d 170, 173 (Iowa 1974); *In re C.P.*, 533 A.2d 1001, 1003 (Pa. 1987).

4.2 Waiver of Formal Extradition Proceedings

4.2.1 Waiver of Extradition Under the Revised ICJ

While the federal constitutional and statutory provisions concerning extradition also appear to be applicable to probation and parole absconders, escapees or juveniles accused delinquent, principal among the provisions of the Revised ICJ and its duly authorized rules is the

member states' waiver of formal extradition requirements for return of juveniles on cooperative supervision who violate the terms and conditions of their supervision. The Revised ICJ specifically provides among its purposes is to:

> (A) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return.

See, REVISED INTERSTATE COMPACT FOR JUVENILES, art. I (2008). Additionally, pursuant to ICJ Rule 7-106(7):

> The duly accredited officers of any compacting state, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference.

And pursuant to ICJ Rule 5-103(3)(b):

> The Form IA/VI Application for Services and Waiver and Memorandum of Understanding and Waiver has the appropriate signatures; no further court procedures will be required for the juvenile's return.

In addition, under ICJ Rule 5-103(3), all applications for transfer must include a signed waiver concerning return or extradition to the sending state. Under the Interstate Compact for Adult Offender Supervision, courts have upheld the execution of a similar extradition waiver at the time of transfer and held that such a waiver is valid. *E.g.*, *Evans v. Thurmer*, 278 Fed. Appx. 679, 681 (7th Cir. 2008), *O'Neal v. Coleman*, No. 06-C-243-C, 2006 WL 1706426, at *5 (W.D. Wis. June 16, 2006). It is also important to note that, subject to certain requirements, a sending state has authority at all times to enter a receiving state and retake a juvenile. The waiver of extradition provided in ICJ Rule 5-103(3) applies to any member state where the juvenile might be located. However, authorities may be required to present evidence that the juvenile is the person being sought and that they are acting with lawful authority, for example, they are a lawful agent of the state enforcing a properly issued warrant. *See*, ICJ RULES 5-103(3) (INTERSTATE COMM'N FOR JUVENILES 2018); *see also Ogden v. Klundt*, 550 P.2d 36, 39 (Wash. Ct. App. 1976).

Although neither Article I of the Revised ICJ, ICJ Rule 4-102(2), nor ICJ Rule 5-103(3)(b) have been the subject of judicial interpretation, challenges to the constitutionality of similar waiver provisions contained in other compacts have not been successful. Courts have held that an interstate compact authorized by Congress relating to interstate apprehension and retaking of offenders without formalities and without compliance with extradition laws does not violate due process of law. *E.g.*, *Gulley v. Apple*, 210 S.W.2d 514, 518-19 (Ark. 1948); *Woods v. State*, 87 So. 2d 633, 637 (Ala. 1956); *Ex parte Tenner*, 128 P.2d 338, 341 (Cal. 1942); *Louisiana v. Aronson*, 252 A.2d 733, 735 (N.J. Super. Ct. App. Div. 1969); *People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458, 460 (N.Y. 1952); *Pierce v. Smith*, 195 P.2d 112, 116 (Wash. 1948), *cert. denied*, 335 U.S. 834 (1948). Extradition is not available even in the absence of a written

waiver by the offender as the interstate compact operates to waive any extradition rights. *E.g., People v. Bynul*, 524 N.Y.S.2d 321, 328 (N.Y. Crim. Ct. 1987).

Habeas corpus is generally unavailable to offenders being held pending return to the sending state under an interstate compact. *E.g., Stone v. Robinson*, 69 So. 2d 206, 210 (Miss. 1954) (prisoner not in Mississippi as a matter of right but as a matter of grace under the clemency extended by the Louisiana parole board; prisoner subject to being retaken on further action by the parole board); *State ex rel. Niederer v. Cady*, 240 N.W.2d 626, 628 (Wis. 1974) (constitutional rights of an offender whose supervision was transferred under the compact, not violated by denial of an extradition hearing, as the offender was not an absconder but was in another state by permission and therefore subject to the retaking provisions of the compact); *Cook v. Kern*, 330 F.2d 1003, 1004 (5th Cir. 1964) (whatever benefits the offender enjoyed under the Texas extradition statute, he has not been deprived of a federally protected right and therefore a writ of habeas corpus was properly denied; even assuming that a constitutional right was involved, the parole agreement constitutes a sufficient waiver.) However, a person seeking relief from incarceration imposed as the result of allegedly invalid proceedings under the ICPP may utilize the remedy of habeas corpus to challenge that incarceration. *People v. Velarde*, 739 P.2d 845, 848 (Colo. 1987). Other jurisdictions have also recognized the availability of this remedy, albeit for limited issues, to offenders seeking to challenge the nature and result of proceedings conducted pursuant to provisions equivalent to those of the ICPP. *See United States ex rel. Simmons v. Lohman*, 228 F.2d 824 (7th Cir. 1955); *Petition of Mathews*, 247 N.E.2d 791 (Ohio Ct. App. 1969); *Ex Parte Cantrell*, 362 S.W.2d 115 (Tex. 1962).

4.2.2 Uniform Extradition Act Considerations

An offender who absconds from a receiving state is deemed a fugitive from justice. The procedures for returning a fugitive to a demanding state can be affected by the Uniform Criminal Extradition and Rendition Act (UCERA). Under that act, a fugitive may waive all procedural rights incidental to the extradition. For example, upon the issuance of a Governor's warrant, the fugitive may waive extradition rights and consent to return to the state demanding the fugitive. To be valid, the waiver must be in writing, in the presence of a judge, after the judge has informed the fugitive of his rights under the statute. Nothing in the UCERA prevents a person from voluntarily returning to a state. Several courts have recognized that an interstate compact governing supervision of out-of-state offenders provides an *alternative procedure* by which a person can be returned to the demanding state without complying with the formalities of the UCERA. *E.g., In re Klock*, 184 Cal. Rptr. 234, 235 (Cal. Ct. App. 1982); *People v. Bynul*, 524 N.Y.S.2d 321, 328-29 (N.Y. Crim. Ct. 1987); *see Todd v. Fla. Parole and Prob. Comm'n*, 410 So.2d 584, 585 (Fla. Dist. Ct. App. 1982) ("[W]hen a person is paroled to another state pursuant to an interstate compact, all requirements to obtain extradition are waived.") An interstate compact has been held to displace the UCERA as to certain offenders and requires only minimal formalities as to the return of those offenders. *Id*. Furthermore, the offender's agreement to waive extradition as a condition of relocating waives the need for formal extradition proceedings upon demand by the sending state that an offender be returned. *Cf. Wymore v. Green*, 245 Fed. Appx. 780, 782-83 (10th Cir. 2007) (plaintiff's waiver of extradition renders any formal request or permission from the requesting and sending state governors unnecessary.)

PRACTICE NOTE: The purpose of the Revised ICJ is to benefit juveniles by permitting them to reside and be supervised in a state where the juvenile has familial and community ties. In consideration of this privilege, a juvenile is bound by the terms of the Revised ICJ, including ICJ Rules 4-102 (2) and 5-103(3) regarding waiver of extradition in certain circumstances. Therefore, a juvenile subject to the Revised ICJ is subject to the "alternative procedures" provided in the Compact and its rules, not the provisions of the UCERA.

4.3 Violations

A receiving state is obligated to furnish written progress reports to authorities in the sending state on a quarterly basis as required by ICJ Rule 5-101(4). Additional reports are required in cases where there are concerns regarding the juvenile or there has been a change in residence. At any time during supervision, if a juvenile is out of compliance with conditions of supervision, the receiving state shall notify the sending state of the condition(s) violated. The violation report must contain:

1. The date of the new citation or technical violation that forms the basis of the violation;
2. Description of the new citation or technical violation;
3. Status and disposition, if any;
4. Supporting documentation regarding the violation including but not limited to police reports, drug testing results, or any other document to support the violation.
5. Efforts or interventions made to redirect the behavior;
6. Sanctions if they apply; and
7. Receiving state recommendations.

The sending state shall respond to a report of a violation where revocation or discharge is requested by the receiving state no later than ten (10) business days following receipt by the sending state. The response shall include the action to be taken by the sending state, which may include continue supervision, and the date that action will occur.

Based upon these reports and other factors, if it is necessary to return a juvenile whose transfer of supervision has failed to the sending state and the Form IA/VI Application for Services and Waiver has the appropriate signatures, no further court procedure is required for the juvenile's return. ICJ RULES 5-103(3)(b) (INTERSTATE COMM'N FOR JUVENILES 2018).

4.4 Retaking/Rendition

As previously noted, Article I of the Revised ICJ and ICJ Rule 5-103(3) authorize officers of a sending state to enter a receiving state or a state to which a juvenile has absconded for purposes of retaking the juvenile. With limited exceptions, the decision to retake a delinquent juvenile rests solely in the discretion of the sending state, which also has the discretion to initiate the compact transfer process. *See* ICJ RULES 5-103(3), 4-101 (INTERSTATE COMM'N FOR JUVENILES 2018); *In re Welfare of Z.S.T.*, No. A09–324, 2009 WL 4910319, at *3 (Minn. Ct. App.,2009) ("First, we note that under Article II of the Compact, the decision to transfer probation is discretionary with the "sending state." Minn. Stat. § 260.51, art. VII(a) (2008)). However, it is important to note that under the provisions of the Revised ICJ Rules, if the

juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency in the receiving state, the sending state may not retake the juvenile without prior consent from authorities in the receiving state, until discharged from prosecution, or other form of proceeding, imprisonment, detention, or supervision. *See* ICJ RULES 5-103(3) (INTERSTATE COMM'N FOR JUVENILES 2018).

In cases where the ICJ transfer of supervision has failed, as determined under the provisions of ICJ Rule 5-103(3), officers of the sending state are permitted to enter the receiving state, or any other state to which the juvenile has absconded, in order to retake the juvenile. *See* discussion *infra* Section 4.5.5. Under the Compact and pursuant to ICJ Rule 5-103 where there has been a waiver of formal extradition proceedings, officers need only establish their authority and the identity of the juvenile. Once the authority of the sending state's officers is established, authorities in a receiving state may not prevent, interfere with or otherwise hinder the transportation of the juvenile back to the sending state. *See* ICJ RULES 5-103. Interference by court officials would constitute a violation of the Revised ICJ and its Rules.

4.5 Detention and Return of Juveniles in the Receiving State

The relationship between officials in a sending state and officials in a receiving state has been defined by courts as an agency relationship. Courts recognize that in supervising out-of-state juveniles the receiving state is acting on behalf of and as an agent of the sending state. *See State v. Hill*, 334 N.W.2d 746, 748 (Iowa 1983) (trial court committed error in admitting out-of-state offender to bail as status of the offender was not controlled by the domestic law of Iowa but rather by the Interstate Compact for Probation and Parole and the determinations of sending state authorities); *State ex rel. Ohio Adult Parole Auth. v. Coniglio*, 610 N.E.2d 1196, 1198 (Ohio Ct. App. 1993) ("For purposes of determining appellee's status in the present case, we believe that the Ohio authorities should be considered as agents of Pennsylvania, the sending state. As such, the Ohio authorities are bound by the decision of Pennsylvania with respect to whether the apprehended probationer should be considered for release on bond and the courts of Ohio should recognize that fact.").

In supervising out-of-state juveniles, authorities in a receiving state are not acting exclusively as authorities of that state under the domestic law of that state, but are also acting as agents of the sending state and to a certain degree are controlled by the lawful decisions of sending state officials. Under the terms of the compact, the receiving state "will assume the duties of visitation and supervision over probationers or parolees of any sending state. Transfer of supervision under this statute is not a transfer of jurisdiction. Although the day-to-day monitoring of probationers becomes the duty of the receiving state, the sending state does not abdicate its responsibility." *Keeney v. Caruthers*, No. 10A05–0512–CV–699, 2007 WL 258425, at *3 (Ind. Ct. App. Jan. 31, 2007); *Scott v. Commonwealth*, 676 S.E.2d 343, 348 (Va. Ct. App. 2009); *see* Tex. Atty. Gen. Op., No. DM-147 (1992).

The terms and conditions imposed upon the juvenile, whose probation or parole is transferred under the compact, are governed by the same standards that prevail for its own juveniles released on probation and parole. *See* ICJ RULES 5-101 (INTERSTATE COMM'N FOR JUVENILES 2018); *In re Crockett*, 71 Cal. Rptr. 3d 632, 639-40 (Cal. Ct. App. 2008) (considering

the status of a Texas juvenile whose supervision was transferred to California under the compact where the Court held that:

> The purpose of the ICJ, as stated in Welfare and Institutions Code section 1300, is to facilitate the cooperation of member states 'to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole.' (Welf. & Inst. Code, § 1300, art. I.) Welfare and Institutions Code section 1300 specifically provides that 'each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.' (Welf. & Inst. Code, § 1300, art. VII, subd. (b).) Thus, the express terms of section 1300 prohibit California authorities from exercising ICJ supervision powers under standards that are different from those they apply to their own delinquent juveniles released on probation. This prohibition bars authorities from requiring juveniles arriving on probation from other states to register as sex offenders based on orders from another state's court, if that requirement would not be imposed on a juvenile adjudicated by a California court under the same facts and circumstances.).

Even though it is clear under the Revised ICJ and its rules that the receiving state's standards apply to the terms of supervision, the Court emphasized that: "Nothing herein should be construed as preventing California law enforcement authorities or our courts from taking actions related to the supervision of petitioner's probation pursuant to the ICJ or to the Texas State juvenile court adjudication and that court's conditions of probation." *Id*.

4.5.1 Return of Juveniles Under the Revised ICJ

The return process under the Revised ICJ, as with all other compact provisions, requires the courts and executive agencies in each member state to enforce the Compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. *See,* REVISED INTERSTATE COMPACT FOR JUVENILES, art. VII, § A(2) (2008); *In re Pierce*, 601 P.2d 1179, 1183 (Mont. 1979). Like its predecessor compact, the Revised ICJ is a contract. "It remains a legal document that must be construed and applied in accordance with its terms. There is nothing in the nature of compacts generally or of this Compact in particular that counsels against ... ordering future performance called for by the Compact." *Texas v. New Mexico,* 482 U.S. 124, 128 (1987). Once a compact has been "solemnly entered into between States by those who alone have political authority to speak for a State . . . it cannot be "unilaterally nullified ... by an organ of one of the contracting States." *West Virginia ex rel. Dyer v. Sims,* 341 U.S. 22, 28 (1951*); In re O.M.*, 565 A.2d 573, 580 (D.C. 1989).

The return of an out-of-state juvenile may occur under one of the four following broad categories:

4.5.2 Release of Non-Delinquent Runaways

First, pursuant to ICJ Rule 6-101(1), a runaway may be released to a legal guardian or custodial agency within the first twenty-four (24) hours of detention (excluding weekends and holidays), except in cases where abuse or neglect is suspected by holding authorities. The runaway may be released to the legal guardian or custodial agency without applying the ICJ. *In Re Stacy B.*, 741 N.Y.S.2d 644, 646 (N.Y. Fam. Ct. 2002) ("The clear import of the language of the Compact is that the state signatories to the compact have agreed as a matter of policy to abide by the orders of member states . . . and to cooperate in the implementation of the return of runaway juveniles to such states.). However, if the legal guardian or custodial agency is unable or unwilling to pick up the juvenile within that timeframe, ICJ Rule 6-102 due process procedures must be used and the holding state's ICJ Office notified. Runaways, who are endangering themselves or others, held beyond twenty-four (24) hours, shall be held in secure facilities until returned by the home/demanding state. *See* ICJ RULES 6-102(1), 6-103(1) (INTERSTATE COMM'N FOR JUVENILES 2018).

Challenges to detention of runaways under this section, and the predecessor compact, have not been successful. *E.g., In re Doe,* 73 P.3d 29 (Haw. 2003) (Under the provisions of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §5633 (a) creates an exemption to the 'deinstitutionalization' of status offenders and also permits detention of juveniles who are held in accordance with the Interstate Compact for Juveniles as enacted by the State.); *L.A. v. Superior Court ex rel. County of San Diego,* 147 Cal. Rptr. 3d 431, 435 n.2 (Cal. Ct. App. 2012) ("A minor taken into custody upon the ground that he or she is a person described in Section 601, or adjudged to be a ward of the juvenile court solely upon that ground, may be held in a secure facility, other than a facility in which adults are held in secure custody, in any of the following circumstances: . . . For up to 24 hours after having been taken into custody, in order to locate the minor's parent or guardian as soon as possible and to arrange the return of the minor to his or her parent or guardian, *with the exception of an out-of-state runaway who is being held pursuant to the Interstate Compact for Juveniles*"); *Hopkins v. State,* 105 So.3d 470 (Fla. 2012); *see,* 42 U.S.C. §5633(a)(11)(A)(iii) (2012); *see also* Memorandum from Ashley Lippert, Exec. Dir., Interstate Comm'n for Juveniles & Richard L. Masters, Gen. Counsel, Interstate Comm'n for Juveniles, to All Interstate Comm'n for Juveniles Offices (May 20, 2010) (on file with author and Appendix VI).

When a holding state has reason to suspect abuse or neglect by a legal guardian or others in the home of a runaway juvenile, the holding state's ICJ Office shall notify the home/demanding state's ICJ Office of the suspected abuse or neglect. The home/demanding state's ICJ Office shall work with the appropriate authority and/or court of jurisdiction in the home/demanding state to effect the safe return of the juvenile. *See* ICJ RULES 6-105(1).

In instances where a runaway who alleges abuse or neglect does not agree to a voluntary return, if the appropriate authorities in the home/demanding state determine that the juvenile will not be returning to legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with ICJ Rule 6-103.

4.5.3 Voluntary Return of Out-of-State Juveniles

Second, an out-of-state juvenile may be voluntarily returned under ICJ Rule 6-102. This rule applies to non-delinquent juveniles, probation and parole absconders, escapees, and accused delinquents. The holding state's ICJ Office shall be advised of the juvenile's detention and shall contact the juvenile's home/demanding state's ICJ Office concerning the case. The home/demanding state's ICJ office is required to immediately initiate measures to determine the juvenile's residency and jurisdictional facts in that state. Juveniles are to be returned only after charges are resolved when pending charges exist in the holding/receiving state, unless consent is given by the holding/receiving and demanding/sending states' courts and ICJ Offices. *See* ICJ RULES 7-103(1) (INTERSTATE COMM'N FOR JUVENILES 2018). At a court hearing, whether physical or by telephonic or other electronic means, the judge in the holding state is required to inform the juvenile of his/her compact rights and may elect to appoint counsel or a guardian ad litem to represent the juvenile in this process. *See id.* 6-102(3)-(5). If in agreement, the juvenile signs the approved ICJ Form III Consent for Voluntary Return of Out-of-State Juvenile, consenting to the return, which is required to be filed with the compact office in the holding state. Juveniles are required to be returned by the home/demanding state within five (5) business days of receiving ICJ Form III Consent for Voluntary Return of Out-of-State Juvenile, this period may be extended up to an additional five (5) working days with approval from both ICJ Offices. The compact rules require the home/demanding state to be responsive to the holding state's court orders in returning its juveniles. Each ICJ Office is required to have pre-existing policies and procedures that govern the return of juveniles to ensure the safety of the public and juveniles. *See id.* 6-102(6)-(9).

In addition to being responsible for the juvenile's return within five business days on notice that the ICJ Form III Consent for Voluntary Return of Out-of-State Juvenile has been signed, the home/demanding state is responsible for the costs of transportation and for making transportation arrangements. *See id.* 7-101. Further, to reinforce ICJ Rule 6-102 (6)-(9), 7-102 designates that the home state's ICJ Office shall determine appropriate measures and arrangements to ensure the safety of the public and of juveniles being transported based on the holding and home states' assessments of the juvenile. If the home state's ICJ Office determines that a juvenile is considered a risk to harm him/herself or others, the juvenile shall be accompanied on the return to the home/demanding state.

When the juvenile is a non-delinquent being held in secure detention past the initial 24 hours, pending return to the home/demanding state, Section 3.2 of the 2007 OJJDP Guidance Manual for Monitoring Facilities Under the JJDP Act of 2002 provides that "Out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a warrant or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the DSO requirement. Juveniles held pursuant to the Interstate Compact for Juveniles enacted by the state are excluded from the DSO requirements in total."

4.5.4 Non-Voluntary Return of Out-of-State Juveniles

Third, an out-of-state juvenile is subject to arrest and detention upon request of either the home/demanding or sending state. This rule applies to non-delinquent juveniles, probation and parole absconders, escapees, and accused delinquents. Such a return procedure applies to all juveniles in custody who refuse to voluntarily return to their home/demanding state, or juveniles whose whereabouts are known but are not in custody. *See* ICJ RULES 6-103, 6-103(a) (INTERSTATE COMM'N FOR JUVENILES 2018). The obligation of member states to honor requisitions under the Revised ICJ is recognized in cases such as *State v. Cook*, where the Court held that under Texas law, an adult defendant, who was properly charged with a crime while a child, was subject to the jurisdiction of the Texas Juvenile Court, and thus the Washington Court was required, pursuant to the Interstate Compact for Juveniles, to honor Texas' rendition request and return the juvenile to Texas, despite the defendant's claim that he was no longer a juvenile. 64 P.3d 58, 58 (Wash. Ct. App. 2003) ("The Uniform Interstate Compact for Juveniles . . . governs, among other things, the return from one state to another of delinquent juveniles who have escaped or absconded. Both Washington and Texas adopted the Compact."). The Court analogized rendition under the compact to extradition and held that the rendition proceedings were applicable even after the offender had become an adult if the crimes in question were committed as a juvenile, stating, "Cook contends the Compact does not apply to him because he is not a juvenile. The State responds that because the Texas juvenile court had jurisdiction under Texas law and Texas made a proper rendition request, the Compact requires Washington to honor the demand. We agree." *Id* at 59. "[E]xtradition cases have typically looked to the law of the demanding state to determine whether the person charged is a juvenile. Cases under the Uniform Criminal Extradition Act have likewise found the demanding state's determination of juvenile status controlling." *Id.*; *see also In re State*, 97 S.W.3d 744, 745 (Tex. App. 2003) (demanding state's requisition under Interstate Compact for Juveniles for return of juvenile from asylum state was "in order," and thus judge of asylum state was required to return the juvenile to the demanding state upon receipt of the requisition).

To affect such a return, the appropriate person or authority in the home/demanding state shall prepare a written requisition within sixty (60) calendar days of notification of either a refusal to voluntarily return as provided in ICJ Rule 6-102, or to request that a court take a juvenile into custody that is allegedly located in their jurisdiction. Once in detention, the juvenile may be held, pending non-voluntary return to the home/demanding state, for a maximum of ninety (90) calendar days. When the juvenile is a runaway, the legal guardian or custodial agency must petition the court of jurisdiction in the home/demanding state for a requisition pursuant the requirements of ICJ Rule 6-103(3)(a) - (c).

In the event that the legal guardian or custodial agency in the home/demanding state is unable or refuses to initiate the requisition process, the home/demanding state is required to do so. *See* ICJ RULES 6-103(11). In *J.T. v. State*, the Court upheld the return of a juvenile, under the ICJ, to a Kansas facility from which she had run away, holding that the juvenile's due process rights were not violated when the court issued an order to have her returned without having made a finding that it was in juvenile's best interests to be returned. 954 P.2d 174, 176 (Okla. Civ. App. 1997) ("No law requires a finding by an Oklahoma court that it is in Appellant's best interests to be returned to Kansas, nor has it been shown that the Interstate Compact for Juveniles

is constitutionally infirm for not requiring such a finding.")*; accord In re State*, 97 S.W.3d 744, 746 (Tex. App. 2003) ("Following these requirements, the duty of a judge receiving a proper requisition must perform the ministerial act or duty of ordering the juvenile to return to the demanding state."); *In re Stacy B.*, 741 N.Y.S.2d 644 (N.Y. Fam. Ct. 2002).

Where the juvenile is an absconder, escapee, or accused delinquent, the Revised ICJ Rules also permit the appropriate authority to requisition the juvenile in the state where the juvenile is alleged to be located, pursuant to the filing of the documentation required in ICJ Rule 6-103A(3) and subject to verification by the home/demanding state upon receipt of which the court where the juvenile is located is required to order the juvenile to be held pending a hearing on the requisition, if not already in custody. A hearing on the requisition is required by this Rule within thirty (30) calendar days of receipt of the requisition. One of the pertinent issues, is whether the juvenile is in fact an absconder, which under the predecessor compact was not defined. In *B.M. v. Dobuler*, the Court in interpreting the term "absconder" observed:

> The Interstate Compact for Juveniles, codified in Chapter 985, Part V, makes several references to juveniles who have absconded, escaped or run away, which suggests a leaving without the intent to return. A search of cases from neighboring jurisdictions reveals our understanding of the meaning of "abscond" to be similar to that of other states." *See, e.g., State v. Graham*, 284 N.J. Super. 413, 665 A.2d 769, 770 (1995) (noting that the offense of absconding from parole in New Jersey consists of two elements, "hiding" or "leaving" and the "intent" to avoid law enforcement); *In re R.*, 73 Misc.2d 390, 341 N.Y.S.2d 998, 1001 (1973) ("To abscond in the eyes of the law ... involves a design to withdraw clandestinely, to hide or conceal one's self for some purpose such as avoiding legal proceedings."); *State v. Snelgrove*, 299 S.C. 290, 384 S.E.2d 705, 706 (1989) (noting that "[t]here must be some evidence, either direct or circumstantial, that the departure was secretive, clandestine, or surreptitious in order for it to constitute 'absconding' ") (quoting *State v. Wagenius*, 99 Idaho 273, 581 P.2d 319, 327 (1978).

979 So. 2d 308, 315 (Fla. Dist. Ct. App. 2008). Consistent with the above judicial interpretations, the Revised ICJ Rules define '*absconder'* as a juvenile probationer or parolee who hides, conceals or absents him/herself with the intent to avoid legal process or authorized control. *See* ICJ RULES 1-101.

Upon determination that proof of entitlement is established, the court shall order the juvenile's return to the home/demanding state. If proof of entitlement is not established, the Rule requires the court to issue written findings providing the reason(s) for denial. Requisitioned juveniles are required to be returned within five (5) business days after receipt of the order granting the requisition and shall be accompanied during their return to the home/demanding state, unless both ICJ Offices determine otherwise.

In addition to being responsible for the juvenile's return within five (5) business days on notice that the requisition has been honored, the home/demanding state is responsible for the costs of transportation and for making transportation arrangements. *See* ICJ RULES 7-101. Juveniles are to be returned only after charges are resolved when pending charges exist in the

holding/receiving state, unless consent is given by the holding/receiving and demanding/sending states' courts and ICJ Offices. *See* ICJ RULES 7-103.

4.5.5 Return of Juveniles After Failed Transfer

The fourth circumstance under which a juvenile may be returned under the compact arises when an ICJ transfer of supervision has failed. The rules of the Revised ICJ specifies that a transfer of supervision has failed when:

1. a juvenile is no longer residing in the residence approved by the receiving state due to documented instances of violation of conditions of supervision; or
2. An alternative residence is determined to be in the best interest of the juvenile due to documented instances of violation of conditions of supervision and no viable alternatives exist in the receiving state; or
3. An immediate, serious threat to the health and safety of the juvenile and/or others in the residence or community is identified; and
4. The receiving state has documented efforts or interventions to redirect the behavior.

Additionally, when a juvenile is not residing with a legal guardian and that person requests the juvenile be removed from his/her home, the sending state shall secure alternative living arrangements within five (5) business days or the juvenile shall be returned. *See* ICJ RULES 5-103(4) (INTERSTATE COMM'N FOR JUVENILES 2018). It is clear that under ICJ Rule 5-101(1) a receiving state can apply any standard which is applied to its own juveniles in the evaluation of a particular transfer, and under the provisions of ICJ Rule 4-102(2), both the sending and receiving states have the authority to enforce the terms of probation and parole including any appropriate sanctions to be imposed. It is also reasonable to assume that since a receiving state, under ICJ Rule 4-104, has the authority to deny the initial application for compact supervision when a home evaluation reveals that a proposed residence is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision, such a request could be made to the sending state to retake the juvenile should such circumstances arise subsequent to acceptance of supervision. It is equally clear that under ICJ Rule 5-103, a sending state has conclusive authority to retake a delinquent juvenile on parole or probation; this decision to retake the juvenile is not reviewable in the receiving state.

If it is determined necessary to return a juvenile whose transfer of supervision has failed to the sending state, and the Form IA/VI Application for Services and Waiver has the appropriate signatures, no further court procedures are required for the juvenile's return. Upon notification to the receiving state's ICJ Office, a duly accredited officer(s) of a sending state may enter the receiving state and apprehend and retake any such juvenile on probation or parole and shall be permitted to transport a delinquent juvenile being returned through any and all states party to this compact without interference. If not practical, a warrant may be issued and the supervising state (receiving state) shall honor the warrant. The sending state is required to return the juvenile in such cases within five (5) business days upon receiving notice of the failed transfer of supervision, in a safe manner, pursuant to ICJ Rules 7-102 and 7-107. *See* ICJ RULES 5-103(3)(d). With limited exceptions, the decision to retake a delinquent juvenile rests solely in the discretion of the sending state. *See* ICJ RULES 5-103. However, if the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency in the receiving state, the

sending state may not retake the juvenile without prior consent from authorities in the receiving state, until discharged from prosecution, or other form of proceeding, imprisonment, detention, or supervision. *See* ICJ RULES 5-103(3)(a).

As provided in ICJ Rule 5-103(3)(c), the sending state may issue a warrant for the juvenile and request that the receiving state arrest and detain the juvenile pending retaking. Courts have routinely recognized the right of a receiving state to arrest and detain a juvenile based on such a request from a sending state. *See, e.g., State ex rel. Ohio Adult Parole Auth. v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993) (offender cannot be admitted to bail pending retaking); *Crady v. Cranfill*, 371 S.W.2d 640 (Ky. Ct. App. 1963) (detention of offenders proper as only courts in the sending state can determine the status of their jurisdiction over the offender).

PRACTICE NOTE: A juvenile arrested and detained for violating the terms and conditions of supervision may have certain due process rights. If the sending state intends to use the juvenile's violations in the receiving state as the basis for possibly revoking the juvenile's conditional release, U.S. Supreme Court decisions, which may be applicable in the context of ICJ retakings, require that the sending and receiving states comply with various hearing requirements.

In addition to specific rule authorization cited above, public policy justifies the arrest of an out-of-state juvenile notwithstanding the domestic law of the receiving state. The purpose of the Revised ICJ is not to regulate the transfer and return of juveniles, including juvenile offenders simply for the sake of regulation. Rather, regulating the movement of juveniles fulfills the critical purposes of promoting public safety and protecting the rights of crime victims. *See* REVISED INTERSTATE COMPACT FOR JUVENILES, art. I (2008). All activities of the Commission and the member states are directed at promoting these two overriding purposes. Member states, their courts and criminal justice agencies are required to take all necessary action to "effectuate the Compact's purposes and intent." *See id.* article VII, § A(2).

4.5.6 Absconders Under ICJ Supervision

When a juvenile being supervised under the terms of the Interstate Compact for Juveniles in the receiving state absconds, the receiving state shall attempt to locate the juvenile. If the juvenile is not located, the receiving state submits a violation report to the sending state's ICJ office.

The receiving state may close the case upon notification that a warrant has been issued by the sending state for a juvenile who has absconded from supervision in the receiving state, or if the juvenile has been on absconder status for ten (10) business days. Upon finding or apprehending the juvenile, the sending state determines if the juvenile shall return to the sending state or they will request supervision resume in the receiving state. *See* ICJ RULES 5-102 (INTERSTATE COMM'N FOR JUVENILES 2018).

4.5.7 Hearing Requirements

Juveniles who are adjudicated delinquent, like other offenders, including those subject to supervision under the Revised ICJ, have limited rights. Conditional release is a privilege not guaranteed by the Constitution; it is an act of grace, a matter of pure discretion on the part of sentencing or corrections authorities. *E.g., Escoe v. Zerbst*, 295 U.S. 490, 492-93 (1935); *Burns v. United States*, 287 U.S. 216, 220 (1932); *see also, United States ex rel. Harris v. Ragen*, 177 F.2d 303, 304 (7th Cir. 1949). Many state courts have similarly found that probation or parole is a "revocable privilege," an act of discretion. *Wray v. State*, 472 So. 2d 1119, 1121 (Ala. 1985); *People v. Reyes*, 968 P.2d 445, 449-50 (Cal. 1998); *People v. Ickler*, 877 P.2d 863, 866 (Colo. 1994); *Carradine v. United States*, 420 A.2d 1385, 1391 (D.C. 1980); *Haiflich v. State*, 285 So.2d 57, 58 (Fla. Dist. Ct. App. 1973); *State v. Edelblute*, 424 P.2d 739, 745 (Idaho 1967); *People v. Johns*, 795 N.E.2d 433, 437 (Ill. App. Ct. 2003); *Johnson v. State*, 659 N.E.2d 194, 198-99 (Ind. Ct. App. 1995); *State v. Billings*, 39 P.3d 682, 685 (Kan. Ct. App. 2002); *State v. Malone*, 403 So. 2d 1234, 1238 (La. 1981); *Wink v. State*, 563 A.2d 414, 417 (Md. 1989); *People v. Moon*, 337 N.W.2d 293, 296 n.6 (Mich. Ct. App. 1983); *Smith v. State*, 580 So. 2d 1221, 1225 (Miss. 1991); *State v. Brantley*, 353 S.W.2d 793, 796 (Mo. 1962); *State v. Mendoza*, 579 P.2d 1255, 1257 (N.M. 1978). Some courts have held that revoking probation or parole merely returns the offender to the same status enjoyed before being granted probation, parole or conditional pardon. *E.g., Woodward v. Murdock*, 24 N.E. 1047, 1048 (Ind. 1890); *Commonwealth ex rel. Meredith v. Hall*, 126 S.W.2d 1056, 1057 (Ky. 1939); *Guy v. Utecht*, 12 N.W.2d 753, 759 (Minn. 1943).

More recently, courts have held that because conditional release to probation or parole is not a right which either an adult offender or delinquent juvenile can demand but extends no further than the conditions imposed, revoking the privilege triggers only very limited rights. Juveniles, like their adult offender counterparts, enjoy some modicum of due process, particularly with regards to revocation, which impacts the retaking process. Beside the rules of the Commission, several U.S. Supreme Court cases may affect the process for return of juveniles whose transfers of supervision have failed due to violating the terms and conditions of their supervision in the same manner as these principles have been applied to adult offenders who have violated the conditions of their probation or parole. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (parolee entitled to revocation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782-83 (1973) (probationer entitled to revocation hearing); *Carchman v. Nash*, 473 U.S. 716, 725-26 (1985) (probation-violation charge results in a probation-revocation hearing to determine if the conditions of probation should be modified or the probationer should be resentenced; probationer entitled to less than the full panoply of due process rights accorded at a criminal trial). The U.S. Supreme Court has recognized that offenders subject to probation or parole have some liberty interests, but that they need not be accorded the "full panoply of rights" enjoyed by defendants in a pretrial status because the presumption of innocence has evaporated. Due process requirements apply equally to parole and probation revocation. *See generally Gagnon*, 411 U.S. 41. While these cases arose in the adult context, the same considerations have been used to invoke similar constitutional protections for juveniles facing revocation of parole or probation. *See e.g., People ex rel. Silbert v. Cohen*, 29 N.Y.S.2d 12 (1971). In *State v. K.M.*, the Court, relying on Morrissey, held that a juvenile revocation hearing based upon a delinquent juveniles failure to comply with sex offender treatment protocols was "subject to minimum

procedural due process protections and do not require the same kind of procedural safeguards as a criminal trial. Morrissey, 408 U.S. at 481-85." No. 49566-0-II, 2018 WL 1108744, at *3 (Wash. Ct. App. Feb. 27, 2018); *see also State v. Robinson* 85 P.3d 376 (Wash. Ct. App. 2004).

Although a juvenile is not entitled to all the due process procedures provided in an ordinary criminal trial, he is entitled to receive sufficient due process to assure fair treatment. In the context of juvenile proceedings by which jurisdiction over a juvenile who has committed a serious offense is 'waived' to adult court, the U.S. Supreme Court, referring to its decision in *Kent v. United States*, 383 U.S. 541 (1966), reiterated in *In re Gault*, "[W]e stated that 'the Juvenile Court Judge's exercise of the power of the state as parens patriae was not unlimited.' We said that 'the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.' With respect to the waiver by the Juvenile Court to the adult court of jurisdiction over an offense committed by a youth, we said that 'there is no place in our system of law for reaching a result of such tremendous consequences without ceremony, without hearing, without effective assistance of counsel, without a statement of reasons.' We announced with respect to such waiver proceedings that while 'We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." 387 U.S. 1, 30 (1967); *Kent*, 383 U.S. at 562; *see also, McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), *In Re Anthony*, 763 A.2d 136 (Md. 2000) (Juvenile causes are civil, not criminal proceedings. Nonetheless, many of the constitutional safeguards afforded criminal defendants are applicable to juveniles."); *accord In Re Roneikas*, 920 A.2d 496 (Md. Ct. App. 2007); *cf. People v. Anderson*, 825 N.W.2d 678 (2012) (". . . juvenile proceedings are closely analogous to the adversary criminal process.")

Since the foregoing analysis was applied in the context of a juvenile 'delinquency' proceeding, which is analogous to a criminal trial, it is reasonable to infer that, like their adult counterparts, juvenile offenders subject to probation or parole have some liberty interests, but that they need not be accorded the "full panoply of rights" enjoyed by defendants in a pretrial status because the presumption of innocence no longer exists. *See also, Breed v. Jones*, 421 U.S. 519 (1975). Consistent with this view, consider *In Interest of Davis*, 546 A.2d 1149, 1153 (Pa. Super. Ct. 1988) ("In view of substantial liberty interest which exists in not having probation revoked on the basis of unverified facts or erroneous information, due process considerations entailing right to confront and cross-examine an accuser must extend to probation revocation proceedings for a juvenile. 42 Pa. C.S.A. §§ 6301 et seq., 6324(5), 6338(b), 6341(d); Const. Art. 1, § 9; U.S.C.A. Const. Amends. 6, 14"); *See also In Interest of W.*, 377 So. 2d 22 (Fla. 1979); *State v. Angel C.*, 715 A.2d 652, 667 (Conn. 1998) ("For defendants to succeed in their contention that state law created a due process liberty interest in their status as juveniles, they were required to show that the Juvenile Justice Act created a right to treatment as a juvenile or created a justifiable expectation that such treatment would be afforded to them.").

4.5.7.1 General Considerations

4.5.7.2 Right to Counsel

Under the ICJ Rules, a state is not specifically obligated to provide counsel in circumstances of revocation or retaking, although in the case of a requisition hearing to effect the non-voluntary return of an absconder, escapee or accused delinquent, a court has the discretion to appoint counsel or a guardian ad litem. *See* ICJ RULES 6-103(A)(6) (INTERSTATE COMM'N FOR JUVENILES 2018). However, particularly with regard to proceedings which may result in the revocation of parole or probation, a state should consider providing counsel to a juvenile offender if he or she may have difficulty in presenting their version of disputed facts, cross-examining witnesses, or presenting complicated documentary evidence. *Gagnon v. Scarpelli*, 411 U.S. 778, 788 (1973); s*ee generally In re Gault*, 387 U.S. 1 (1967); *see also Silbert v. Cohen*, 29 N.Y.S.2d 12 (1971); *People ex rel. Arthur F. v. Hill*, 29 N.Y.S.2d 17 (1971).

Presumptively, counsel should be provided where, after being informed of his right, the probationer or parolee requests counsel based on a timely and colorable claim that he or she has not committed the alleged violation or, if the violation is a matter of public record or uncontested, there are substantial reasons in justification or mitigation that make revocation inappropriate. *See generally Gagnon*, 411 U.S. 778. Providing counsel for proceedings in the receiving state may be warranted where the sending state intends to use the juvenile's violations as a basis for revoking conditional release. In the revocation context, officials in the receiving state are not only evaluating any alleged violations but are also creating a record for possible use in subsequent proceedings in the sending state. The requirement to provide counsel would generally not be required in the context where the juvenile is being retaken and the sending state does not intend to revoke conditional release based on violations that occurred in the receiving state. In this latter context, no liberty interest is at stake because the juvenile has no right to be supervised in another state.

The provision of the *Morrissey* and *Gagnon* decisions governing revocation hearings and appointment of counsel have been read by some courts to apply only after the defendant is incarcerated. *E.g., State v. Ellefson*, 334 N.W.2d 56, 57 (S.D. 1983). However, the law in this area is unsettled. At least one case provides insight into the Supreme Court's evolving jurisprudence with regard to the right to counsel in non-traditional criminal sentencing proceedings. *See, e.g., Alabama v. Shelton*, 535 U.S. 654, 662 (2002) (Sixth Amendment does not permit activation of a suspended sentence upon an indigent defendant's violation of the terms of his probation where the state did not provide counsel during the prosecution of the offense for which he is imprisoned). In *Shelton*, the Court reasoned that once a prison term is triggered, the defendant is incarcerated not for the probation violation but for the underlying offense. The uncounseled conviction at that point results in imprisonment and ends up in the actual deprivation of a person's liberty. The Court also noted that *Gagnon* does not stand for the broad proposition that sequential proceedings must be analyzed separately for Sixth Amendment purposes, with the right to state-appointed counsel triggered only in circumstances where proceedings result in immediate actual imprisonment. The dispositive factor in *Gagnon* and *Nichols v. United States*, 511 U.S. 738 (1994), was not whether incarceration occurred immediately or only after some delay. Rather, the critical point was that the defendant had a

recognized right to counsel when adjudicated guilty of the felony for which he was imprisoned. Revocation of probation would trigger a prison term imposed for a misdemeanor of which Shelton was found guilty without the aid of counsel, not for a felony conviction for which the right to counsel is questioned.

Similarly, returning a defendant to a sending state on allegations that he or she violated the terms of their probation and thus are now subject to incarceration or detention may give rise to due process concerns. Because *Shelton* was limited to actual trial proceedings (distinguished from post-trial proceedings) its direct application to retaking proceedings may be of limited value. However, the decision does provide insight into the gravity the Supreme Court attaches to the opportunity to be heard and the assistance of counsel if liberty interests are at stake. The age, experience, and intellectual ability of the juvenile can also be critical factors in determining the degree to which a juvenile can understand the nature of the proceedings as well as the consequences of waiving any constitutional protections. *See also, People v. Lucas*, 992 P.2d 617 (Colo. Ct. App. 1999); *Gesicki v. Oswald*, 336 F. Supp. 371 (1971).

4.5.7.3 Specific Considerations for Hearings under the Revised ICJ

It is important to emphasize the distinction between retaking that may result in revocation and retaking that will not result in revocation. Where there is no danger that the sending state will revoke the juvenile's probation or parole supervision, the juvenile is not entitled to a probable cause proceeding. As previously discussed, a juvenile has no right to be supervised in another state and the sending state retains the right under the Revised ICJ to retake a juvenile for any or no reason. *See* ICJ RULES 5-103(3) (INTERSTATE COMM'N FOR JUVENILES 2018); *Paull v. Park Cty.*, 218 P.3d 1198 (Mont. 2009). The failure of a juvenile transfer of supervision may cause officials in the sending and receiving states to conclude that the juvenile offender would be better supervised in the sending state. The broad language of the Revised ICJ and its rules would allow a sending state to retake a juvenile even though the status of the juvenile's conditional release is not in jeopardy. *See* ICJ RULES 5-103(2).

Where the retaking of a juvenile may result in revocation of conditional release by the sending state, the juvenile is entitled to the basic due process considerations that are the foundation of the Supreme Court's decisions in *Morrissey*, *Gagnon*, *In re Gault* and the Revised ICJ Rules.

Second, a juvenile must be afforded a probable cause hearing where retaking is for a purpose other than the commission of a new felony offense *and* revocation of conditional release by the sending state is likely. The juvenile may waive this hearing only if he or she admits to one or more significant violations of their supervision. *See Sanders v. Pa. Bd. of Prob. and Parole*, 958 A.2d 582 (Pa. Commw. Ct.2008). The purpose of the hearing is twofold: (1) to test the sufficiency and evidence of the alleged violations, and (2) to make a record for the sending state to use in subsequent revocation proceedings. One of the immediate concerns in *Gagnon* and *Morrissey* was geographical proximity to the location of the offender's alleged violations of supervision. Presumably, hearings on violations that occurred in a receiving state that was geographically proximate to the sending state could be handled in the sending state if witnesses and evidence were readily available to the offender. *See, Fisher v. Crist*, 594 P.2d 1140 (Mont.

1979); *State v. Maglio*, 459 A.2d 1209 (N.J. Super. Ct. 1979) (when the sentencing state is a great distance from the supervising state, an offender can request a hearing to determine if a *prima facie* case of probation violation has been made; a hearing will save the defendant the inconvenience of returning to that state if there is absolutely no merit to the claim that a violation of probation occurred). While a judge is not required to preside at such hearings, care should be taken to conduct these proceedings in a fair manner consistent with the due process requirements set forth in these U.S. Supreme Court cases. An offender's due process rights are violated where a witness against an offender is allowed to testify via another person without proper identification, verification, and confrontation, for example, with a complete lack of demonstrating good cause for not calling the real witness. *See State v. Phillips*, 126 P.3d 546 (N.M. 2005).

The probable cause hearing required to meet the applicable due process requirements need not be a full "judicial proceeding." A variety of persons can fulfill the requirement of a "neutral and detached" person for purposes of the probable cause hearing. For example, in the context of revocation, it has been held that a parole officer not recommending revocation can act as a hearing officer without raising constitutional concerns. *See Armstrong v. State*, 312 So. 2d 620 (Ala. 1975)*; In re Hayes*, 468 N.E.2d 1083 (Mass. Ct. App. 1984) (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975)) (while an offender entitled to a hearing prior to rendition, the reviewing officer need not be a judicial officer; due process requires only that the hearing be conducted by some person other than one initially dealing with the case such as a parole officer other than the one who has made the violations report); *In Interest of Davis*, 546 A.2d 1149, 1153 (Pa. Super. Ct. 1988). However, the requirement of neutrality is not satisfied when the hearing officer has predetermined the outcome of the hearing. *See Baker v. Wainwright*, 527 F.2d 372 (5th Cir. 1976) (determination of probable cause at commencement of the hearing violated the requirement of neutrality). This does not prohibit a judicial proceeding on the underlying violations, but merely provides states some latitude in determining the nature of the hearing, so long as it is consistent with basic due process standards. Presumably, if officials other than judicial officers are qualified to handle revocation proceedings, these same officials can preside over a probable cause hearing in the receiving state.

4.5.7.4 Probable Cause Hearings When Violations Occurred in another State

It is important to maintain the distinction between a probable cause hearing and a retaking hearing. Under the Compact, any sending state has the right to enter any other member state and retake an absconder, escapee or juvenile offender. *See,* ICJ RULES 5-103(2) (INTERSTATE COMM'N FOR JUVENILES 2018). The *Gagnon* and *Morrissey* decisions do not require a probable cause type hearing in all circumstances of retaking.

For example, in *Ogden v. Klundt*, the court held that the scope of review in the receiving state in a retaking proceeding was limited to determining (1) the scope of the authority of the demanding officers, and (2) the identity of the person to be retaken. 550 P.2d 36, 39 (Wash. Ct. App. 1976). This principle applies in circumstances where the violations forming the basis of retaking occurred in a state other than the state where the offender is incarcerated, *e.g.,* a determination of probable cause by a sending state. It is sufficient in this context that officials conducting the hearing in the state where the offender is physically located be satisfied on the

face of any documents presented that an independent decision maker in another state has made a determination that there is probable cause to believe the offender committed a violation. *Cf. In re Hayes*, 468 N.E.2d 1083 (Mass. Ct. App. 1984). Such a determination is entitled to full faith and credit in the asylum state and can, therefore, form the basis of retaking by the sending state without additional hearings. *Id.* The juvenile is entitled to notice. The hearing may be non-adversarial. The juvenile, while entitled to a hearing, need not be physically present given the limited scope of the proceeding. *Id.*; *Cf. Quinones v. Commonwealth*, 671 N.E.2d 1225 (Mass. 1996) (juveniles transferred under interstate compact not entitled to a probable cause hearing in Massachusetts before being transferred to another state to answer pending delinquency proceedings when the demanding state had already found probable cause); *In re Doucette*, 676 N.E.2d 1169 (Mass. Ct. App. 1997) (Once the governor of the asylum state has acted on a request for extradition based on a demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue in the asylum state; a court considering release on habeas corpus can do no more than decide (a) whether documents are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive).

4.5.7.5 Detention/Bail Pending Return

A juvenile offender subject to a warrant issued under ICJ jurisdiction has no right to bail. ICJ Rule 7-104(1) specifically prohibits any court or paroling authority in *any holding state* to admit a juvenile in custodial detention to bail. Given that the Revised ICJ mandates that the rules of the commission must be afforded standing as statutory law in every member state, the "no bond" provision of ICJ Rule 7-104(1) has the same standing as if the rule was a statutory law promulgated by that state's legislature. *See* REVISED INTERSTATE COMPACT FOR JUVENILES, art. IV (2008).

The "no bond" provision in ICJ Rule 7-104(1) is not novel; states have previously recognized that under the predecessor to the Interstate Compact for Adult Offender Supervision, officials in a receiving state were bound by no bail determinations made by officials in a sending state. *See, e.g., State ex rel. Ohio Adult Parole Auth. v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993) (probationer transferred from Pennsylvania and could not be released on personal recognizance as Ohio authorities were bound under the ICPP by Pennsylvania decision as to consideration of probationer for release). States have recognized the propriety of the "no bail" requirements associated with ICPP, even where there was no expressed prohibition. In *State v. Hill*, the state supreme court held that Iowa authorities were agents of Nevada, the sending state, and that they could hold the parolee in their custody pending his return to Nevada. 334 N.W.2d 746 (Iowa 1981) The trial court's decision to admit the offender to bail notwithstanding a prohibition against such action was reversed. In *Ex parte Womack*, the court found no error in denying bail to an offender subject to retaking as the Compact made no provision for bail. 455 S.W.2d 288 (Tex. Crim. App. 1970) And in *Ogden v. Klundt*, the court held that:

> Absent express statutory authorization, the courts of Washington are without power to release on bail or bond a parolee arrested and held in custody for violating his parole. The Uniform Act for Out-of-State Supervision provides that a

> parole violator shall be held, and makes no provision for bail or bond. The person on parole remains in constructive custody until his sentence expires. Restated, his liberty is an extension of his confinement under final judgment and sentence. Whether the convicted person is in actual custody within the prison walls or in constructive custody within the prison of his parole, the rule is unchanging; there is simply no right to release on bail or bond from prison. *See also, Aguilera v. California Department of Corrections*, 247 Cal.App.2d 150 (1966); *People ex rel. Tucker v. Kotsos*, 368 N.E.2d 903 (Ill. 1977); *People ex rel. Calloway v. Skinner*, 300 N.E.2d 716 (N.Y. 1973); *Hardy v. Warden of Queens House of Detention for Men*, 288 N.Y.S.2d 541 (N.Y. Sup. 1968); *January v. Porter*, 453 P.2d 876 (Wash. 1969); *Gaertner v. State*, 150 N.W.2d 370 (Wis. 1967).

550 P.2d 36, 39 (Wash. Ct. App. 1976). However, an offender cannot be held indefinitely. *See Windsor v. Turner*, 428 P.2d 740 (Okla. Crim. App. 1967) (offender on parole from New Mexico who committed new offenses in Oklahoma could not be held indefinitely under the compact and was therefore entitled to writ of habeas corpus when the trial in Oklahoma would not take place for a year and New Mexico authorities failed to issue a warrant for his return). *See Morrissey v. Brewer*, 408 U.S. 471, 481, 488 (1972) ("The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, as respondents suggest occurs in some cases, would not appear to be unreasonable"). *See also Doggett v. United States,* 505 U.S. 647, 651 (1992) *(*'delays of less than a year (between indictment and trial) are as a general matter constitutionally adequate . . .'*)*; *accord Barker v. Wingo*, 407 U.S. 514, 530 (1972).

PRACTICE NOTE: The Revised ICJ and its rules impose upon the member states (including courts of a member state) an absolute prohibition against admitting a juvenile to bond when the home/demanding state enters a warrant into NCIC as a "no bond warrant."

CHAPTER 5

LIABILITY AND IMMUNITY CONSIDERATIONS FOR JUDICIAL OFFICERS AND EMPLOYEES

PRACTITIONER NOTE: The discussion contained in this chapter is general in nature. Whether a state official is immune from suit or damages will depend on the applicable state or federal law, court interpretations of those laws, the nature of the underlying act, and the facts of the case. Practitioners are strongly encouraged to consult with legal counsel to understand the laws and standards that apply for their particular jurisdiction.

5.1 State Sovereign Immunity – Generally

State sovereign immunity is comprised of two general categories: (1) states are a sovereign entity in the federal system and therefore may be immune from suit in federal court pursuant to the Eleventh Amendment; and (2) absent a waiver, states are not liable for their actions and are not subject to suit in its own courts without consent. *See, Betts v. New Castle Youth Dev. Ctr.*, 621 F.3d 249 (3rd Cir. 2010) (state sovereign immunity extends beyond the literal text of the Eleventh Amendment to comprise more than just immunity from suit in federal court, but also immunity from liability). Unfortunately, the term "state sovereign immunity" is frequently used imprecisely and interchangeably by courts to refer to both parts, *i.e.*, the immunity from suit in federal court and the state's immunity from liability. The first immunity is so-called "Eleventh Amendment immunity" and it is an outgrowth of the states' standing at the time of the adoption of the federal constitution. It has two sub-parts: (1) states may not be sued in federal court absent their consent or abrogation of Eleventh amendment immunity by Congress; and (2) Congress has no authority to waive a state's sovereign immunity such that a state is subject to suit in its own courts. *See generally Alden v. Maine*, 527 U.S. 706 (1999). The second form of immunity (immunity from liability) is sometimes referred to as "absolute immunity" and derives from a state's standing as a quasi-sovereign entity in its own right. *See, e.g., Ala. Dept. of Corr. v. Merritt*, 74 So. 3d 1 (Ala. Ct. App. 2010). A state legislature may affirmatively waive immunity, may waive immunity for certain types of actions (*e.g.*, torts or contracts), or may maintain immunity. *See Tooke v. City of Mexia*, 197 S.W.3d 325 (Tex. 2006) (Use of provisions in various statutes, including one creating an interstate compact agency, stating that such agencies may "sue and be sued" did not, "merely by using such phrases, clearly waive governmental immunity from suit and instead merely addressed such governmental entity's capacity to engage in the activities encompassed in those phrases.").

In the context of the Eleventh Amendment immunity, a state's immunity is not absolute. The U.S. Supreme Court has recognized three circumstances in which an individual may sue a state in federal court. First, Congress may abrogate the states' immunity by authorizing such a suit to enforce a constitutional right, such as the equal protection clause of the Fourteenth Amendment. The Civil Rights Act of 1964 and the Americans with Disability Act are examples of acts where Congress has explicitly waived state sovereign immunity for purposes of suit in

federal court. Second, a state may voluntarily waive immunity by consenting to suit. *See Meyers v. Texas*, 410 F.3d 236 (5th Cir. 2005). Voluntary consent may be explicit in state statute or a state's constitution, or inferred by action if (1) a state voluntarily invokes federal court jurisdiction; (2) a state makes a clear declaration that it intends to submit itself to federal court jurisdiction. A waiver of the Eleventh Amendment immunity by state officials must be permitted by the state constitution, or state statutes and applicable court decisions must explicitly authorize such a waiver by the state officials since they cannot waive immunity unless authorized to do so. *See Lapides v. Bd. of Regents*, 251 F.3d 1372 (11th Cir. 2001). Unless waived, Eleventh Amendment immunity bars a §1983 lawsuit against a state agency or state officials in their official capacities even if the entity is the moving force behind the alleged deprivation of the federal right. *See Kentucky v. Graham*, 473 U.S. 159, 169 (1985); *Larsen v. Kempker*, 414 F.3d 936, 939 n.3 (8th Cir. 2005). Third, an individual may bring suit against a state official seeking injunctive relief to stop future continuing violations of federal law. *See Ex Parte Young*, 209 U.S. 123 (1908).

In the context of state immunity from liability, a state's immunity is presumed absent a specific or necessary waiver. Stated differently, immunity in this context is assumed absent affirmative evidence that the state has agreed to submit to the jurisdiction of its own courts and be held liable for the actions of its agencies, instrumentalities, officers, and employees. The most common evidence of waiver is in the form of a statute that defines the circumstances under which the state will submit to court jurisdiction and the types of injuries for which it is willing to be held liable. *See Texans Uniting for Reform and Freedom v. Saenz*, 319 S.W.3d 914 (Tex. App. 2010). If a state chooses by legislation to waive its immunity, a court strictly construes the waiver in favor of the state. *Bd. of Educ. of Baltimore Cty. v. Zimmer-Rubert***,** 973 A.2d 233, 240 (Md. 2009) ("As such, '[w]hile the General Assembly may waive sovereign immunity either directly or by necessary implication, this Court has emphasized that the dilution of the doctrine should not be accomplished by judicial fiat.'"). Sovereign immunity is applicable to the state, its agencies, its officers and employees, and its instrumentalities unless the legislature has waived the immunity either directly or by necessary implication. *See, e.g., Doe v. Bd. of Regents of Univ. of Neb.*, 788 N.W.2d 264 (Neb. 2010) (a suit against a state agency is a suit against the state). Thus, immunity may extend to compact-created commissions if the compact statute evidences a clear intent by the states to extend their immunity as a state instrumentality. *Lizzi v. Alexander*, 255 F.3d 128, 132 (4th Cir. 2001); *see also Morris v. Wash. Metro. Area Transit Auth.*, 781 F.2d 218, 219 (D.C. Cir. 1986) ("Inter-jurisdictional compact agency was 'cloaked in sovereign immunity' because the signatory states to the Washington Metro Area Transit Authority Compact conferred their respective sovereign immunities upon WMATA); *accord Proctor v. Wash. Metro. Area Transit Auth.*, 990 A.2d 1048 (Md. 2010).

State liability immunity, as distinguished from immunity from federal court jurisdiction, can be broken into two categories: (1) absolute immunity; and (2) qualified immunity. Briefly, absolute immunity completely shields the state and its officials from civil liability. For example, absolute immunity shields a judge or prosecutor for their judicial or prosecutorial acts, but not for their administrative acts. However, qualified immunity may shield a judge or prosecutor for non-judicial acts under certain circumstances. Under the doctrine of qualified immunity, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or

constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Gross v. Pirtle*, 245 F.3d 1151, 1155 (10th Cir. 2001) (citing *Malley v. Briggs*, 475 U.S. 335, 341(1986)). Qualified immunity will only relieve a defendant of individual liability. *Harlow*, 457 U.S. at 818.

PRACTITIONERS NOTE: Many states have waived their sovereign immunity for tort claims arising out of negligent acts. They have also waived immunity for breach of contract. In place of sovereign immunity, most states have established liability risk funds that will pay for the defense of a state official and any monetary damages that are awarded, or indemnify a state employee or official who pays such sums. These risk funds may have caps set by the legislature that limit the amount of money a state will pay. In some states, county and municipal employees fall under the state risk fund. In other states, counties and municipalities must provide their own insurance or risk sharing. It is of note that states generally do not cover the willful and wanton conduct of state officials; specifically, states do not cover conduct that is intentional and injurious. In such cases, the state official is personally obligated.

Notably, state sovereign immunity is generally construed such that private entities acting on behalf of the state do not enjoy the immunity of the state. Thus, for example, in *Del Campo v. Kennedy*, the court rejected the immunity claims by a private contractor hired to administer a pre-trial diversion program. 517 F.3d 1070 (9th Cir 2008) The court noted the following:

> The law makes clear that state sovereign immunity does not extend to private entities. The district court was therefore right to let this suit proceed. To be clear: Although we hold that private entities cannot be arms of the state, we emphatically do *not* hold that they cannot act under color of state law for the purposes of 42 U.S.C. § 1983 and similar statutes. The two concepts are distinct.

Moreover, an incorporated entity with the power to sue in its own name and which is not funded by state appropriations but is operated from 'self-generated revenues' is not subject to Eleventh Amendment immunity barring suits against a state because the state is not obligated to pay any debts of the agency. *See Simmons v. Sabine River Auth. of La.*, 823 F. Supp .2d 420 (W.D. La. 2011), *Frazier v. Pioneer American LLC*, 455 F.3d 542, 547 (5th Cir. 2006)

5.2 Liability Considerations under 42 U.S.C. § 1983

5.2.1 General Considerations

42 U.S.C. § 1983 effectively creates a state or federal cause of action for damages arising out of the acts of state officials that violate an individual's civil rights while acting under color of state law. The statute provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to

> be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

State immunity law will not be construed to insulate the wrongful actions of state authorities with respect to such violations. Congress has waived Eleventh Amendment immunity in this context.

To establish a claim under 42 U.S.C. § 1983 a plaintiff must prove (1) a violation of a constitutional right, and (2) that the alleged violation was committed by a person acting under color of state law. *West v. Atkins,* 487 U.S. 42, 48 (1988). As noted above, a private entity acting on behalf of the state may be sued under 42 U.S.C. § 1983.

Generally, § 1983 liability will not be imposed where the consequences of state action are too remote to be classified as "state action." Thus, the relatives of a person murdered by a paroled offender cannot maintain an action against the state because the acts of parole authorities are too remote; that is, the parole board owed no greater consideration to the victim than to any other member of the public and the offender was not acting as an agent of the state for purposes of federal civil rights liability. *See generally Martinez v. California*, 444 U.S. 277 (1980); *see also Howlett v. Rose*, 496 U.S. 356 (1990) (conduct by persons acting under color of state law which is wrongful under § 1983 cannot be immunized by state law even though the federal cause of action is being asserted in state court.) However, allegations which do not attribute particular actions to individual defendants are insufficient to constitute the "individualized participation" necessary to state a claim under §1983. *See Esnault v. Suthers*, 24 Fed. Appx. 854-55 (10th Cir. 2001). Thus, an offender alleging that defendants collectively detained him without due process and were deliberately indifferent to his rights but failed to identify any particular action to state a claim under 42 U.S.C. § 1983. *Grayson v. Kansas*, No. 06-2375-KHV, 2007 WL 2994070 (D. Kan. Oct. 12, 2007); *see also Sconce v. Interstate Com'n for Adult Offender Supervision*, No. CV 08–39–M–DWM–JCL, 2009 WL 579399 (D. Mont. Mar. 5, 2009) Furthermore, the "public duty doctrine" may also insulate state officials from liability where it can be shown that absent statutory intention to the contrary, the duty to enforce statutory law is a duty owed to the public generally, the breach of which is not actionable on behalf of the private person suffering damage. *See Westfarm Assocs. Ltd. Pshp. v. Wash. Suburban Sanitary Comm'n*, 66 F.3d 669 (4th Cir. 1995).

5.2.2 Private Right of Action under an Interstate Compact

In a compact similar in purpose and scope to the Revised ICJ, a court has held that an interstate compact does not create a federally enforceable right under 42 U.S.C. § 1983 for those subject to its provisions absent a clear and unambiguous intent by Congress to establish a federal cause of action. *Doe v. Pa. Bd. of Prob. and Parole*, 513 F.3d 95 (3rd Cir. 2008). Consequently, 42 U.S.C. § 1983 was not available to redress a probationer's alleged violations of the Interstate

Compact for Adult Offender Supervision (ICAOS). *See also M.F. v. N.Y. Exec. Dept. Div. of Parole*, 640 F.3d 491 (2d Cir. 2011); *Orville Lines v. Wargo*, 271 F. Supp. 2d 649 (W.D. Pa. 2003). Where there is no indication from the text and structure of a statute that Congress intended to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action. Unlike the Interstate Agreement on Detainers, which confers certain rights on incarcerated persons, both the ICAOS and the Revised ICJ speak only to the obligations of the party states and not the rights of individuals. The language of the Revised ICJ does not clearly and unambiguously create a federal right of action.

A similar analysis would apply in the context of potential victims of juveniles or status offenders who relocated under the provisions of the Revised ICJ. In cases arising under the adult offender compact, at least one federal court and one state court have held that there is no private right of action by victims of offenders. *See Hodgson v. Miss. Dep't of Corr.*, 963 F. Supp. 776 (E.D. Wis. 1997) (no private right of action was created under the Uniform Act for Out-of-State Parolee Supervision for the wrongful death of a victim of a Mississippi parolee who allegedly was improperly allowed to relocate to Wisconsin under the compact.) More recently the same analysis was applied in *Doe v. Miss. Dep't of Corr.*, 859 So.2d 350 (2003) (plaintiff had no claim under the Mississippi Tort Claims Act for damages sustained as the result of a rape committed by an Illinois parolee transferred under the compact whom she alleged was improperly accepted under the compact and negligently supervised by Mississippi parole officers). *See also Connell v. Miss. Dep't of Corr.*, 841 So.2d 1127 (2003). Given the similarities in scope, purpose and effect between the Revised ICJ and the ICAOS (and their predecessor compacts), it is unlikely that a state could be held liable for the actions of an offender transferred under the Revised ICJ who then harms another person.

5.3 Limitations on State Immunity

As a general proposition, state officials enjoy immunity from civil liability for their official or public acts when undertaken on behalf of the state. However, over the years the defense of sovereign immunity has been substantially reduced by state legislatures waiving immunity for ministerial or operational acts. Generally, courts distinguish between two "types" of public acts in assessing the application of sovereign immunity to conduct resulting in injuries to others: (1) discretionary acts; and (2) ministerial acts. Other states grant immunity to public officers and employees so long as the official's actions were not undertaken in bad faith or without a reasonable basis. *Pinter v. City of New York*, 710 F. Supp. 2d 408 (S.D.N.Y. 2010). To be entitled to governmental immunity for intentional tort, an officer must establish that they were acting in the course of employment and at least reasonably believed that they were acting within scope of their authority, that the actions were discretionary in nature, and that the officer acted in good faith. *Bell v. Porter*, 739 F.Supp.2d 1005 (W.D. Mich. 2010).

5.3.1 Liability Associated with Discretionary Acts

A discretionary act is defined as a quasi-judicial act that requires the exercise of judgment in the development or implementation of public policy. Discretionary acts are generally indicated by terms such as "may" or "can" or "discretion." Whether an act is discretionary depends on several factors: (1) the degree to which reason and judgment is required; (2) the

nature of the official's duties; (3) the extent to which policymaking is involved in the act; and (4) the likely policy consequences of withholding immunity. *See Heins Implement Co. v. Mo. Hwy. & Trans. Comm'n*, 859 S.W.2d 681, 695 (Mo. 1993). Generally, a state official may not be held liable for injuries associated with discretionary acts under the doctrine of qualified immunity. *Polk County v. Ellington*, 702 S.E.2d 17 (Ga. Ct. App. 2010).

5.3.2 Liability Associated with Ministerial or Operational Acts

A ministerial act, also called an operational act, involves conduct over which a state official has no discretion; officials have an affirmative duty to comply with instructions or legal mandates or to implement operational policy. Ministerial acts are generally indicated by terms such as "shall" or "must." A ministerial act is defined as an act "that involves obedience to instructions or laws instead of discretion, judgment or skills." *See Black's Law Dictionary*, 7th Ed. (West 1999). Ministerial acts generally do not enjoy official immunity because most states have waived their immunity in this area. *See Thomas v. Brandt*, 325 S.W.3d 481 (Mo. Ct. App. 2010).

5.3.3 Types of "Acts" Under the Revised ICJ*

The distinction between discretionary and ministerial is a critical consideration for state officials charged with administering the Revised ICJ. Many of the Revised ICJ Rules impose ministerial acts on state officials. *See, e.g.*, ICJ RULES 4-102 (INTERSTATE COMM'N FOR JUVENILES 2018) (Sending and Receiving Referrals); 5-101(2) (mandating the quarterly filing of reports); 8-101 (mandatory circumstances for issuing a travel permit). Each of these rules imposes a specific, non-discretionary obligation on state officials. For example, a state official does not exercise judgment or discretion in filing quarterly reports, although they clearly exercise discretion as to the content of the reports. By contrast, ICJ Rule 4-104 imposes both a discretionary duty and a ministerial duty on state officials in that it allows a receiving state official to deny a transfer but mandates that the sending state provide written notification of the juvenile's departure to the receiving state.

5.4 Immunity Waiver

In general, state officials are not liable for injuries related to discretionary acts because the states have not waived their sovereign immunity in this regard. *See King v. Seattle*, 525 P.2d 228 (Wash. 1974). The public policy behind maintaining immunity is to foster the exercise of good judgment in areas that call for such, *e.g.*, policy development. Absent such immunity, state officials may hesitate to assist the government in developing and implementing public policy.

Many states have waived sovereign immunity for the failure to perform or the negligent performance of ministerial acts. Consequently, the failure to perform a ministerial act, or the

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* The question of whether a state official's acts under the Revised ICJ and its rules are discretionary or ministerial in nature for purposes of liability considerations may be irrelevant given that at least one court has held with reference to the ICAOS that the compact does not confer a federal cause of action. *See* discussion *infra* § 5.5.2. Although the Revised ICJ may not confer a private right of action in federal court, this does not necessarily mean that state officials could not be subject to suit in state court for their ministerial acts.

negligent performance of such an act, can expose state officials to liability if a person is injured as a result thereof. Whether an act is discretionary or ministerial is a question of fact. The nature of the act, not the nature of the actor, is the determining consideration. *See Miree v. United States*, 490 F. Supp. 768, 773 (N.D. Ga. 1980).

Where immunity is waived, the state is generally liable to provide a defense and cover damages up to the amount authorized by the state legislature or the provisions of a risk or legal defense fund. *See, e.g.,* FLA. STAT. § 768.28 (2010) (which limits the state's liability in most circumstances to $200,000 per person or $300,000 per incident). There are some exceptions, which require a direct appropriation from the state legislature. A state official can be held personally liable to the extent of any damages awarded that exceed state policy. *See, e.g.*, *McGhee v. Volusia Cty.*, 679 So. 2d 729 (Fla. 1996) (absent statutory provision, a state official would be personally liable for that portion of a judgment rendered against him or her that exceeds the state's liability limits). However, many states specifically exempt "willful and wanton" conduct from coverage deeming such conduct to lie outside the scope of employment. *See, e.g., Hoffman v. Yack*, 373 N.E.2d 486 (Ill. 1978).

5.5 Judicial Immunity

Judicial immunity protects judges, court employees, and others "intimately" involved with the judicial process against liability arising from their decisions and actions. Judicial immunity is absolute immunity and acts as a complete bar to suit. Virtually any decision of a judge that results from the judicial process, that is, the adjudicatory process, is protected by judicial immunity. With some limitations, this immunity extends to court employees and others, such as jurors, parole and probation officers, and prosecutors who are fulfilling the court's orders or participating in some official capacity in the judicial process. Quasi-judicial immunity may also extend to other agents of state government including probation and parole authorities. *See, Holmes v. Crosby*, 418 F.3d 1256 (11th Cir. 2005); *see also Fuller v. Ga. State Bd. of Pardons & Paroles*, 851 F.2d 1307, 1310 (11th Cir. 1988); *Clark v. Ga. Pardons & Paroles Bd.*, 915 F.2d 636, 641 n.2 (11th Cir. 1990). However, quasi-judicial immunity does not extend to probation or parole officers investigating suspected parole violations, ordering the parolee's arrest pursuant to a parole hold, and recommending that parole revocation proceedings be initiated against him. Such actions are more akin to law enforcement actions and are not entitled to immunity. *See Swift v. California*, 384 F.3d 1184 (9th Cir. 2004).

Not everything a judge or court employee does is protected by judicial immunity. The U.S. Supreme Court has repeatedly held that judicial immunity only protects those acting in a judicial capacity and does not extend to administrative or rulemaking matters. *See Forrester v. White*, 484 U.S. 219, 229 (1988). Acts of judges or court employees that are purely administrative or supervisory in nature are not protected by judicial immunity and such non-judicial acts may give rise to liability under 42 U.S.C. § 1983 and any state counterparts. Generally, probation and parole officers have absolute judicial immunity where their actions are integral to the judicial process. In determining whether an officer's actions fall within the scope of absolute judicial immunity, courts "have adopted a 'functional approach,' one that turns on the nature of the responsibilities of the officer and the integrity and independence of his office. As a result, judicial immunity has been extended to federal hearing officers and administrative law

judges, federal and state prosecutors, witnesses, grand jurors, and state parole officers." *Demoran v. Witt*, 781 F.2d 155, 156, 157 (9th Cir. 1985). While judicial immunity may protect judges and court officials from monetary damages, it does not protect them against injunctive relief. *Pulliam v. Allen*, 466 U.S. 522 (1984); *Dorman v. Higgins*, 821 F.2d 133 (2nd Cir. 1987).

Several courts have held that actions such as supervision, as distinguished from investigation, are administrative in nature and not a per se judicial function entitled to judicial immunity. *Acevado v. Pima City Adult Prob.*, 690 P.2d 38 (Ariz. 1984). The relocation of juveniles by a probation counselor is an administrative function and the court's mere knowledge of a relocation is in and of itself insufficient to convert an administrative act into a judicial act. *Faile v. S.C. Dept. of Juvenile Justice*, 566 S.E.2d 536 (S.C. 2002). In some states, quasi-judicial immunity is available only if the probation officer "acted pursuant to a judge's directive or otherwise in aid of the court. . . . Any claim to immunity which the Commonwealth might have asserted ceased when [the probation officer] failed to aid in the enforcement of the conditions of . . . probation." *A.L. v. Commonwealth*, 521 N.E.2d 1017 (Mass. 1988). One court has held that parole officers do not enjoy absolute immunity for conduct unassociated with the decision to grant, deny, or revoke parole. *See Swift v. California*, 384 F.3d 1184 (9th Cir. 2004) (parole officer does not have immunity for violations of Fourth Amendment rights as the activities are investigative in nature and do not involve the granting, denial or revocation of parole); *cf. Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525 (8th Cir. 2005) (juvenile officer does not enjoy judicial immunity to the extent that he acted beyond the scope of the court's orders, acted without proper court authority, and relied on bad information to obtain orders from a court).

5.6 Qualified Immunity

Courts have recognized that parole and probation officers may possess "qualified immunity" to the extent that they act outside any judicial or quasi-judicial proceeding. Whether qualified immunity is available is largely dependent on the facts and circumstances of the particular case. As discussed, a state official may be covered by qualified immunity where they (1) carry out a statutory duty, (2) act according to procedures dictated by statute and superiors, and (3) act reasonably. *Babcock v. State*, 809 P.2d 143 (1991). Government officials performing discretionary functions are entitled to qualified immunity unless they violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *see also Graves v. Thomas*, 450 F.3d 1215, 1218 (10th Cir. 2006); *Perez v. Unified Gov't of Wyandotte Cty./Kansas City, Kan.*, 432 F.3d 1163, 1165 (10th Cir. 2005); *Robinson v. Warden, N. NH Corr. Facility*, 634 F. Supp. 2d 116 (D. Me. 2009) If the plaintiff's allegations sufficiently allege the deprivation of a clearly established constitutional or statutory right, qualified immunity will not protect the defendant. *Grayson v. Kansas*, No. 06-2375-KHV, 2007 WL 2994070 (D.C. Kan. Oct. 12, 2007); *Payton v. United States*, 679 F.2d 475 (5th Cir. 1982) (Trial court erred in finding that requesting or transmitting records and providing standard medical care pertaining to the parole decision were not actionable under Federal Tort Claim Act. The statute placed on the parole board a non-discretionary duty to examine the mental health of parolee. Where government assumed the duty of providing psychiatric treatment to offender, it was under a non-discretionary duty to provide proper care.)

Parole and probation officers may enjoy qualified immunity if their actions are in furtherance of a statutory duty and in substantial compliance with the directives of superiors and relevant statutory or regulatory guidelines. The immunity requires only that an officer's conduct be in substantial compliance, not strict compliance, with the directives of superiors and regulatory procedures. *Taggart v. State*, 822 P.2d 243 (Wash. 1992). Whether a government official may be held personally liable for an allegedly unlawful action turns on the "'objective legal reasonableness' of the action in light of the legal rules that were 'clearly established' at the time." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (quoting and interpreting *Harlow v. Fitzgerald*, 457 U.S. 800, 818-19 (1982)). Qualified immunity is a question of law and a public official does not lose his or her qualified immunity merely because his or her conduct violates some statutory provision. *Davis v. Scherer*, 468 U.S. 183, 194 (1984).

5.7 Negligent Supervision

Some of the factors a court may consider in determining whether a state official is liable for negligent supervision are:

- **Misconduct** by a non-policymaking employee that is the result of training or supervision "so reckless or grossly negligent" that misconduct was "almost inevitable" or "substantially certain to result." *Vinson v. Campbell Cty. Fiscal Court*, 820 F.2d 194 (6th Cir. 1987).

- **The existence of special custodial or other relationships** created or assumed by the state in respect of particular persons. A "right/duty" relationship may arise with respect to persons in the state's custody or subject to its effective control and whom the state knows to be a specific risk of harm to themselves or others. Additionally, state officials may be liable to the extent that their conduct creates a danger from which they fail to adequately protect the public. *See Withers v. Levine*, 615 F.2d 158 (4th Cir.), cert. denied, 449 U.S. 849 (1980) (prison inmates under known risk of harm from homosexual assaults by other inmates); *Davis v. Zahradnick*, 600 F.2d 458 (4th Cir. 1979) (inmate observed attacking another inmate); *Woodhous v. Virginia*, 487 F.2d 889 (4th Cir. 1973); *cf. Orpiano v. Johnson*, 632 F.2d 1096, 1101-03 (4th Cir. 1980), *cert. denied*, 450 U.S. 929 (1981) (no right where no pervasive risk of harm and specific risk unknown); *Hertog v. City of Seattle*, 979 P.2d 400 (Wash. 1998) (city probation officers have a duty to third persons, such as the rape victim, to control the conduct of probationers to protect them from reasonably foreseeable harm; whether officers violated their duty was subject to a factual dispute.)

  - **The foreseeability of an offender's actions** and the harm those actions may create. Even in the absence of a special relationship with the victim, state officials may be liable under the "state created danger" theory of liability when that danger is foreseeable and direct. *See Green v. City of Philadelphia*, 92 Fed. Appx. 873 (3rd Cir. 2004). The state-created danger exception to the general rule that the state is not required to protect the life, liberty, and property of its citizens against invasion by private actors is met if: (1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the

safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

- **Negligent hiring and supervision** in cases where the employer's direct negligence in hiring or retaining an incompetent employee whom the employer knows, or by the exercise of reasonable care should have known, was incompetent or unfit, thereby creating an unreasonable risk of harm to others. *See, Wise v. Complete Staffing Serv., Inc.*, 56 S.W.3d 900, 902 (Tex. Ct. App. 2001). Liability may be found where supervisors have shown a deliberate indifference or disregard to the known failings of an employee.

The obligation of state officials to fulfill ministerial acts, which are not open to discretion, generally gives rise to liability. For example, an officer can be held liable for failing to execute the arrest of a probationer or parolee when there is no question that such an act should be done. *See Taylor v. Garwood*, 98 F. Supp. 2d 672 (E.D. Pa. 2000).

5.8 Summary of Cases Discussing Liability in the Context of Supervision

5.8.1 Cases Finding That Liability May Be Imposed

In the following cases, the courts found liability on the part of government officials supervising offenders or other persons:

- *Semler v. Psychiatric Inst. of Wash., D.C.*, 538 F.2d 121 (4th Cir. 1976): Mother brought an action against psychiatric institute, a physician, and a probation officer, seeking recovery for the death of her daughter, who was killed by a probationer that had been a patient at the institute. Mother alleged that appellants were negligent in failing to retain custody over the patient until he was released from the institute by order of the court. The court concluded that the state court's probation order imposed a duty on appellants to protect the public from the reasonably foreseeable risk of harm imposed by the patient. The court held that the breach of the state court's order by the defendants was the proximate cause of the daughter's death.

- *Division of Corr. v. Neakok*, 721 P.2d 1121 (Alaska, 1986): A newly released offender shot and killed his teenaged stepdaughter and her boyfriend, and raped, beat and strangled to death another woman. Relatives of the murdered persons sued the state of Alaska, claiming the state was negligent in failing to impose special conditions of release, to supervise offender adequately on parole in allowing offender to return to a small, isolated community without police officers or alcohol counseling, and in failing to warn his victims of his dangerous propensities. The Supreme Court affirmed in part and reversed in part, holding that offender's victims and his actions were within the zone of foreseeable hazards of the state's failure to use due care in supervising a parolee. The state had a legal duty to supervise the offender and the authority to impose conditions on parole and to re-incarcerate the offender if these conditions were not met. The

state was obligated to use reasonable care to prevent the parolee from causing foreseeable injury to other people. *See also Bryson v. Banner Health Sys.*, 89 P.3d 800 (Alaska 2004) (Private treatment center liable for injuries caused by known rapist with extensive history of alcohol-related crimes who attacked other program participants. As part of the treatment, the center encouraged all members of the group to contact and assist each other outside of the group setting. The center knew that the rapist had an extensive criminal history of alcohol-related crimes of violence, including sexual assaults. The rapist relapsed into drinking while being treated and attacked fellow patient. The Court correctly held that the center owed the victim an actionable duty of due care to protect her from harm in the course of her treatment, including foreseeable harm by other patients.)

- *Acevedo v Pima Cty. Adult Prob. Dept.*, 690 P.2d 38 (Ariz. 1984): Action brought against county probation department and four officers for damages suffered as a result of the alleged negligent supervision of a probationer. The court held that probation officers were not protected from liability by judicial immunity. It was alleged that the children of the plaintiffs had been sexually molested by the probationer, who had a long history of sexual deviation, especially involving children. Probation officers permitted the probationer to rent a room from one of the plaintiffs knowing there were five young children in the residence and despite the fact that as a special condition of probation the probationer was not to have any contact whatsoever with children under the age of 15. The court noted that whether a particular officer was protected by judicial immunity depended upon the nature of the activities performed and the relationship of those activities to the judicial function. A non-judicial officer was entitled to immunity only in those instances where he performed a function under a court directive and that was related to the judicial process. Not all supervising activities of a probation officer are entitled to immunity because much of the work is administrative and supervisory, not judicial in function. The court concluded that judicial immunity could not be invoked because the officers did not act under a court's directive and, in fact, had ignored specific court orders.

- *Johnson v. State*, 447 P.2d 352 (Cal. 1968): Action brought by foster parent against the state for damages for an assault on her by a youth placed in her home by the youth authority. Plaintiff alleged that the parole officer placing the youth failed to warn her of the youth's homicidal tendencies and violent behaviors. Court held that placement of the youth and providing adequate warnings was a ministerial duty rather than a discretionary act. Therefore, the state was not immune from liability. The court determined that the release of a prisoner by the parole department would be a discretionary act, whereas the decision of where to place the probationer and what warnings to give constituted only a ministerial function for which liability could be attached.

- *Sterling v. Bloom*, 723 P.2d 755 (Idaho 1986): A car operated by a probationer who was at the time under legal custody and control of the Idaho Board of Corrections, whose blood alcohol was .23 percent by weight, struck a plaintiff's motorcycle. A special condition of his probation was not to drive a motor vehicle except for

employment purposes for the first year of probation. The court held that under state law, every governmental entity was subject to liability for monetary damages whether arising out of a governmental or proprietary function, if a private person or entity would be liable for monetary damages under the laws of the state. One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm. The key to this duty is not the supervising individual's direct relationship with the endangered person or persons, but rather is the relationship to the supervised individual. Where the duty is upon government officials, it is a duty more specific than one to the general public.

- *Mianecki v. Second Judicial Dist. Court*, 658 P.2d 422 (Nev. 1983), *cert. dismissed* 464 U.S. 806 (1983): Convicted sex offender on probation for the sexual assault of a boy in Wisconsin relocated permanently to Nevada with approval. Offender moved in with parents and a child, who were uninformed of the offender's history. The offender victimized the child. Parents sued alleging that the Wisconsin and the employee, who approved the offender's travel permit, violated the Interstate Compact for the Supervision of Parolees and Probationers. The complaint also alleged negligence. Nevada Supreme Court concluded that Wisconsin and the employee were not immune from suit in Nevada. If the Nevada Department of Parole and Probation had committed the acts complained of, sovereign immunity would not have barred suit against the state. Nevada as the forum state was not required to honor Wisconsin's claim of sovereign immunity. In addition, the law of Wisconsin was not granted comity, as doing so would have been contrary to the policies of Nevada.

- *Hansen v. Scott*, 645 N.W.2d 223 (N.D. 2002) *cert denied*, 537 U.S. 1108 (2003): Daughters brought an action in connection with the murder of their parents by the parolee who had been transferred to North Dakota for parole supervision by Texas officials. The daughters alleged that the employees of Texas failed to notify North Dakota officials about the inmate's long criminal history and dangerous propensities. Daughters sought to hold the employees liable on their wrongful death, survivorship, and 42 U.S.C.S. § 1983 claims. The court held that the claims against the employees stated a prima facie tort under N.D. R. Civ. P. 4(b)(2)(C) and thus the exercise of personal jurisdiction over the employees was proper because the employees' affirmative action of asking North Dakota to supervise their parolee constituted activity in which they purposefully availed themselves of the privilege of sending the parolee to North Dakota. The employees could have reasonably anticipated being brought into court in North Dakota, and the exercise of personal jurisdiction over the employees comported with due process.

- *Reynolds v. State Div. of Parole & Cmty. Servs.*, 471 N.E.2d 776 (Ohio 1984): The victim was assaulted and raped by the prisoner while the prisoner was serving a prison term for an involuntary manslaughter. The prisoner had been granted a work release furlough. Under OHIO REV. CODE ANN. § 2967.26(B), the prisoner was to have been confined for any periods of time that he was not actually working at his approved employment. Victim contended that the state was liable for the injuries

suffered because the state breached its duty to confine the prisoner during the non-working period when he raped the victim. The court found that, although the victim was unable to maintain an action against the state for its decision to furlough the prisoner, the victim was able to maintain an action against the state for personal injuries proximately caused by the failure to confine the prisoner during non-working hours as required by law. Such a failure to confine was negligence per se and was actionable.

- *Jones-Clark v. Severe*, 846 P.2d 1197 (Ore. Ct. App. 1993): Probation department had a duty to control court probationers and to protect others from reasonably foreseeable harm. Even though officers could not act on their own to arrest a probationer or to revoke probation, they were in charge of monitoring probationers to ensure that conditions of probation were being followed, along with a duty to report violations to the court.

- *Faile v. S.C. Dept. of Juvenile Justice*, 566 S.E.2d 536 (S.C. 2002). Parents of nine-year-old child who was assaulted by a 12-year-old juvenile delinquent on probation brought negligence action against the Department of Juvenile Justice (DJJ). The South Carolina Supreme Court held that: (1) as a matter of first impression, juvenile probation counselor's placement of a juvenile was an administrative, rather than a judicial or quasi-judicial function, and as such was not entitled to immunity; (2) probation officer was not acting as an agent and representative of family court, but was acting on behalf of DJJ and thus DJJ was the proper party; (3) probation officer's decision to place a juvenile after he was expelled from the foster home was not a discretionary decision entitled to discretionary immunity; (4) genuine issue of material fact as to whether the officer's placing of the juvenile was gross negligence precluded summary judgment; (5) immunity under juvenile release exception to the Tort Claims Act did not protect DJJ from liability; and (6) having assumed custody of a known dangerous individual, DJJ had an independent duty to control and supervise the juvenile. Just as police officers are not granted absolute immunity when they apply for arrest warrants, probation officers generally are not immune in performing their enforcement duties.

- *Doe v. Arguelles*, 716 P.2d 279 (Utah 1985): Plaintiff sued the state and parole officer on behalf of 14-year-old ward who was raped, sodomized, and stabbed by juvenile offender while he was on placement in the community, but before he had been finally discharged from the Youth Detention Center (YDC). State Supreme Court concluded that the state and officer could be held liable for injuries to the extent that the officer's conduct involved the implementation of a plan of supervision, not policy decisions. However, under state law, plaintiffs must show officer acted with gross negligence to establish personal liability.

- *Joyce v. Dept. of Corr.*, 119 P.3d 825 (Wash. 2005): The state corrections department was supervising an offender convicted of two felonies when the offender stole a car, ran a red light, and collided with a vehicle killing the occupant. At trial, the jury found that the state's negligence caused the death and awarded damages. On appeal,

the court refused to limit the state's duty to supervise offenders, finding that once the state had taken charge of an offender, it had a duty to take reasonable precautions to protect against reasonably foreseeable dangers posed by the dangerous propensities of parolees. However, the court found errors at trial regarding jury instructions and remanded the case for a new trial on the issue of the state's negligence.

- *Hertog v. City of Seattle*, 979 P.2d 400 (Wash. 1999): A young child was raped by a person on probation for a lewd conduct conviction in municipal court and on pretrial release awaiting trial in county court for a sexually motivated burglary. The plaintiff, the child's guardian ad litem, sued the city and county claiming that the city probation counselor and the county pretrial release counselor negligently supervised the individual who committed the rape. Defendants' summary judgment motion was denied and the denial was upheld by the appellate court. The court ruled that the defendants did have a duty to third persons, such as the rape victim, to control the conduct of probationers and pretrial releases to protect others from reasonably foreseeable harm. Whether the defendants violated their duty was subject to a factual dispute. In addition, because the probationer had signed a written release allowing mental health professionals to report to the city probation officer, he had no expectation of confidentiality as to his records as they were no longer subject to the psychologist-client privilege.

- *Bishop v. Miche*, 943 P.2d 706 (Wash. Ct .App. 1997): Parents of a child killed in a car accident with a drunk driver sued the drunk driver for wrongful death and the county for negligent supervision by a probation officer. Plaintiffs alleged that had the probation officer properly supervised the driver and reported his probation violations, the driver would have been jailed and their son would not have been killed. The court held that although the county could not be held liable for the sentencing error, there were fact issues with respect to the plaintiffs' negligent supervision claim. The court stated that the probation officer had sufficient information about the driver to cause her to be concerned that he was violating his probation terms and that he might start drinking and driving again.

5.8.2 Cases Rejecting Liability

In the following cases, the courts refused to impose liability on government officials responsible for supervising offenders or other persons:

- *Whitehall v. King Cty.*, 167 P.3d 1184 (Wash. Ct. App. 2007): Victim of illegal explosive set by probationer brought negligence action against a county, alleging that the county failed to control the probationer. The court held that county's supervision of the probationer was not grossly negligent for failing to require probation officers to perform home visits or contact third parties to ensure the probationer was fulfilling the terms and conditions of probation. However, the court also noted that probation officers have a duty to protect third parties from reasonably foreseeable dangers that exist because of an offender's dangerous propensities; duty arises from the special relationship between the government and the offender. The failure to adequately

monitor and report violations by a probationer may result in liability if such failure amounts to gross negligence.

- *Dept. of Corr. v. Cowles*, 151 P.3d 353 (Alaska 2006): A parolee murdered his girlfriend and shot himself. One of the bodies fell on a child, leading to suffocation. The complaint alleged that the State committed negligence by failing to implement and enforce an appropriate parole plan, to require appropriate post-release therapy, to enforce parole violations, to properly supervise the parolee, and to revoke his parole. The Alaska Supreme Court held that the state's duty of care in supervising its parolees should be narrowly construed. However, the selection of conditions of parole were operational activities not entitled to immunity but that at least some of the state's alleged acts of negligence were shielded by discretionary function immunity. The state could not be held liable for the parole officer's alleged negligence in failing to take affirmative action to discover parole violations absent notice. Material issues of fact remained with respect to the issue of causation.

- *Martinez v. California*, 444 U.S. 277 (1980): Parole officials released a known violent offender who subsequently killed the decedent. The family sued the state alleging reckless, willful, wanton, and malicious negligence and deprivation of life without due process under 42 U.S.C.S. § 1983. The Supreme Court held that the California statute granting immunity was not unconstitutional. The Court further held that the U.S. Constitution only protects citizens from deprivation by the state of life without due process of law. The decedent's killer was not an agent of the state and the parole board was not aware that decedent, as distinguished from the public at large, faced any special danger. The Court did not resolve whether a parole officer could never be deemed to "deprive" someone of life by action taken in connection with the release of a prisoner on parole for purposes of 42 U.S.C.S. § 1983 liability.

- *Weinberger v Wisconsin*, 906 F. Supp. 485 (W.D. Wis. 1995): Probation officers were not liable for injuries caused by drunken probationer collision with plaintiff's car based on a failure to arrest probationer a night earlier when found driving under the influence (DUI). It was decision of judge to allow probationer to remain out of custody pending the disposition of a petition that left the probationer able to drive and re-offend. Failure of probation officers to arrest the probationer did not proximately cause injuries.

- *Pate v. Alabama Bd. of Pardons & Paroles*, 409 F. Supp. 478 (M.D. Ala. 1976), *affirmed without opinion*, 548 F.2d 354 (5th Cir. 1977): Plaintiff sued state for damages when minor daughter was allegedly raped and killed by a parolee of the Alabama Board of Pardons and Paroles. Plaintiff alleged that the granting of parole and subsequent supervision was either negligent or done in a willful and wanton manner. Court held that the board of pardons and paroles was immune from suit by virtue of the Eleventh Amendment and the doctrine of official immunity. Court held that individual parole officers should be granted same immunity accorded judges

notwithstanding allegations of misfeasance, nonfeasance and malfeasance in the conduct of their supervision of parolee.

- *McCleaf v. State*, 945 P.2d 1298 (Ariz. Ct. 1997): Probation officer did not act with "actual malice" in connection with allegedly negligent supervision of probationer. Because manner of supervision was a discretionary act, officer was immune from liability for pedestrian struck and killed by probationer who was driving while intoxicated and without driver's license. Probationer had told the officer that he was not using alcohol or drugs, and the officer saw no signs of such use. Nothing in the record indicated that officer in any way encouraged or condoned probationer's drinking or drunken driving.

- *Dep't of Corr. v. Lamaine*, 502 S.E.2d 766 (Ga. 1998): Conduct of parole officer in supervising parolee, who was on conditional release after ten years in prison for aggravated rape and sodomy convictions, and while out raped and killed fellow restaurant employee, was not reckless. There was no proof that the officer was aware of a risk so great that it was highly probable that the injuries would follow or that he acted with conscious disregard of a known danger.

- *Anthony v. State*, 374 N.W.2d 662 (Iowa 1985): Plaintiffs filed action against the state for injuries caused by a sex offender whom the state released to work in the community without imposing any conditions on his release. The court found that the state had breached no duty to plaintiffs because the decision to adopt a work release plan for a prisoner was a discretionary function. State law barred negligence claims against the state for the failure to exercise or perform a discretionary function. Furthermore, the state had not breached a duty of care under a negligent supervision theory for the same reason. Additionally, the evidence concerning implementation was not so strong as to compel a finding of negligence as a matter of law. Finally, there was no duty to warn because there was no threat to an identifiable person.

- *Schmidt v. HTG, Inc.*, 961 P.2d 677 (Kan. 1998), cert. denied, 525 U.S. 964 (U.S. 1998): Probation officer's failure to report violations by a probationer who injured a child while driving under influence of alcohol was not liable for damages. Officer did not take custody of probationer sufficiently to create a duty to protect the public. Statutory duty to report probation violations was owed to court and not to general public.

- *Lamb v. Hopkins*, 492 A.2d 1297 (Md. 1985): Probation officer who had probationer arrested on warrant for violating terms of probation did not have actual ability to control probationer by preventing his release which resulted in additional crimes. Even assuming that the officer had provided available information about other pending charges against the probationer to the court at revocation hearing, decision whether to revoke probation was within control of court, not probation officer.

- *Johnson v. State*, 553 N.W.2d 40 (Minn. 1996): The trustees of a victim, who was raped and murdered by a parolee who had failed to report to a halfway house,

initiated a wrongful death action against the state and halfway house. The court held that statutory immunity and official immunity barred the trustees' claim because the decision to release the prisoner was a protected discretionary function. The court further found that the immunities protected the state and county for the alleged failure of its agents to determine whether the parolee had arrived at the halfway house because imposing this liability would undermine public policy clearly manifested by the legislature to provide for the release of parolees into the community. The court found that the halfway house was not negligent in that it had no legal duty to control the parolee; the halfway house did not have custody of the parolee nor had it entered into a special relationship with him due to his failure to arrive at the halfway house.

- *Hurst v. State Dep't of Rehabilitation & Corr.*, 650 N.E.2d 104 (Ohio 1995): Parolee was declared absent without leave. Pursuant to the policy of the Department of Rehabilitation and Correction, parole officer waited 30 days before drafting a parole violator-at-large (PVAL) report, which was never entered into the computer networks. Parolee was arrested for his participation in the beating death of decedent. The executor of decedent's estate brought an action against state alleging wrongful death, negligence, and negligence per se. The court held that the only affirmative duty imposed upon state officials was to report the status of a PVAL and to enter this fact into the official minutes of the Adult Parole Authority. There was no statute or rule that imposed a specific, affirmative duty to enter the offender's name on any computer network. Therefore, the plaintiffs failed to establish the existence of a special duty owed the decedent by the state. The public duty rule applied to bar liability on the part of the Adult Parole Authority.

- *Kim v. Multnomah Cty.*, 909 P.2d 886 (Ore. 1996): Action brought against a probation officer alleging gross negligent supervision with reckless disregard for safety of others. Plaintiff alleged the officer was liable to due to the officer's unreasonably heavy caseload, failure to make home visit, and failure to recognize mental condition of perpetrator was worsening. Court held that probation officer did not create dangerous condition or cause death of son and that the officer was immune from liability for damages resulting from negligence or unintentional fault in performance of discretionary duties.

- *Zavalas v. State*, 809 P.2d 1329 (Ore. Ct. App. 1991): Parole officer enjoyed judicial immunity in action by mother of eight-year-old child, despite allegations that the officer was negligent in failing to supervise a sex offender who was subject to a condition that he refrain from knowingly associating with victims or any other minor except with written permission of the court or officer. Plaintiffs could not establish evidence that the officer knew the parolee was violating probation nor did terms of probation prohibit parolee from living next to families or children's playground. Officer was carrying out the court's direction to supervise parolee and level of supervision exercised by him was within authority granted by court.

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It

is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. “By –laws” means: those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. "Compact Administrator" means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. “Compacting State" means: any state which has enacted the enabling legislation for this compact.

D. “Commissioner” means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. "Court" means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. "Deputy Compact Administrator" means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. "Interstate Commission" means: the Interstate Commission for Juveniles created by Article III of this compact.

H. “Juvenile” means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender – a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. "Non-Compacting state" means: any state which has not enacted the enabling legislation for this compact.

J. "Probation or Parole" means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. "State" means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III
INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-

commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing any person of a crime, or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes;
7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.
2. To promulgate rules to effect the purposes and obligations as enumerated in this Compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.
4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.
5. To establish and maintain offices which shall be located within one or more of the compacting states.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, hire or contract for services of personnel.
8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.
9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.
10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.
12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.
13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.
14. To sue and be sued.
15. To adopt a seal and by-laws governing the management and operation of the Interstate Commission.
16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.
18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.
19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

ARTICLE V
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. By-laws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:
   a. Establishing the fiscal year of the Interstate Commission;
   b. Establishing an executive committee and such other committees as may be necessary;
   c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
   d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;
   e. Establishing the titles and responsibilities of the officers of the Interstate Commission;
   f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations.
   g. Providing "start-up" rules for initial administration of the compact; and
   h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.
2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to

the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.
2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.
3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.
4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U. S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule;
2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;
3. Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided

that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII
OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.
2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.
2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII
FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX
THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.
2. The effective date of withdrawal is the effective date of the repeal.
3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.
4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.
5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:
    a. Remedial training and technical assistance as directed by the Interstate Commission;
    b. Alternative Dispute Resolution;
    c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
    d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.
2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state’s legislature, and the state council of such termination.
3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.
2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.
2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.
3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.
4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

ICJ RULES

INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

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Section 100 Definitions

RULE 1-101: Definitions

As used in these rules, unless the context clearly requires a different construction:

Absconder: a juvenile probationer or parolee who hides, conceals, or absents him/herself with the intent to avoid legal process or authorized control.

Accused Delinquent: a person charged with an offense that, if committed by an adult, would be a criminal offense.

Accused Status Offender: a person charged with an offense that would not be a criminal offense if committed by an adult.

Adjudicated: a judicial finding that a juvenile is a status offender or delinquent.

Adjudicated Delinquent: a person found to have committed an offense that, if committed by an adult, would be a criminal offense.

Adjudicated Status Offender: a person found to have committed an offense that would not be a criminal offense if committed by an adult.

Affidavit: a written or printed declaration or statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.

Appropriate Authority: the legally designated person, agency, court or other entity with the power to act, determine, or direct.

By-laws: those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

Commission: a body corporate and joint agency made up of compacting states who has the responsibility, powers and duties set forth in the ICJ.

Commissioner: the voting representative of each compacting state appointed pursuant to Article III of this Compact.

Commitment: an order by a court ordering the care, custody, and treatment of a juvenile to an agency or private or state institution maintained for such purpose.

Compact Administrator: the individual in each compacting state appointed pursuant to the terms of this Compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this Compact.

Compacting State: any state which has enacted the enabling legislation for this Compact.

Counsel (Legal): a state licensed attorney either privately retained or appointed by a court of competent jurisdiction to represent a juvenile or other party to a proceeding under this Compact.

Court: any court having jurisdiction over delinquent, neglected, or dependent children.

Court Order: an authorized order by a court of competent jurisdiction.

Custodial Agency: the agency which has been ordered or given authority by the appropriate court to render care, custody, and/or treatment to a juvenile.

Defaulting State: any state that fails to perform any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules.

Deferred Adjudication: a decision made by a court that withholds or defers formal judgment and stipulates terms and/or conditions of supervision.

Demanding State: the state seeking the return of a juvenile with or without delinquency charges.

Deputy Compact Administrator: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this Compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this Compact.

Designee: a person who is authorized to act on behalf of the ICJ Commissioner or Administrator of any member state under the provisions of this Compact, authorized by-laws, and rules.

Escapee: a juvenile who has made an unauthorized flight from in custody status or a facility to which he/she has been committed by a lawful authority.

Executive Director: the Commission's principal administrator (as defined in the Compact).

Hearing: any proceeding before a judge or other appropriate authority in which issues of fact or law are to be determined, in which parties against whom proceedings are initiated have notice and a right to be heard and which may result in a final order.

Holding State: the state where the juvenile is located.

Home Evaluation: an evaluation and subsequent report of findings to determine if supervision in a proposed residence is in the best interest of the juvenile and the community.

Home State: the state where the legal guardian or custodial agency is located.

Interstate Commission: the Interstate Commission for Juveniles created by Article III of this

Compact.

Interstate Compact for Juveniles (ICJ): the agreement pertaining to the legally authorized transfer of supervision and care, as well as the return of juveniles from one state to another, which has been adopted by all member states that have enacted legislation in substantially the same language. The agreement does not include or provide for the transfer of court jurisdiction from one state to another.

Jurisdiction: the authority a court has to preside over the proceeding and the power to render a decision pertaining to one or more specified offenses with which a juvenile has been charged.

Juvenile: any person defined as a juvenile in any member state or by the rules of the Interstate Commission.

Juvenile Sex Offender: a juvenile having been adjudicated for an offense involving sex or of a sexual nature as determined by the sending state or who may be required to register as a sex offender in the sending or receiving state.

Legal Guardian: a parent or other person who is legally responsible for the care and management of the juvenile.

Non-Delinquent Juvenile: any person who has not been adjudged or adjudicated delinquent.

Non-Offender: a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

Notice: Advanced notification given to a party, either written or verbal, in regards to the future of an ICJ case.

Petition: a written request to the court or other appropriate authority for an order requiring that action be taken or a decision made regarding a juvenile stating the circumstances upon which it is founded.

Physical Custody: the detainment of a juvenile by virtue of lawful process or authority.

Probation/Parole: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

Promulgate: to put a law or regulation into effect by formal public announcement and publication.

Receiving State: a state to which a juvenile is sent for supervision under provision of the ICJ.

Relocate: when a juvenile remains in another state for more than ninety (90) consecutive days in any twelve (12) month period.

Requisition: a written demand for the return of a non-delinquent runaway, probation or parole absconder, escapee, or accused delinquent.

Residential Facility: a staffed program that provides custodial care and supervision to juveniles.

Retaking: the act of a sending state physically removing a juvenile, or causing to have a juvenile removed, from a receiving state.

Rule: a written statement by the Interstate Commission promulgated pursuant to Article VI of this Compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

Runaways: persons within the juvenile jurisdictional age limit established by the home state who have voluntarily left their residence without permission of their legal guardian or custodial agency but who may or may not have been adjudicated.

Sanction: requirement, including but not limited to detention time, imposed upon a juvenile for non-compliance with terms of supervision.

Secure Facility: a facility which is approved for the holding of juveniles and is one which is either staff-secured or locked and which prohibits a juvenile in custody from leaving.

Sending State: a state which has sent or is in the process of sending a juvenile to another state for supervision under the provisions of the ICJ.

State: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

State Committed (Parole): any delinquent juvenile committed to a correctional facility that is conditionally released from an institutional setting or community supervision as authorized under the law of the sending state.

Substantial Compliance: sufficient compliance by a juvenile with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending or receiving state.

Supervision: the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile.

Termination: the discharge from ICJ supervision of a juvenile probationer or parolee by the appropriate authority.

Travel Permit: written permission granted to a juvenile authorizing travel from one state to another.

Voluntary Return: the return of a juvenile runaway, escapee, absconder, or accused delinquent who has consented to voluntarily return to the home/demanding state.

Warrant: an order authorizing any law enforcement or peace officer to apprehend and detain a specified juvenile.

History: Adopted December 2, 2009, effective March 1, 2010; "Deferred Adjudication" adopted September 15, 2010, effective January 1, 2011; "Probation/Parole" amended September 15, 2010, effective January 1, 2011; "Relocate" adopted September 15, 2010, effective January 1, 2011; "Retaking" adopted September 15, 2010, effective January 1, 2011; "Substantial Compliance" adopted September 15, 2010, effective January 1, 2011; "Adjudicated" amended October 26, 2011, effective March 1, 2012; "Appropriate Authority" adopted October 26, 2011, effective March 1, 2012; "Commitment" amended October 26, 2011, effective March 1, 2012; "Cooperative Supervision" amended October 26, 2011, effective March 1, 2012; "Detainer" amended October 26, 2011, effective March 1, 2012; "Hearing" amended October 26, 2011, effective March 1, 2012; "Holding State" amended October 26, 2011, effective March 1, 2012; "Juvenile Sex Offender" amended October 26, 2011, effective March 1, 2012; "Petition" amended October 26, 2011, effective March 1, 2012; "Requisition" amended October 26, 2011, effective March 1, 2012; "Residence" amended October 26, 2011, effective March 1, 2012; "Status Offense" amended October 26, 2011, effective March 1, 2012; "Termination" amended October 26, 2011, effective March 1, 2012; "Voluntary Return" amended October 26, 2011, effective March 1, 2012; "Substantial Compliance" amended October 17, 2012, effective April 1, 2013; "Adjudicated Status Offender" amended October 9, 2013, effective April 1, 2014; "Aftercare(temporary community placement)" rescinded October 9, 2013, effective April 1, 2014; "Custody" rescinded October 9, 2013, effective April 1, 2014; "Home Evaluation/Investigation" amended October 9, 2013, effective April 1, 2014; "Juvenile Sex Offender" amended October 9, 2013, effective April 1, 2014; "Residential Facility" adopted October 9, 2013, effective April 1, 2014; "Sanction" adopted October 9, 2013, effective April 1, 2014; "Sanction" amended October 29, 2014, effective January 1, 2015; "Demanding State" amended August 26, 2015, effective February 1, 2016; "Detainer" rescinded August 26, 2015, effective February 1, 2016; "Detention Order" rescinded August 26, 2015, effective February 1, 2016; "Emancipation" rescinded August 26, 2015, effective February 1, 2016; "Escapee" amended August 26, 2015, effective February 1, 2016; "Good Faith Effort" rescinded August 26, 2015, effective February 1, 2016; "Guardian ad litem" rescinded August 26, 2015, effective February 1, 2016; "Holding State" amended August 26, 2015, effective February 1, 2016; "Home Evaluation/Investigation" amended August 26, 2015, effective February 1, 2016; "Home State" amended August 26, 2015, effective February 1, 2016; "Interstate Compact for Juveniles (ICJ)" amended August 26, 2015, effective February 1, 2016; "Juvenile" amended August 26, 2015, effective February 1, 2016; "Legal Custodian" amended August 26, 2015, effective February 1, 2016; "Legal Guardian" amended August 26, 2015, effective February 1, 2016; "Legal Jurisdiction" amended August 26, 2015, effective February 1, 2016; "Non-Compacting State" rescinded August 26, 2015, effective February 1, 2016; "Peace Officer" rescinded August 26, 2015, effective February 1, 2016; "Pick-Up Order" rescinded August 26, 2015, effective February 1, 2016; "Private Provider" rescinded August 26, 2015, effective February 1, 2016; "Residence" rescinded August 26, 2015, effective February 1, 2016; "Runaway" amended August 26, 2015, effective February 1, 2016; "Rule" amended August 26, 2015, effective February 1, 2016; "Status Offense" rescinded August 26, 2015, effective February 1, 2016; "Travel Permit" amended August 26, 2015, effective February 1, 2016; "Deferred Adjudication" amended September 27, 2017, effective March 1, 2018; "Non Adjudicated Juveniles" rescinded September 27, 2017, effective March 1, 2018; "Runaways" amended September 27, 2017, effective March 1, 2018

Section 200 General Provisions

Rule 2-101: Dues Formula

1. The Commission shall determine the formula to be used in calculating the annual assessments to be paid by states. Public notice of any proposed revision to the approved dues formula shall be given at least thirty (30) days prior to the Commission meeting at which the proposed revision will be considered.

2. The Commission shall consider the population of the states and the volume of juvenile transfers between states in determining and adjusting the assessment formula.

3. The approved formula and resulting assessments for all member states shall be distributed by the Commission to each member state annually.

4. The dues formula shall be — (Population of the state / Population of the United States) plus (Number of juveniles sent from and received by a state / total number of offenders sent from and received by all states) divided by two.

History: Adopted December 2, 2009, effective March 1, 2010

RULE 2-102: Data Collection

1. As required by Article III (K) of the compact, the Interstate Commission shall gather, maintain and report data regarding the interstate movement of juveniles who are supervised under this compact and the return of juveniles who have absconded, escaped or fled to avoid prosecution or run away.

History: Adopted September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 9, 2013, effective April 1, 2014; amended October 29, 2014, effective October 29, 2014

RULE 2-103: Adoption of Rules and Amendments

Proposed new rules or amendments to the rules shall be adopted by majority vote of the members of the Commission in the following manner.

1. Proposed new rules and amendments to existing rules shall be submitted to the Rules Committee for referral and final approval by the full Commission:

    a. Any ICJ Compact Commissioner or Designee may submit proposed rules or amendments for referral to the Rules Committee during the annual meeting of the Commission. This proposal would be made in the form of a motion and would have to be approved by a majority vote of a quorum of the Commission members present at the meeting.

    b. Standing ICJ Committees may propose rules or amendments by a majority vote of that committee.

    c. ICJ Regions may propose rules or amendments by a majority vote of members of that region.

2. The Rules Committee shall prepare a draft of all proposed rules or amendments and provide the draft to the Commission for review and comments. All written comments received by the Rules Committee on proposed rules or amendments shall be posted on the Commission's website upon receipt. Based on these comments, the Rules Committee shall prepare a final draft of the proposed rules or amendments for consideration by the Commission not later than the next annual meeting falling in an odd-numbered year.

3. Prior to the Commission voting on any proposed rules or amendments, said text shall be published at the direction of the Rules Committee not later than thirty (30) days prior to the meeting at which a vote on the rule or amendment is scheduled, on the official website of the Commission and in any other official publication that may be designated by the Commission for the publication of its rules. In addition to the text of the proposed rule or amendment, the reason for the proposed rule shall be provided.

4. Each proposed rule or amendment shall state:

    a. The place, time, and date of the scheduled public hearing;

    b. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments; and

    c. The name, position, physical and electronic mail address, telephone, and telefax number of the person to whom interested persons may respond with notice of their attendance and written comments.

5. Every public hearing shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made, in which case the person requesting

the transcript shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the public hearing if it so chooses.

6. Nothing in this section shall be construed as requiring a separate public hearing on each rule or amendment. Rules or amendments may be grouped for the convenience of the Commission at public hearings required by this section.

7. Following the scheduled public hearing date, the Commission shall consider all written and oral comments received.

8. The Commission shall, by majority vote of a quorum of the Commissioners, take final action on the proposed rule or amendment by a vote of yes/no. No additional rules or amendments shall be made at the time such action is taken. A rule or amendment may be referred back to the Rules Committee for further action either prior to or subsequent to final action on the proposed rule or amendment. The Commission shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

9. Not later than sixty (60) days after a rule is adopted, any interested person may file a petition for judicial review of the rule in the United States District Court of the District of Columbia or in the federal district court where the Commission's principal office is located. If the court finds that the Commission's action is not supported by substantial evidence, as defined in the Model State Administrative Procedures Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. In the event that a petition for judicial review of a rule is filed against the Commission by a state, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

10. Upon determination that an emergency exists, the Commission may promulgate an emergency rule or amendment that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. An emergency rule or amendment is one that shall be made effective immediately in order to:

    a. Meet an imminent threat to public health, safety, or welfare;

    b. Prevent a loss of federal or state funds; or

    c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

11. The Chair of the Rules Committee may direct revisions to a rule or amendments adopted by the Commission, for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the official website of the Interstate Commission for Juveniles and in any other official publication that may be designated by the Interstate Commission for Juveniles for the publication of its rules. For a period of thirty (30) days after posting, the revision is subject to challenge by any

Commissioner or Designee. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Executive Director of the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

History: Adopted as Rule 7-101 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 9, 2013 and renumbered as Rule 2-103, effective April 1, 2014; amended September 27, 2017, effective March 1, 2018

RULE 2-104: Communication Requirements Between States

1. All communications between states, whether verbal or written, on ICJ issues shall be transmitted between the respective ICJ Offices.

2. Communication may occur between local jurisdictions with the prior approval of the ICJ Offices in both states. A summary of communication shall be provided to the ICJ Office and documented in the electronic data system.

3. Communication regarding ICJ business shall respect the confidentiality rules of sending and receiving states.

History: Adopted as Rule 4-105 December 2, 2009, effective March 1, 2010; renumbered as Rule 2-104, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

RULE 2-105: Victim Notification

1. Victim notification requirements are the responsibility of the sending state in accordance with the laws and policies of that state.

2. When the sending state will require the assistance of the supervising person in the receiving state to meet these requirements, the sending officer shall clearly document such in the initial packet using the Victim Notification Supplement Form. The Victim Notification Supplement Form shall include the specific information regarding what will be required and the timeframes for which it shall be received.

3. Throughout the duration of the supervision period, the receiving state shall, to the extent possible, provide the sending state with the requested information to ensure the sending state can remain compliant with the laws and policies of the sending state.

4. It is the responsibility of the sending state to update the receiving state of any changes to victim notification requirements.

History: Adopted as Rule 4-107 December 2, 2009, effective March 1, 2010; clerically amended January 5, 2011, effective February 4, 2011; amended October 26, 2011, effective March 1, 2012; renumbered as Rule 2-105, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

RULE 2-106: Request for Juvenile Information

Upon request by a member state ICJ Office, other member state ICJ Offices may share information regarding a juvenile who crosses state lines to determine if they are or may be subject to the ICJ.

History: Adopted September 27, 2017, effective March 1, 2018

Section 300 Forms

RULE 3-101: Forms

States shall use the electronic information system approved by the Commission for e-forms processed through the Interstate Compact for Juveniles.

History: Deferred action December 3, 2009 (continued use of AJCA forms with revisions to logo, compact and rule notations); adopted September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective April 1, 2013; amended October 9, 2013, effective April 1, 2014; amended October 29, 2014, effective January 1, 2015

RULE 3-102: Rescinded, effective 2015

Title when rescinded: *Optional Forms*

History: Deferred action December 3, 2009 (continued use of AJCA forms with revisions to logo, compact and rule notations); adopted September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective November 1, 2012; rescinded October 29, 2014, effective January 1, 2015

RULE 3-103: Rescinded, effective 2012

Title when rescinded: *Form Modifications or Revisions*

History: Adopted September 15, 2010, effective January 1, 2011; rescinded October 17, 2012, effective November 1, 2012

Section 400 Transfer of Supervision

RULE 4-101: Eligibility Requirements for the Transfer of Supervision

1. Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state.

2. No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules. A juvenile shall be eligible for transfer under ICJ if the following conditions are met:

    a. is classified as a juvenile in the sending state; and

    b. is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state; and

    c. is under the jurisdiction of a court or appropriate authority in the sending state; and

    d. has a plan inclusive of relocating to another state for a period exceeding ninety (90) consecutive days in any twelve (12) month period; and

    e. has more than ninety (90) days or an indefinite period of supervision remaining at the time the sending state submits the transfer request; and

    f. i. will reside with a legal guardian, relative, non-relative or independently, excluding residential facilities; or

        ii. is a full-time student at an accredited secondary school, or accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment.

3. If a juvenile is placed pursuant to the ICJ and is also subject to the Interstate Compact on the Placement of Children (ICPC), placement and supervision through the ICPC would not be precluded.

4. A request for the transfer of supervision for the sole purpose of collecting restitution and/or court fines is not permitted.

5. A juvenile who is not eligible for transfer under this Compact is not subject to these rules.

History: Adopted December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 9, 2013, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; clerically amended November 4, 2015

RULE 4-101A: Rescinded, effective 2014

Title when rescinded: *Transfer of Students*

History: Adopted September 15, 2010, effective January 1, 2011; rescinded October 9, 2013, effective April 1, 2014

RULE 4-102: Sending and Receiving Referrals

1. Each ICJ Office shall develop policies/procedures on how to handle ICJ matters within its state.

2. The sending state shall maintain responsibility until supervision is accepted by, and the juvenile has arrived in, the receiving state.

   a. State Committed (Parole) Cases – When transferring a juvenile parolee, the sending state shall not allow the juvenile to transfer to the receiving state until the sending state's request for transfer of supervision has been approved, except as described in 4-102(2)(a)(ii).

      i. The sending state shall ensure the following referral is complete and forwarded to the receiving state forty-five (45) calendar days prior to the juvenile's anticipated arrival: Form IV Parole or Probation Investigation Request, Form IA/VI Application for Services and Waiver, and Order of Commitment. The sending state shall also provide copies (if available) of the Petition and/or Arrest Report(s), Legal and Social History, and any other pertinent information deemed to be of benefit to the receiving state. Parole conditions, if not already included, shall be forwarded to the receiving state upon the juvenile's release from an institution. Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to the juvenile relocating to the receiving state.

      ii. When it is necessary for a State Committed (parole) juvenile to relocate prior to the acceptance of supervision, under the provision of Rule 4-104(4), the sending state shall determine if the circumstances of the juvenile's immediate relocation justifies the use of a Form VII Out-of-State Travel Permit and Agreement to Return, including consideration of the appropriateness of the residence. If approved by the sending state, it shall provide the receiving state with the approved Form VII Out-of-State Travel Permit and Agreement to Return along with a written explanation as to why ICJ procedures for submitting the referral could not be followed.

      iii. If not already submitted, the sending state shall provide the complete referral to the receiving state within ten (10) business days of the Form VII Out-of-State Travel Permit and Agreement to Return being issued. The receiving state shall make the decision whether or not it will expedite the referral.

   b. Probation Cases – The sending state shall ensure the following referral is complete and forwarded to the receiving state. Form IV Parole or Probation Investigation Request, Form IA/VI Application for Services and Waiver, Order of Adjudication and Disposition, Conditions of Probation and Petition and/or Arrest Report(s). The sending state should also provide Legal and Social History, and any other pertinent information (if available). Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to relocating if the juvenile is not already residing in the receiving state.

3. The sending state shall forward additional documentation, if available, at the request of the receiving state. The receiving state shall not delay the investigation pending receipt of the additional documentation. If the juvenile is already residing in the receiving state, the receiving state shall obtain the juvenile's signature on the Form IA/VI Application for Service and Waiver.

4. The receiving state shall, within forty-five (45) calendar days of receipt of the referral, forward to the sending state the home evaluation along with the final approval or disapproval of the request for supervision or provide an explanation of the delay to the sending state.

History: Adopted December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective April 1, 2013; amended October 9, 2013, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; clerically amended October 17, 2016; amended September 27, 2017, effective March 1, 2018

RULE 4-103: Transfer of Supervision Procedures for Juvenile Sex Offenders

1. When transferring a juvenile sex offender, the sending state shall not allow the juvenile to transfer to the receiving state until the sending state's request for transfer of supervision has been approved, or reporting instructions have been issued by the receiving state unless Rule 4-103(3) is applicable.

2. When transferring a juvenile sex offender, the referral shall consist of: Form IA/VI Application for Services and Waiver, Form IV Parole or Probation Investigation Request, Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State, Order of Adjudication and Disposition, Conditions of Supervision, Petition and/or Arrest Report. The sending state shall also provide: Safety Plan, Specific Assessments, Legal and Social History information pertaining to the criminal behavior, Victim Information, i.e., sex, age, relationship to the juvenile, sending state's current or recommended Supervision and Treatment Plan, and all other pertinent materials (if available). Parole conditions, if not already included, shall be forwarded to the receiving state upon the juvenile's release from an institution.

3. When it is necessary for a juvenile sex offender to relocate with a legal guardian prior to the acceptance of supervision, and there is no legal guardian in the sending state, the sending state shall determine if the circumstances of the juvenile's immediate relocation justifies the use of a Form VII Out-of-State Travel Permit and Agreement to Return, including consideration of the appropriateness of the residence. If approved by the sending state's ICJ Office, the following shall be initiated:

    a. The sending state shall provide the receiving state with an approved Form VII Out-of-State Travel Permit and Agreement to Return along with a written explanation as to why ICJ procedures for submitting the referral could not be followed.

    b. If not already submitted, the sending state shall transmit a complete referral to the receiving state within ten (10) business days of the Form VII Out-of-State Travel Permit and Agreement to Return being issued. The receiving state shall make the decision whether it will expedite the referral or process the referral according to Rule 4-102.

    c. Within five (5) business days of receipt of the Form VII Out-of-State Travel Permit and Agreement to Return, the receiving state shall advise the sending state of applicable registration requirements and/or reporting instructions, if any. The sending state shall be responsible for communicating the registration requirements and/or reporting instructions to the juvenile and his/her family in a timely manner.

    d. The sending state shall maintain responsibility until supervision is accepted by, and the juvenile has arrived in, the receiving state. The receiving state shall have the authority to supervise juveniles pursuant to reporting instructions issued under 4-103(3)(c).

4. In conducting home evaluations for juvenile sex offenders, the receiving state shall ensure compliance with local policies or laws when issuing reporting instructions. If the proposed residence is unsuitable, the receiving state may deny acceptance referred to in Rule 4-104(4).

5. Juvenile sex offender shall abide by the registration laws in the receiving state, i.e., felony or sex offender registration, notification or DNA testing.

6. A juvenile sex offender who fails to register when required will be subject to the laws of the receiving state.

History: Adopted December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective April 1, 2013; amended October 9, 2013, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; clerically amended October 17, 2016

RULE 4-104: Authority to Accept/Deny Supervision

1. Only the receiving state's authorized Compact Office staff shall accept or deny supervision of a juvenile by that state after considering a recommendation by the investigating officer.

2. The receiving state's authorized Compact Office staff's signature is required on or with the Form VIII Home Evaluation that accepts or denies supervision of a juvenile by that state.

3. Supervision cannot be denied based solely on the juvenile's age or the offense.

4. Supervision may be denied when the home evaluation reveals that the proposed residence is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state, except when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state.

5. Upon receipt of acceptance of supervision from the receiving state, and within five (5) business days prior to the juvenile's departure if the youth is not already residing in the receiving state, the sending state shall provide reporting instructions to the juvenile, and provide written notification of the juvenile's departure to the receiving state.

6. If the transfer of supervision in the receiving state is denied, the sending state shall return the juvenile within five (5) business days. This time period may be extended up to an additional five (5) business days with approval from both ICJ offices.

History: Adopted as Rule 5-101 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; renumbered as Rule 4-104, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

Comment: Rule 4-104 was originally titled "Supervision/Services Requirements," adopted December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; renumbered as Rule 5-101, effective April 1, 2014

RULE 4-105: Renumbered, effective 2014

Title when renumbered: *Communication Requirements Between States*

History: Adopted December 2, 2009, effective March 1, 2010; renumbered as Rule 2-104, effective April 1, 2014

RULE 4-106: Renumbered, effective 2014

Title when renumbered: Closure of Cases

History: Adopted December 2, 2009, effective March 1, 2010; renumbered as Rule 5-104, effective April 1, 2014

RULE 4-107: Renumbered, effective 2014

Title when renumbered: *Victim Notification*

History: Adopted December 2, 2009, effective March 1, 2010; renumbered as Rule 2-105, effective April 1, 2014

Section 500 Supervision in Receiving State

RULE 5-101: Supervision/Services Requirements

1. After accepting supervision, the receiving state will assume the duties of supervision over any juvenile, and in exercise of those duties will be governed by the same standards of supervision that prevail for its own juveniles released on probation or parole.

2. At the time of acceptance or during the term of supervision, the appropriate authority in the receiving state may impose conditions on a juvenile transferred under the ICJ if that condition would have been imposed on a juvenile in the receiving state. Any costs incurred from any conditions imposed by the receiving state shall not be the responsibility of the sending state.

3. Both the sending and receiving states shall have the authority to enforce terms of probation/parole, which may include the imposition of detention time in the receiving state. Any costs incurred from any enforcement sanctions shall be the responsibility of the state seeking to impose such sanctions.

4. The receiving state shall furnish written progress reports to the sending state on no less than a quarterly basis. Additional reports shall be sent in cases where there are concerns regarding the juvenile or there has been a change in residence.

5. Neither sending states nor receiving states shall impose a supervision fee on any juvenile who is supervised under the provisions of the ICJ.

6. The sending state shall be financially responsible for treatment services ordered by the appropriate authority in the sending state when they are not available through the supervising agency in the receiving state or cannot be obtained through Medicaid, private insurance, or other payor. The initial referral shall clearly state who will be responsible for purchasing treatment services.

7. The age of majority and duration of supervision are determined by the sending state. Where circumstances require the receiving court to detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the receiving state.

8. Juvenile restitution payments or court fines are to be paid directly from the juvenile/juvenile's family to the adjudicating court or agency in the sending state. Supervising officers in the receiving state shall encourage the juvenile to make regular payments in accordance with the court order of the sending state. The sending state shall provide the specific payment schedule and payee information to the receiving state.

9. Supervision for the sole purpose of collecting restitution and/or court fines is not a permissible reason to continue or extend supervision of a case. The receiving state may initiate the case closure request once all other terms of supervision have been met.

History: Adopted as Rule 4-104 December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 9, 2013 and renumbered as Rule 5-101, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016

Comment: Rule 5-101 was originally titled "Authority to Accept/Deny Supervision," adopted December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; renumbered as Rule 4-104, effective April 1, 2014

RULE 5-102: Absconder Under ICJ Supervision

1. If there is reason to believe that a juvenile being supervised under the terms of the Interstate Compact for Juveniles in the receiving state has absconded, the receiving state shall attempt to locate the juvenile. Such activities shall include, but are not limited to:

    a. conducting a field contact at the last known residence;
    b. contacting the last known school or employer, if applicable; and
    c. contacting known family members and collateral contacts.

2. If the juvenile is not located, the receiving state shall submit a violation report to the sending state's ICJ office which shall include the following information:

    a. the juvenile's last known address and telephone number,
    b. date of the juvenile's last personal contact with the supervising agent,
    c. details regarding how the supervising agent determined the juvenile to be an absconder, and
    d. any pending charges in the receiving state.

3. The receiving state may close the case upon notification that a warrant has been issued by the sending state for a juvenile who has absconded from supervision in the receiving state, or if the juvenile has been on absconder status for ten (10) business days.

4. Upon finding or apprehending the juvenile, the sending state shall make a determination if the juvenile shall return to the sending state or if the sending state will request supervision resume in the receiving state.

History: Adopted as Rule 6-104A October 17, 2012, effective April 1, 2013; renumbered as Rule 5-102, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016

Comment: Rule 5-102 was originally titled "Travel Permits," adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective April 1, 2013; amended October 9, 2013 and renumbered as Rule 8-101, effective April 1, 2014

RULE 5-103: Reporting Juvenile Non-Compliance, Failed Supervision and Retaking

1. At any time during supervision if a juvenile is out of compliance with conditions of supervision, the receiving state shall notify the sending state using Form IX Quarterly Progress, Violation or Absconder Report, which shall contain:

    a. the date of the new citation or technical violation that forms the basis of the violation;
    b. description of the new citation or technical violation;
    c. status and disposition, if any;
    d. supporting documentation regarding the violation including but not limited to police reports, drug testing results, or any other document to support the violation;
    e. efforts or interventions made to redirect the behavior;
    f. sanctions if they apply;
    g. receiving state recommendations.

2. The sending state shall respond to a violation report in which a revocation or discharge is recommended by the receiving state no later than ten (10) business days following receipt by the sending state. The response shall include the action to be taken by the sending state, which may include continue supervision, and the date that action will occur.

3. The decision of the sending state to retake a juvenile shall be conclusive and not reviewable within the receiving state. If the sending state determines the violation requires retaking or retaking is mandatory, the following shall be considered:

    a. In those cases where the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency in the receiving state, the juvenile shall not be retaken without the consent of the receiving state until discharged from prosecution, or other form of proceeding, imprisonment, detention, or supervision.

    b. The Form IA/VI Application for Services and Waiver has the appropriate signatures; no further court procedures will be required for the juvenile's return.

    c. A duly accredited officer of a sending state may enter a receiving state and apprehend and retake any such juvenile on probation or parole consistent with probable cause requirements, if any. If this is not practical, a warrant may be issued and the supervising state shall honor that warrant in full.

    d. The sending state shall return the juvenile in a safe manner, pursuant to the ICJ Rules, within five (5) business days. This time period may be extended up to an additional five (5) business days with the approval from both ICJ Offices.

4. Upon request from the receiving state, the sending state's ICJ Office shall return the juvenile within five (5) business days in accordance with these rules when:

    a. A legal guardian remains in the sending state and the supervision in the receiving state fails as evidenced by:

i. When a juvenile is no longer residing in the residence approved by the receiving state due to documented instances of violation of conditions of supervision; or
ii. When an alternative residence is determined to be in the best interest of the juvenile due to documented instances of violation of conditions of supervision and no viable alternatives exist in the receiving state; or
iii. When an immediate, serious threat to the health and safety of the juvenile and/or others in the residence or community is identified; and
iv. The receiving state has documented efforts or interventions to redirect the behavior.

b. The juvenile is not residing with a legal guardian and that person requests the juvenile be removed from his/her home. The sending state shall secure alternative living arrangements within five (5) business days or the juvenile shall be returned. This time period may be extended up to an additional five (5) business days with the approval from both ICJ Offices.

c. A juvenile student transfer of supervision fails.

History: Adopted October 9, 2013, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; clerically amended October 17, 2016; amended September 27, 2017, effective March 1, 2018

Comment: Sections of Rule 5-103 were adopted as Rule 6-104 "Return of Juveniles Whose ICJ Placement Has Failed" December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; Rule 6-104 rescinded and replaced by Rule 5-103 October 9, 2013, effective April 1, 2014

RULE 5-104: Closure of Cases

1. The sending state has sole authority to discharge/terminate supervision of its juveniles with the exception of:

    a. When a juvenile is convicted of a crime and sentenced under the jurisdiction of the adult court of the receiving state and the adult sentence is longer than the juvenile sentence. In such cases, the receiving state may close the supervision and administration of its ICJ case once it has notified the sending state's ICJ office, in writing, and provided it with a copy of the adult court order.

    b. Cases which terminate due to expiration of a court order or upon expiration of the maximum period of parole or probation may be closed by the receiving state without further action by the sending state. In such cases, the receiving state shall forward a summary report to the sending state, and notify the sending state in writing that, unless otherwise notified, the case will be closed due to the expiration of the court order within five (5) business days.

2. After the receiving state has accepted a probation/parole case for supervision, the juvenile shall relocate within ninety (90) calendar days. If the juvenile does not relocate within this timeframe, the receiving state may close the case with written notice to the sending state. The sending state may request an extension beyond the ninety (90) calendar day timeframe, providing an appropriate explanation, or may resubmit the referral at a later date.

3. The receiving state may submit to the sending state a request for the early discharge/termination of the juvenile from probation or parole. In such cases, the sending state shall be provided the opportunity to consider the matter, to advise the court of jurisdiction or state agency of the request, and to make known any objection or concern before the case is closed. Any decision to release a juvenile from probation/parole early shall be made by the appropriate authority in the sending state. The sending state will forward a copy of the discharge/termination report or notification to close based on the receiving state's recommendation or, if the request to close has been denied, provide written explanation within sixty (60) calendar days as to why the juvenile cannot be discharged/terminated from probation/parole.

4. The receiving state may close the case upon notification that a warrant has been issued by the sending state for a juvenile who has absconded from supervision in the receiving state, or if the juvenile has been on absconder status for ten (10) business days.

5. The sending state shall close the case when the sole purpose of supervision is collecting restitution and/or court fines.

6. The receiving state may close the supervision case upon notification that the juvenile has been admitted to a residential facility for a planned stay in excess of ninety (90) calendar days. Upon release from the facility, if the juvenile remains on supervision within the sending state and meets eligibility requirements, the sending state shall submit a new referral.

History: Adopted as Rule 4-106 December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective April 1, 2013; renumbered as Rule 5-104, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

Section 600 Voluntary and Non-Voluntary Return of Juveniles/Runaways

The home/demanding state's ICJ Office shall return all of its juveniles according to one of the following methods.

RULE 6-101: Release of Non-Delinquent Runaways

1. Juvenile authorities may release a non-delinquent runaway to his/her legal guardian or custodial agency within the first twenty-four (24) hours (excluding weekends and holidays) of detainment without applying the Compact, except in cases where the holding authority suspects abuse or neglect in the residence of the legal guardian or custodial agency.

2. If a non-delinquent runaway remains in custody beyond twenty-four (24) hours, the holding state's ICJ Office shall be contacted and the Compact shall be applied.

History: Adopted December 3, 2009, effective March 1, 2010; clerically amended January 5, 2011, effective February 4, 2011; amended October 26, 2011, effective March 1, 2012; clerically amended April 18, 2012, effective May 31, 2012; amended August 26, 2015, effective February 1, 2016

RULE 6-102: Voluntary Return of Runaways, Probation/Parole Absconders, Escapees or Accused Delinquents and Accused Status Offenders

Once an out-of-state juvenile is found and detained, the following procedures shall apply:

1. Runaways and accused status offenders who are a danger to themselves or others shall be detained in secure facilities until returned by the home/demanding state. The holding state shall have the discretion to hold runaways and accused status offenders who are not a danger to themselves or others at a location it deems appropriate.

2. Probation/parole absconders, escapees or accused delinquents who have an active warrant shall be detained in secure facilities until returned by the home/demanding state. In the absence of an active warrant, the holding state shall have the discretion to hold the juvenile at a location it deems appropriate.

3. The holding state's ICJ Office shall be advised that the juvenile is being detained. The holding state's ICJ Office shall contact the home/demanding state's ICJ Office advising them of case specifics.

4. The home/demanding state's ICJ Office shall immediately initiate measures to determine the juvenile's residency and jurisdictional facts in that state.

5. At a court hearing (physical or electronic), the judge in the holding state shall inform the juvenile of his/her due process rights and may use the ICJ Juvenile Rights Form. The court may elect to appoint counsel or a guardian ad litem to represent the juvenile.

6. If in agreement with the voluntary return, the juvenile shall sign the Form III Consent for Voluntary Return of Out-of-State Juveniles in the presence (physical or electronic) of a judge. The Form III Consent for Voluntary Return of Out-of-State Juveniles shall be signed by a judge.

7. When an out-of-state juvenile has reached the age of majority according to the holding state's laws and is brought before an adult court for an ICJ due process hearing, the home/demanding state shall accept an adult waiver instead of the Form III Consent for Voluntary Return of Out-of-State Juveniles, provided the waiver is signed by the juvenile and the judge.

8. When consent has been duly executed, it shall be forwarded to and filed with the Compact administrator, or designee, of the holding state. The holding state's ICJ Office shall in turn, forward a copy of the consent to the Compact administrator, or designee, of the home/demanding state.

9. The home/demanding state shall be responsive to the holding state's court orders in effecting the return of its juveniles. Each ICJ Office shall have policies/procedures in place involving the return of juveniles that will ensure the safety of the public and juveniles.

10. Juveniles shall be returned by the home/demanding state in a safe manner and within five (5) business days of receiving a completed Form III Consent for Voluntary Return of Out-of-State

Juveniles or adult waiver. This time period may be extended up to an additional five (5) business days with approval from both ICJ Offices.

History: Adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; clerically amended January 5, 2011, effective February 4, 2011; amended October 17, 2012, effective April 1, 2013; amended August 26, 2015, effective February 1, 2016

RULE 6-103: Non-Voluntary Return of Runaways and/or Accused Status Offenders

A requisition applies to all juveniles in custody who refuse to voluntarily return to their home/demanding state or to request a juvenile whose whereabouts are known, but not in custody be picked up and detained pending return.

1. Runaways and accused status offenders in custody who are a danger to themselves or others shall be detained in secure facilities until returned by the home/demanding state. The holding state shall have the discretion to hold runaways and accused status offenders who are not a danger to themselves or others at a location it deems appropriate.

2. The home/demanding state's ICJ Office shall maintain regular contact with the authorities preparing the requisition to ensure accurate preparation and timely delivery of said documents to minimize detention time.

3. When the juvenile is a runaway and/or an accused status offender, the legal guardian or custodial agency shall petition the court of jurisdiction in the home/demanding state for a requisition. When the juvenile is already in custody, this shall be done within sixty (60) calendar days of notification of the juvenile's refusal to voluntarily return.

    a. The petitioner may use Form A, Petition for Requisition to Return a Runaway Juvenile, or other petition. The petition shall state the juvenile's name and date of birth, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of his/her running away, his/her location at the time application is made, and other facts showing that the juvenile is endangering his/her own welfare or the welfare of others and is not an emancipated minor.

        i. The petition shall be verified by affidavit.
        ii. The petition is to be accompanied by a certified copy of the document(s) on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees.
        iii. Other affidavits and other documents may be submitted with such petition.

    b. When it is determined that the juvenile should be returned, the judge in the home/demanding state shall sign the Form I Requisition for Runaway Juvenile.

    c. The Form I Requisition for Runaway Juvenile accompanied by the petition and supporting documentation shall be forwarded to the home/demanding state's ICJ Office.

4. Upon receipt of the Form I Requisition for Runaway Juvenile, the home/ demanding state's ICJ Office shall ensure the requisition packet is in order. The ICJ Office will submit the requisition packet through the electronic data system to the ICJ Office in the state where the juvenile is located. The state where the juvenile is located may request and shall be entitled to receive originals or duly certified copies of any legal documents.

5. The ICJ Office in the state where the juvenile is located will forward the Form I Requisition for Runaway Juvenile to the appropriate court and request that a hearing be held within thirty

(30) calendar days of the receipt of the requisition. If not already detained, the court shall order the juvenile be held pending a hearing on the requisition. This time period may be extended with the approval from both ICJ Offices.

6. The court in the holding state shall inform the juvenile of the demand made for his/her return and may elect to appoint counsel or a guardian ad litem. The purpose of said hearing is to determine proof of entitlement for the return of the juvenile. If proof of entitlement is not established, the judge shall issue written findings detailing the reason(s) for denial.

7. In all cases, the order concerning the requisition shall be forwarded immediately from the holding court to the holding state's ICJ Office which shall forward the same to the home/demanding state's ICJ Office.

8. Juveniles held in detention, pending non-voluntary return to the home/demanding state, may be held for a maximum of ninety (90) calendar days.

9. Juveniles shall be returned by the home/demanding state within five (5) business days of the receipt of the order granting the requisition. This time period may be extended up to an additional five (5) business days with approval from both ICJ Offices.

10. If the legal guardian or custodial agency in the home/demanding state is unable or refuses to initiate the requisition process on a runaway, then the home/demanding state's appropriate authority shall initiate the requisition process on behalf of the juvenile.

History: Adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective November 1, 2012; amended October 9, 2013, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

RULE 6-103A: Non-Voluntary Return of an Escapee, Absconder or Accused Delinquent

A requisition applies to all juveniles in custody who refuse to voluntarily return to their home/demanding state or to request a juvenile whose whereabouts are known, but not in custody be picked up and detained pending return.

1. Probation/parole escapees, absconders or accused delinquents who have been taken into custody on a warrant shall be detained in secure facilities until returned by the demanding state.

2. The demanding state's ICJ Office shall maintain regular contact with the authorities preparing the requisition to ensure accurate preparation and timely delivery of said documents to minimize detention time.

3. The demanding state shall present to the court or appropriate authority a Form II Requisition for Escapee, Absconder, or Accused Delinquent, requesting the juvenile's return. When the juvenile is already in custody, this shall be done within sixty (60) calendar days of notification of the juvenile's refusal to voluntarily return.

    a. The requisition shall be verified by affidavit, unless a judge is the requisitioner, and shall be accompanied by copies of supporting documents that show entitlement to the juvenile. Examples may include:

        i. Judgment
        ii. Order of Adjudication
        iii. Order of Commitment
        iv. Petition Alleging Delinquency
        v. Other affidavits and documents may be submitted with such requisition.

    b. When it is determined that the juvenile should be returned, the judge or the appropriate authority in the demanding state shall sign the Form II Requisition for Escapee, Absconder, or Accused Delinquent.

    c. The Form II Requisition for Escapee, Absconder, or Accused Delinquent accompanied by the supporting documentation shall be forwarded to the demanding state's ICJ Office.

4. Upon receipt of Form II Requisition for Escapee, Absconder, or Accused Delinquent, the demanding state's ICJ Office shall ensure the requisition packet is in order. The ICJ Office will submit the requisition packet through the electronic data system to the ICJ Office in the state where the juvenile is located. The state where the juvenile is located may request and shall be entitled to receive originals or duly certified copies of any legal documents.

5. The ICJ Office in the state where the juvenile is located will forward the Form II Requisition for Escapee, Absconder, or Accused Delinquent to the appropriate court and request that a hearing be held within thirty (30) calendar days of the receipt of the requisition. If not already detained, the court shall order the juvenile be held pending a hearing on the requisition. This time period may be extended with the approval from both ICJ Offices.

6. The court in the holding state shall inform the juvenile of the demand made for his/her-return and may elect to appoint counsel or a guardian ad litem. The purpose of said hearing is to determine proof of entitlement for the return of the juvenile. If proof of entitlement is not established, the judge shall issue written findings detailing the reason(s) for denial.

7. In all cases, the order concerning the requisition shall be forwarded immediately from the holding court to the holding state's ICJ Office which shall forward the same to the demanding state's ICJ Office.

8. Juveniles held in detention, pending non-voluntary return to the demanding state, may be held for a maximum of ninety (90) calendar days.

9. Requisitioned juveniles shall be accompanied in their return to the demanding state unless both ICJ Offices determine otherwise. Juveniles shall be returned by the demanding state within five (5) business days of the receipt of the order granting the requisition. This time period may be extended up to an additional five (5) business days with approval from both ICJ Offices.

History: Adopted October 9, 2013, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

RULE 6-104: ICPC Recognition

ICJ recognizes the authority of ICPC under Article V of the Interstate Compact on the Placement of Children and supports their authority to return ICPC youth who have run away from their out-of-state placement resulting in a demand for their return by the sending state. In the event a juvenile is held in a secure facility beyond twenty-four (24) hours (excluding weekends and holidays), the appropriate provisions of the ICJ Rules shall apply.

History: Adopted October 9, 2013, effective April 1, 2014

Comment: Rule 6-104 was originally titled "Return of Juveniles Whose ICJ Placement Has Failed," adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; rescinded and replaced by Rule 5-103 on October 9, 2013, effective April 1, 2014

Rule 6-105: Return of Juveniles When Abuse or Neglect is Reported

1. When a holding state has reason to suspect abuse or neglect by a person in the home/demanding state, the holding state's ICJ Office shall notify the home/demanding state's ICJ Office of the suspected abuse or neglect. The home/demanding state's ICJ Office shall work with the appropriate authority and/or court of competent jurisdiction in the home/demanding state to affect the return of the juvenile.

2. Allegations of abuse or neglect do not alleviate a state's responsibility to return a juvenile within the time frames in accordance with the rules.

3. States shall follow its procedures for reporting and investigating allegations of abuse or neglect of juveniles.

History: Adopted August 26, 2015, effective February 1, 2016

Comment: Rule 6-105 was originally titled "Financial Responsibility," adopted December 3, 2009, effective March 1, 2010; clerically amended January 5, 2011, effective February 4, 2011; renumbered as Rule 7-101, effective April 1, 2014

RULE 6-111: Renumbered, effective 2014

Title when renumbered: *Airport Supervision*

History: Adopted December 3, 2009, effective March 1, 2010; clerically amended January 5, 2011, effective February 4, 2011; amended October 26, 2011, effective March 1, 2012; renumbered as Rule 7-107, effective April 1, 2014

RULE 6-112: Rescinded, effective 2012

Title when rescinded*: Provision of Emergency Services*

History: Adopted December 3, 2009, effective March 1, 2010; rule rescinded and "Provision of Emergency Services" merged into Rule 6-111 October 26, 2011, effective March 1, 2012

Section 700 Additional Return Requirements for Sections 500 and 600

RULE 7-101: Financial Responsibility

1. The home/demanding/sending state shall be responsible for the costs of transportation, for making transportation arrangements and for the return of juveniles within five (5) business days of being notified by the holding state's ICJ Office that the juvenile's due process rights have been met. This time period may be extended up to an additional five (5) business days with the approval from both ICJ Offices.

2. The holding state shall not be reimbursed for detaining or transporting juveniles unless the home/demanding/sending state fails to affect the return of its juveniles accordance with these rules.

History: Adopted as Rule 6-105 December 3, 2009, effective March 1, 2010; clerically amended January 5, 2011, effective February 4, 2011; renumbered as Rule 7-101, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; clerically amended October 17, 2016; amended September 27, 2017, effective March 1, 2018

Comment: Rule 7-101 was originally titled "Adoption of Rules and Amendments," adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; renumbered as Rule 2-103 October 9, 2013, effective April 1, 2014

RULE 7-102: Public Safety

1. The home/demanding/sending state's ICJ Office shall determine appropriate measures and arrangements to ensure the safety of the public and of juveniles being transported based on the holding and home/demanding/sending states' assessments of the juvenile, including but not limited to, the juvenile's psychological and medical condition and needs.

2. If the home/demanding/sending state's ICJ Office determines that a juvenile is considered a risk to harm him/herself or others, the juvenile shall be accompanied on the return to the home/demanding/sending state.

History: Adopted as Rule 6-106 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; clerically amended January 5, 2011, effective February 4, 2011; amended October 9, 2013 and renumbered as Rule 7-102, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016

RULE 7-103: Charges Pending in Holding/Receiving State

Juveniles shall be returned only after charges are resolved when pending charges exist in the holding/receiving state, unless consent is given by the holding/receiving and demanding/sending states' courts and ICJ Offices.

History: Adopted as Rule 6-107 December 3, 2009, effective March 1, 2010; renumbered as Rule 7-103, effective April 1, 2014; amended September 27, 2017, effective March 1, 2018

RULE 7-104: Warrants

1. All warrants issued for juveniles subject to the Compact shall be entered into the National Crime Information Center (NCIC) with a nationwide pickup radius with no bond amount set.

2. Holding states shall honor all lawful warrants as entered by other states and shall, no later than the next business day, notify the ICJ Office in the home/demanding/sending state that the juvenile has been placed in custody pursuant to the warrant. Upon notification, the home/demanding/sending state shall issue a detainer or provide a copy of the warrant to the holding state.

3. Within two (2) business days of notification, the home/demanding/sending state shall inform the holding state whether the home/demanding/sending state intends to withdraw the warrant. Withdrawal of the warrant does not negate the home/demanding/sending state's responsibility to return the juvenile under other applicable rules.

4. The holding state shall not release the juvenile in custody on bond.

History: Adopted as Rule 6-108 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; renumbered as Rule 7-104, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

RULE 7-105: Detention and Hearing on Failure to Return

1. Where circumstances require the holding/receiving court to detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the holding/receiving state.

2. If a home/demanding/sending state is required to return a juvenile and fails to do so within ten (10) business days in accordance with these rules, a judicial hearing shall be provided in the holding state to hear the grounds for the juvenile's detention. This hearing shall determine whether the grounds submitted justify the continued detention of the juvenile subject to the provisions of these rules. A juvenile may be discharged from detention to a legal guardian or his/her designee if the holding/receiving state's court determines that further detention is not appropriate.

History: Adopted as Rule 6-109 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; renumbered as Rule 7-105, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016

RULE 7-106: Transportation

1. Holding/receiving states are responsible for transporting juveniles to local airports or other means of public transportation as arranged by the home/demanding/sending state and maintaining security of the juveniles until departure.

2. Home/demanding/sending states shall make every effort to accommodate the airport preferences of the holding/receiving state. Additionally, travel plans shall be made with consideration of normal business hours and exceptions shall be approved by the holding/ receiving state.

3. Holding/receiving states shall not return to juveniles any–personal belongings which could jeopardize the health, safety, or security of the juveniles or others (examples: weapon, cigarettes, medication, lighters, change of clothes, or cell phone).

4. Holding/receiving states shall confiscate all questionable personal belongings and return those belongings to the legal guardians by approved carrier, COD or at the expense of the home/demanding/sending state (e.g., United States Postal Service, United Parcel Service, or Federal Express).

5. In cases where a juvenile is being transported by a commercial airline carrier, the holding/receiving state shall ensure the juvenile has a picture identification card, if available, and/or a copy of the applicable ICJ paperwork or appropriate due process documentation in his/her possession before entering the airport.

6. The home/demanding/sending state shall not use commercial ground transportation unless all other options have been considered or the juvenile is accompanied by an adult.

7. The duly accredited officers of any compacting state, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference.

History: Adopted as Rule 6-110 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; renumbered as Rule 7-106, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

RULE 7-107: Airport Supervision

1. All states shall provide supervision and assistance to unescorted juveniles at intermediate airports en route to the home/demanding/sending state.

2. Juveniles shall be supervised from arrival until departure.

3. Home/demanding/sending states shall give the states providing airport supervision a minimum of forty-eight (48) hours advance notice.

4. In the event of an emergency situation including but not limited to weather, delayed flight, or missed flight, that interrupts or changes established travel plans during a return transport, the ICJ member states shall provide necessary services and assistance, including temporary detention or appropriate shelter arrangements for the juvenile until the transport is rearranged and/or completed.

History: Adopted as Rule 6-111 December 3, 2009, effective March 1, 2010; clerically amended January 5, 2011, effective February 4, 2011; amended October 26, 2011, effective March 1, 2012; renumbered as Rule 7-107, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016

Section 800 Travel Permits

RULE 8-101: Travel Permits

1. All travel permits shall be submitted prior to the juvenile's travel. Travel permits shall be mandatory for the following juveniles traveling out-of-state for a period in excess of twenty-four (24) consecutive hours who meet the criteria set forth in 1(a) or 1(b):

   a. Juveniles who have been adjudicated and are on supervision for one of the following:
      i. sex-related offenses;
      ii. violent offenses that have resulted in personal injury or death; or
      iii. offenses committed with a weapon;

   b. Juveniles who are one of the following:
      i. state committed;
      ii. relocating pending a request for transfer of supervision, and who are subject to the terms of the Compact;
      iii. returning to the state from which they were transferred for the purposes of visitation;
      iv. transferring to a subsequent state(s) with the approval of the original sending state; or
      v. transferred and the victim notification laws, policies and practices of the sending and/or receiving state require notification.

2. Juveniles traveling to a residential facility for placement shall be excluded from this rule; however, states may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return for notification purposes.

3. The travel permit shall not exceed ninety (90) calendar days. If for the purposes of testing a proposed residence, a referral is to be received by the receiving state's ICJ Office within thirty (30) calendar days of the effective date of the travel permit. The issuing state shall instruct the juvenile to immediately report any change in status during that period.

   a. When a travel permit exceeds thirty (30) calendar days, the sending state shall provide specific instructions for the juvenile to maintain contact with his/her supervising agency.

4. Out-of-state travel for a juvenile under Compact supervision is at the discretion of the supervising person in the receiving state. If the sending state wishes to retain authority to approve travel, it shall do so by notifying the supervising state in writing.

   When the sending state retains authority to approve travel permits, the receiving state shall request and obtain approval prior to authorizing the juvenile's travel.

5. If a Form VII Out-of-State Travel Permit and Agreement to Return is issued, the sending state is responsible for victim notification in accordance with the laws, policies and practices of that state. The sending and receiving states shall collaborate to the extent possible to comply with

the legal requirements of victim notification through the timely exchange of required information.

History: Adopted as Rule 5-102 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012; amended October 17, 2012, effective April 1, 2013; amended October 9, 2013 and renumbered as Rule 8-101, effective April 1, 2014; amended August 26, 2015, effective February 1, 2016; amended September 27, 2017, effective March 1, 2018

Comment: Rule 8-101 was originally titled "Informal Communication to Resolve Disputes or Controversies and Obtain Interpretation of the Rules," adopted December 3, 2009, effective March 1, 2010; renumbered as Rule 9-101, effective April 1, 2014

RULE 8-102: Renumbered, effective 2014

Title when renumbered: *Formal Resolution of Disputes and Controversies*

History: Adopted December 3, 2009, effective March 1, 2010; renumbered as Rule 9-102, effective April 1, 2014

RULE 8-103: Renumbered, effective 2014

Title when renumbered: *Enforcement Action Against a Defaulting State*

History: Adopted December 3, 2009, effective March 1, 2010; renumbered as Rule 9-103, effective April 1, 2014

RULE 8-104: Renumbered, effective 2014

Title when renumbered: *Judicial Enforcement*

History: Adopted December 3, 2009, effective March 1, 2010; renumbered as Rule 9-104, effective April 1, 2014

RULE 8-105: Renumbered, effective 2014

Title when renumbered: *Dissolution and Withdrawal*

History: Adopted December 3, 2009, effective March 1, 2010; renumbered as Rule 9-105, effective April 1, 2014

Section 900 Dispute Resolution, Enforcement, Withdrawal, and Dissolution

The compacting states shall report to the Commission on all issues and activities necessary for the administration of the Compact as well as issues and activities pertaining to compliance with provisions of the Compact and its by-laws and rules.

The Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues, which are subject to the Compact and which may arise among compacting states and between compacting and non-compacting states. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact using any or all means set forth in Article XI of the Compact.

RULE 9-101: Informal Communication to Resolve Disputes or Controversies and Obtain Interpretation of the Rules

1. Informal communication.

Through the office of a state's Compact Commissioner, states shall attempt to resolve disputes or controversies by communicating with each other directly.

2. Failure to resolve dispute or controversy.

    a. Following a documented unsuccessful attempt to resolve controversies or disputes arising under this Compact, its by-laws or its rules as required under Rule 9-101, Section 1, compacting states shall pursue informal dispute resolution processes prior to resorting to formal dispute resolution alternatives.

    b. Parties shall submit a written request to the Executive Director for assistance in resolving the controversy or dispute. The Executive Director, or the Chair of the Commission in the Executive Director's absence, shall provide a written response to the parties within ten (10) business days and may, at the Executive Director's discretion, seek the assistance of legal counsel or the Executive Committee in resolving the dispute. The Executive Committee may authorize its standing committees or the Executive Director to assist in resolving the dispute or controversy.

    c. In the event that a Commission officer(s) or member(s) of the Executive Committee or other committees authorized to process the dispute, is the Commissioner(s) or designee(s) of the state(s) which is a party(ies) to the dispute, such Commissioner(s) or designee(s) will refrain from participation in the dispute resolution decision making process.

3. Interpretation of the rules.

a. Any state may submit a written request to the Executive Director for assistance in interpreting the rules of this Compact. The Executive Director may seek the assistance of legal counsel, the Executive Committee, or both, in interpreting the rules. The Executive Committee may authorize its standing committees to assist in interpreting the rules. Interpretations of the rules shall be issued in writing by the Executive Director and legal counsel in consultation with the Executive Committee and shall be circulated to all of the states.

History: Adopted as Rule 8-101 December 3, 2009, effective March 1, 2010; renumbered as Rule 9-101, effective April 1, 2014; clerically amended February 4, 2015, effective February 4, 2015

Comment: Rule 9-101 was originally titled "Transition Rule," adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective September 15, 2010; expired June 30, 2011

RULE 9-102: Formal Resolution of Disputes and Controversies

1. Alternative dispute resolution.

    a. Any controversy or dispute between or among parties that arises from or relates to this Compact that is not resolved under Rule 9-101 may be resolved by alternative dispute resolution processes. These shall consist of mediation and arbitration.

2. Mediation and arbitration.

    a. Mediation.

        i. A state that is party to a dispute may request, or the Executive Committee may require, the submission of a matter in controversy to mediation.

        ii. Mediation shall be conducted by a mediator appointed by the Executive Committee from a list of mediators approved by the Commission or a national organization responsible for setting standards for mediators, and pursuant to procedures customarily used in mediation proceedings.

    b. Arbitration.

        i. Arbitration may be recommended by the Executive Committee in any dispute regardless of the parties' previous submission of the dispute to mediation.

        ii. Arbitration shall be administered by at least one neutral arbitrator or a panel of arbitrators not to exceed three (3) members. These arbitrators shall be selected from a list of arbitrators maintained by the Commission.

        iii. Arbitration may be administered pursuant to procedures customarily used in arbitration proceedings and at the direction of the arbitrator.

        iv. Upon the demand of any party to a dispute arising under the Compact, the dispute shall be referred to the American Arbitration Association and shall be administered pursuant to its commercial arbitration rules.

        v. The arbitrator in all cases shall assess all costs of arbitration, including fees of the arbitrator and reasonable attorney fees of the prevailing party, against the party that did not prevail.

        vi. The arbitrator shall have the power to impose any sanction permitted by the provisions of this Compact and authorized Compact rules.

        vii. Judgment on any arbitration award may be entered in any court having jurisdiction.

History: Adopted as Rule 8-102 December 3, 2009, effective March 1, 2010; renumbered as Rule 9-102, effective April 1, 2014; clerically amended February 4, 2015, effective February 4, 2015

RULE 9-103: Enforcement Actions Against a Defaulting State

1. The Commission shall seek the minimum level of penalties necessary to ensure the defaulting state's performance of such obligations or responsibilities as imposed upon it by this compact.

2. If the Commission determines that any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Commission may impose any or all of the following penalties.

    a. Remedial training and technical assistance as directed by the Commission;

    b. Alternative dispute resolution;

    c. Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Commission;

    d. Suspension and/or termination of membership in the Compact. Suspension or termination shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted, and the Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Commission to the governor, the chief justice or chief judicial officer of the state; the majority and minority leaders of the defaulting state's legislature, and the State Council.

3. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this Compact, Commission by-laws, or duly promulgated rules, and any other grounds designating on Commission by-laws and rules. The Commission shall immediately notify the defaulting state in writing of the default and the time period in which the defaulting state must cure said default. The Commission shall also specify a potential penalty to be imposed on the defaulting state pending a failure to cure the default. If the defaulting state fails to cure the default within the time period specified by the Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

4. Within sixty (60) days of the effective date of termination of a defaulting state, the Commission shall notify the governor, the chief justice or chief judicial officer, and the Majority and Minority Leaders of the defaulting state's legislature and the State Council of such termination.

5. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

6. The Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Commission and the defaulting state.

7. Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Commission pursuant to the rules.

History: Adopted as Rule 8-103 December 3, 2009, effective March 1, 201; renumbered as Rule 9-103, effective April 1, 2014; clerically amended February 4, 2015, effective February 4, 2015; amended August 26, 2015, effective February 1, 2016

RULE 9-104: Judicial Enforcement

The Commission, in consultation with legal counsel, may by majority vote of the states that are members of the Compact, initiate legal action in the United States District Court in the District of Columbia or at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its office, as authorized under the Constitution and laws of the United States to enforce compliance with the provisions of the Compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

History: Adopted as Rule 8-104 December 3, 2009, effective March 1, 2010; renumbered as Rule 9-104, effective April 1, 2014

RULE 9-105: Dissolution and Withdrawal

1. Dissolution.

    a. The Compact dissolves effective upon the date of the withdrawal or default of a compacting state, which reduces membership in the Compact to one compacting state.

    b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

2. Withdrawal.

    a. Once effective the Compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the Compact by specifically repealing the statute, which enacted the Compact into law.

    b. The effective date of withdrawal is the effective date of the repeal.

    c. The withdrawing state shall immediately notify the chairperson of the Commission in writing upon the introduction of legislation repealing this Compact in the withdrawing state. The Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

    d. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extends beyond the effective date of withdrawal.

    e. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Commission.

History: Adopted as Rule 8-105 December 3, 2009, effective March 1, 2010; renumbered as Rule 9-105, effective April 1, 2014

INTERSTATE COMMISSION
FOR JUVENILES

By-laws

Article I
Commission Purpose, Function and By-laws

Section 1. Purpose.

Pursuant to the terms of the Interstate Compact for Juveniles , (the "Compact"), the Interstate Commission for Juveniles (the "Commission") is established as a body corporate to fulfill the objectives of the Compact, through a means of joint cooperative action among the Compacting States: to promote, develop and facilitate a uniform standard that provides for the welfare and protection of juveniles, victims and the public by governing the compacting states' transfer of supervision of juveniles, temporary travel of defined offenders and return of juveniles who have absconded, escaped , fled to avoid prosecution or run away.

Section 2. Functions.

In pursuit of the fundamental objectives set forth in the Compact, the Commission shall, as necessary or required, exercise all of the powers and fulfill all of the duties delegated to it by the Compacting States. The Commission's activities shall include, but are not limited to, the following: the promulgation of binding rules and operating procedures; equitable distribution of the costs, benefits and obligations of the Compact among the Compacting States; enforcement of Commission Rules, Operating Procedures and By-laws; provision of dispute resolution; coordination of training and education; and the collection and dissemination of information concerning the activities of the Compact, as provided by the Compact, or as determined by the Commission to be warranted by, and consistent with, the objectives and provisions of the Compact. The provisions of the Compact shall be reasonably and liberally construed to accomplish the purposes and policies of the Compact.

Section 3. By-laws.

As required by the Compact, these By-laws shall govern the management and operations of the Commission. As adopted and subsequently amended, these By-laws shall remain at all times subject to, and limited by, the terms of the Compact.

Article II
Membership

Section 1. Commissioners
The Commission Membership shall be comprised as provided by the Compact. Each Compacting State shall have and be limited to one Member. A Member shall be the Commissioner of the Compacting State. Each Compacting State shall forward the name of its Commissioner to the Commission chairperson. The Commission chairperson shall promptly advise the Governor and State Council for Interstate Juvenile Supervision of the Compacting State of the need to appoint a new Commissioner upon the expiration of a designated term or the occurrence of mid-term vacancies.

Section 2. Ex-Officio Members
The Commission Membership shall also include individuals who are not commissioners, and who shall not have a vote, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. In addition, representatives of the American Probation and Parole Association, Conference of State Court Administrators, International Association of Chiefs of Police, National Children's Advocacy Center, National Council of Juvenile and Family Court Judges, National Runaway Safeline, and National Sheriffs' Association shall be ex-officio members of the Commission.

Article III
Officers

Section 1. Election and Succession.

The officers of the Commission shall include a chairperson, vice chairperson, secretary, treasurer and immediate past-chairperson. The officers shall be duly appointed Commission Members, except that if the Commission appoints an Executive Director, then the Executive Director shall serve as the secretary. Officers shall be elected annually by the Commission at any meeting at which a quorum is present, and shall serve for one year or until their successors are elected by the Commission. The officers so elected shall serve without compensation or remuneration, except as provided by the Compact.

Section 2. Duties.

The officers shall perform all duties of their respective offices as provided by the Compact and these By-laws. Such duties shall include, but are not limited to, the following:

a. *Chairperson.* The chairperson shall call and preside at all meetings of the Commission and in conjunction with the Executive Committee shall prepare agendas for such meetings, shall make appointments to all committees of the Commission, and, in accordance with the Commission's directions, or subject to ratification by the

Commission, shall act on the Commission's behalf during the interims between Commission meetings.

b. *Vice Chairperson.* The vice chairperson shall, in the absence or at the direction of the chairperson, perform any or all of the duties of the chairperson. In the event of a vacancy in the office of chairperson, the vice chairperson shall serve as acting chairperson until a new chairperson is elected by the Commission.

c. *Secretary.* The secretary shall keep minutes of all Commission meetings and shall act as the custodian of all documents and records pertaining to the status of the Compact and the business of the Commission.

d. *Treasurer.* The treasurer, with the assistance of the Commission's executive director, shall act as custodian of all Commission funds and shall be responsible for monitoring the administration of all fiscal policies and procedures set forth in the Compact or adopted by the Commission. Pursuant to the Compact, the treasurer shall execute such bond as may be required by the Commission covering the treasurer, the executive director and any other officers, Commission Members and Commission personnel, as determined by the Commission, who may be responsible for the receipt, disbursement, or management of Commission funds.

e. *Immediate Past-Chairperson.* The immediate past–chairperson shall automatically succeed to the immediate past-chairperson position and provide continuity and leadership to the Executive Committee regarding past practices and other matters to assist the Committee in governing the Commission. The immediate past–chairperson supports the Chairperson on an as-needed basis and serves a term of one year.

Section 3. Costs and Expense Reimbursement.

Subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by the officers in the performance of their duties and responsibilities as officers of the Commission.

Section 4. Vacancies

Upon the resignation, removal, or death of an officer of the Commission before the next annual meeting of the Commission, a majority of the Executive Committee shall appoint a successor to hold office for the unexpired portion of the term of the officer whose position shall so become vacant or until the next regular or special meeting of the Commission at which the vacancy is filled by majority vote of the Commission, whichever first occurs.

Article IV
Commission Personnel

Section 1. Commission Staff and Offices.

The Commission may by a majority of its Members, or through its executive committee appoint or retain an executive director, who shall serve at its pleasure and who shall act as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission. The executive director shall establish and manage the Commission's office or offices, which shall be located in one or more of the Compacting States as determined by the Commission.

Section 2. Duties of the Executive Director.

As the Commission's principal administrator, the executive director shall also perform such other duties as may be delegated by the Commission or required by the Compact and these By-laws, including, but not limited to, the following:

a. Recommend general policies and program initiatives for the Commission's consideration;

b. Recommend for the Commission's consideration administrative personnel policies governing the recruitment, hiring, management, compensation and dismissal of Commission staff;

c. Implement and monitor administration of all policies, programs, and initiatives adopted by the Commission;

d. Prepare draft annual budgets for the Commission's consideration;

e. Monitor all Commission expenditures for compliance with approved budgets, and maintain accurate records of the Commission's financial account(s);

f. Assist Commission Members as directed in securing required assessments from the Compacting States;

g. Execute contracts on behalf of the Commission as directed;

h. Receive service of process on behalf of the Commission;

i. Prepare and disseminate all required reports and notices directed by the Commission; and

j. Otherwise assist the Commission's officers in the performance of their duties under Article IV herein.

Article V
Qualified Immunity, Defense, and Indemnification

Section 1. Immunity.

The Commission, its Members, officers, executive director, and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to

or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability, or both, for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

Section 2. Defense.

Subject to the provisions of the Compact and rules promulgated thereunder, the Commission shall defend the Commissioner of a Compacting State, his or her representatives or -employees, or the Commission, and its representatives or employees in any civil action seeking to impose liability against such person arising out of or relating to any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Section 3. Indemnification.

The Commission shall indemnify and hold the Commissioner of a Compacting State, his or her representatives or employees, or the Commission, and its representatives or employees harmless in the amount of any settlement or judgment obtained against such person arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VI
Meetings of the Commission

Section 1. Meetings and Notice.

The Commission shall meet at least once each calendar year at a time and place to be determined by the Commission. Additional meetings may be scheduled at the discretion of the chairperson, and must be called upon the request of a majority of Commission Members, as provided by the Compact. All Commission Members shall be given written notice of Commission meetings at least thirty (30) days prior to their scheduled dates. Final agendas shall be provided to all Commission Members no later than ten (10) days prior to any meeting of the Commission. Thereafter, additional agenda items requiring Commission action may not be added to the final agenda, except by an affirmative vote of a majority of the Members. All Commission meetings shall be open to the public, except as set forth in Commission Rules or as otherwise provided by the Compact. Prior public notice shall be provided in a manner consistent with the federal Government in Sunshine Act, 5 U.S.C. § *552b*, including, but not limited to, the following:

publication of notice of the meeting at least ten (10) days prior to the meeting in a nationally distributed newspaper or an official newsletter regularly published by or on behalf of the Commission and distribution to interested parties who have requested in writing to receive such notices. A meeting may be closed to the public where the Commission determines by two-thirds (2/3rds) vote of its Members that there exists at least one of the conditions for closing a meeting, as provided by the Compact or Commission Rules.

Section 2. Quorum.

Commission Members representing a majority of the Compacting States shall constitute a quorum for the transaction of business, except as otherwise required in these By-laws. The participation of a Commission Member from a Compacting State in a meeting is sufficient to constitute the presence of that state for purposes of determining the existence of a quorum, provided the Member present is entitled to vote on behalf of the Compacting State represented. The presence of a quorum must be established before any vote of the Commission can be taken.

Section 3. Voting.

Each Compacting State represented at any meeting of the Commission by its Member is entitled to one vote. A Member shall vote on such member's own behalf and shall not delegate such vote to another Member. Members may participate in meetings by telephone or other means of telecommunication or electronic communication. Except as otherwise required by the Compact or these By-laws, any question submitted to a vote of the Commission shall be determined by a simple majority.

Section 4. Procedure.
Matters of parliamentary procedure not covered by these By-laws shall be governed by Robert's Rules of Order.

Article VII
Committees

Section 1. Executive Committee.

The Commission may establish an executive committee, which shall be empowered to act on behalf of the Commission during the interim between Commission meetings, except for rulemaking or amendment of the Compact. The Committee shall be composed of all officers of the Interstate Commission, the chairpersons of each committee, the regional representatives, and the ex-officio victims' representative to the Interstate Commission. The ex-officio victims' representative shall serve for a term of one year. The procedures, duties, budget, and tenure of such an executive committee shall be determined by the Commission. The power of such an executive committee to act on behalf of the Commission shall at all times be subject to any limitations imposed by the Commission, the Compact or these By-laws.

Section 2. Other Committees.

The Commission may establish such other committees as it deems necessary to carry out its objectives, which shall include, but not be limited to Finance Committee, Rules Committee, Compliance Committee, Information Technology Committee, and Training, Education and Public Relations Committee. The composition, procedures, duties, budget and tenure of such committees shall be determined by the Commission.

Section 3. Regional Representatives.

A regional representative of each of the four regions of the United States, Northeastern, Midwestern, Southern, and Western, shall be elected or reelected every two years by a plurality vote of the commissioners of each region, and shall serve for two years or until a successor is elected by the commissioners of that region. The states and territories comprising each region shall be determined by reference to the regional divisions used by the Council of State Governments.

Article VIII
Finance

Section 1. Fiscal Year.

The Commission's fiscal year shall begin on July 1 and end on June 30.

Section 2. Budget.

The Commission shall operate on an annual budget cycle and shall, in any given year, adopt budgets for the following fiscal year or years only after notice and comment as provided by the Compact.

Section 3. Accounting and Audit.

The Commission, with the assistance of the executive director, shall keep accurate and timely accounts of its internal receipts and disbursements of the Commission funds, other than receivership assets. The treasurer, through the executive director, shall cause the Commission's financial accounts and reports including the Commission's system of internal controls and procedures to be audited annually by an independent certified or licensed public accountant, as required by the Compact, upon the determination of the Commission, but no less frequently than once each year. The report of such independent audit shall be made available to the public and shall be included in and become part of the annual report to the Governors, legislatures, and judiciary of the Compacting States. The Commission's internal accounts, any workpapers related to any internal audit, and any workpapers related to the independent audit shall be confidential; provided, that such materials shall be made available: i) in compliance with the order of any court of competent jurisdiction; ii) pursuant to such reasonable rules as the Commission shall promulgate; and iii) to any Commissioner of a Compacting State, or their duly authorized representatives.

Section 4. Public Participation in Meetings.

Upon prior written request to the Commission, any person who desires to present a statement on a matter that is on the agenda shall be afforded an opportunity to present an oral statement to the Commission at an open meeting. The chairperson may, depending on the circumstances, afford any person who desires to present a statement on a matter that is on the agenda an opportunity to be heard absent a prior written request to the Commission. The chairperson may limit the time and manner of any such statements at any open meeting.

Section 5. Debt Limitations.

The Commission shall monitor its own and its committees' affairs for compliance with all provisions of the Compact, its rules, and these By-laws governing the incursion of debt and the pledging of credit.

Section 6. Travel Reimbursements.

Subject to the availability of budgeted funds and unless otherwise provided by the Commission, Commission Members shall be reimbursed for any actual and necessary expenses incurred pursuant to their attendance at all duly convened meetings of the Commission or its committees as provided by the Compact.

Article IX
Withdrawal, Default, and Termination

Compacting States may withdraw from the Compact only as provided by the Compact. The Commission may terminate a Compacting State as provided by the Compact.

Article X
Adoption and Amendment of By-laws

Any By-law may be adopted, amended or repealed by a majority vote of the Members, provided that written notice and the full text of the proposed action is provided to all Commission Members at least thirty (30) days prior to the meeting at which the action is to be considered. Failing the required notice, a two-third (2/3rds) majority vote of the Members shall be required for such action.

Article XI
Dissolution of the Compact

The Compact shall dissolve effective upon the date of the withdrawal or the termination by default of a Compacting State which reduces Membership in the Compact to one Compacting State as provided by the Compact**.**

Upon dissolution of the Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be concluded in an orderly manner and according to applicable law. Each Compacting State in good standing at the time of

the Compact's dissolution shall receive a pro rata distribution of surplus funds based upon a ratio, the numerator of which shall be the amount of its last paid annual assessment, and the denominator of which shall be the sum of the last paid annual assessments of all Compacting States in good standing at the time of the Compact's dissolution. A Compacting State is in good standing if it has paid its assessments timely.

History: Adopted December 16, 2008; amended December 1, 2009; amended October 26, 2011; amended October 29, 2014

Interstate Commission for Juveniles	Opinion Number: 01-2009	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L. Masters**		
Description: ICJ Appropriate Appointing Authority		**Dated:** June 24, 2009

Issues:

What qualifications are required by the Interstate Compact for Juveniles in order for a commissioner, or designee to be eligible to represent and vote on behalf of each member State on the Interstate Commission for Juveniles.

What qualifications are required by the Interstate Compact for Juveniles for another authorized representative of a compact state if a commissioner has decided that it is necessary to delegate the authority to vote and to otherwise exercise the authority of the commissioner from that state for a specified meeting.

Applicable Statuses:

Article III, Section B. of the Interstate Compact for Juveniles provides that:

> "The Interstate Commission "shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The Commissioner shall be the compact administrator, deputy Compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state."

Article III, Section G. of the Interstate Compact for Juveniles provides in relevant part:

> "Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting."

Analysis:

With respect to the first question, one of the axioms of statutory construction is that if the meaning of the statutory provision in question is clear from the language used in the statute then that meaning shall prevail without recourse to other possible sources. [See Burns v. Alcala, 420 U.S. 575 (1975)] The above referenced language of the ICJ provides that in order to be qualified to cast a vote on behalf of a member state and to participate, on that State's behalf, in the business and affairs of the Interstate Commission, that such commissioner shall be "appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder."

While the terms "appropriate appointing authority" are not defined in the Compact, there is implicit in such terminology the assumption that states have provided authority to appoint a representative of each state to represent its interest in interstate agreements dealing with the proper supervision of juveniles. In some states this responsibility may be vested in the Executive branch (See for example TX, FL); while other states may vest such authority in the Judicial Branch (See for example WVA,); and still others divide such authority between the Executive Branch (parole) and the Judicial Branch (probation) (See for example IL, IN, MA).

Where it is unclear under state law what constitutes the 'appropriate appointing authority,' recourse can be made to other indicia of the intention of this language such as various sources surrounding the drafting and adoption of the ICJ which indicate that it was anticipated that where such an ambiguity exists in a particular state as to the 'appropriate appointing authority' that such authority may be properly exercised by the Executive branch. [See Watt v. Alaska, 451 U.S. 259 (1981)].

For example the main page on the CSG website that has the map of the new ICJ's progress, under Primary Changes to the original Juvenile Compact (1955), second bullet, states, in part:

"Gubernatorial appointments of representatives for all member states on a national governing commission."

Similarly, the ICJ Resource Guide which was prepared as an interpretive guide to the provisions

of the new ICJ as it was being considered by the state legislatures included as a response to the hypothetical question,

> Question: "Who will be my state's commissioner?"
> Answer: "The commissioner will be that person appointed by the State Council or the governor under Article III (B), subject to qualifications determined by each state."

With respect to the second question, the ICJ also contemplates that there may be specific meetings which a commissioner who has been appointed by the 'appropriate appointing authority' and customarily represents a State at ICJ meetings may be unable to attend. Under Article III, G a separate procedure is provided by which the commissioner of a State who is unable to attend a particular ICJ meeting may appoint another authorized representative to vote and otherwise take part in such meeting in place of the commissioner. Under Art. III, Section G. the commissioner may make such a temporary appointment in consultation with the state council.

Conclusion:

Using this analysis, the determination of whether an appointment of a commissioner is bona fide under the above referenced provisions of the Interstate Compact will depend upon establishing whether adequate documentation has been furnished to establish the 'appropriate appointing authority' has acted with respect to the appointment of the commissioner for that state. This can be demonstrated by such items as a gubernatorial executive order or letter of appointment, a statutory provision which clearly delegates such authority to another state official and proof that the official to who receives such delegated power has in fact issued an appointment letter to the proponent seeking recognition as a commissioner.

The above described procedure for the general appointment of a commissioner to act on behalf of a compact state under Article III, Section B. is a distinctly different process than the process which the compact provides in Article III, Section G. for the temporary appointment of another authorized representative to represent and vote on behalf of a state at a specific ICJ meeting in the absence of the commissioner. This temporary appointment for a specific meeting does not require the action by the 'appropriate appointing authority' and under the compact may be accomplished by action of the commissioner in consultation with the state council.

Interstate Commission for Juveniles	**Advisory Opinion Number** **2-2009**	**Page Number:** **1**
ICJ Advisory Opinion **Issued by:** **Chief Legal Counsel: Richard L. Masters**		**Dated:** **06-24-09**
Description: **Authority of Ex-Officio members and "appointees" or "proxies" in ICJ Commission Meetings**		

Issues:

Whether Ex-Officio members of the Interstate Commission for Juveniles or its' committees may make motions or cast votes?

Whether 'designees' or 'proxies' who are temporarily substituting for a commissioner at a meeting of the Commission or its' committees may make motions or cast votes?

Applicable Statutes:

Article III, Section C. of the Interstate Compact for Juveniles provides in relevant part:

> *" In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members."*

Article III, Section G. of the Interstate Compact for Juveniles provides in relevant part:

> *"Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting."*

Conclusion:

Regarding the first issue, a review of Art. III, Sec. C. of the compact statute indicates the clear intent to provide for participation in Commission meetings by 'non-commissioners' but to limit such participation by classifying those persons as "ex-officio (non-voting)" members. Implicit in such a classification is the inference that those who are not eligible to vote should not be entitled to make motions which require a vote which they are prohibited from casting. Based on this provision of the ICJ, while participation in Commission meetings including providing comments and opinions during debate are permitted, that 'ex-officio members of the commission are neither eligible to vote nor make motions at Commission meetings.

With respect to the second issue, as has previously been discussed in Advisory Opinion 1-2009, the procedure described in Art. III, Section G. of the ICJ provides "for the temporary appointment of another authorized representative to represent and vote on behalf of a state at a specific ICJ meeting in the absence of the commissioner. It is clear that as long as the 'substitute' or 'proxy' has been appointed by the commissioner in consultation with the state council as required by this section, by definition such person has the authority to both make motions and to vote at ICJ Commission meetings.

Interstate Commission for Juveniles	Opinion Number 3-2009	Page Number: 1

ICJ Advisory Opinion

Issued by:
Chief Legal Counsel: Richard L Masters

State Requesting Opinion: Idaho	**Dated:** August 31, 2009
Description: Whether a county violation of the Compact constitutes a state violation of the Compact that would result in potential liability of the County and/or State	

Background & History:

The State of Idaho has requested an advisory opinion regarding the whether a county violation of the Interstate Compact for Juveniles constitutes a state violation that would result in potential liability of the County and/or State of Idaho.:

Issue:

Dear Commissioner Ehlers:
After receipt of your request for legal guidance and subsequent telephone discussions, I am submitting the following points for your consideration which you or other Idaho officials charged with administration of the Interstate Compact for Juveniles ('ICJ'), including county probation officials, may have relative to the ICJ Commission's authority and objectives with respect to the above matter. More specifically, you have asked whether the failure or refusal of an Idaho county official to properly process the lawful transfer of supervision of a juvenile from Idaho to another state and the failure or refusal of the same Idaho county, in another case, to supervise a juvenile whose supervision was properly transferred to Idaho from another state constitutes a violation(s) of the ICJ which would result in potential liability of the County and/or State of Idaho.

Analysis and Conclusions:
This is a question which has been raised in other states as to the extent to which a state which is a signatory to an interstate compact is legally liable for the failure of a county to comply with the provisions of the compact or its authorized rules. The Interstate Compact for Juveniles is very specific with respect to compliance with the provisions of the compact and the rules as well as the right to enforce the compact against states which are not in compliance.

Article VII of the compact provides that among the powers and duties of the commission is *"to enforce compliance with the compact provisions, interstate commission rules and bylaws, using any or all means set forth in Article XI of this compact,"* which section authorizes, but is not limited to, the use of legal *action "to enforce compliance with the provisions of this compact, its duly promulgated rules and by-laws against any compacting state in default."* Article XIII (B.) provides that *"all lawful actions of the*

interstate commission, including all rules and bylaws promulgated by the interstate commission are binding upon the compacting states. In the event that legal action is necessary to enforce the compact provisions against a state in violation, Article XI, C. provides that *"the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees."*

As in most states counties are specifically classified and recognized as political subdivisions of the State of Idaho. *See for example Bonneville County v. Ysursa, 129 P.3d 1213 (Id. 2005); also Sanchez v. State Department of Corrections, 141 P.3d 1108 (Id. 2006)* which unequivocally recognize that a county is a political subdivision of the State. As a consequence the above ICJ provisions and authority apply equally and coextensively to all Idaho counties as political subdivisions.

Thus, the failure of a county to comply with the provisions of the ICJ and its duly authorized rules is tantamount to a violation by the State of Idaho and a default in its obligations under the compact and authorized rules. Based on the above provisions, the ICJ Commission and its authorized committees, including the Executive Committee and the Compliance Committee have the authority to address whether or not the State of Idaho has violated its obligations or responsibilities as the result of the failure or refusal of one of its counties to properly process the supervision of a juvenile to another state or to properly supervise a transferred juvenile from another state, and if so, what action should be taken against the State, by the ICJ Commission, as a consequence of such violation.

Moreover, it is also important to keep in mind that there are other liability concerns which are separate and apart from liability to other member states for violation of the compact. For example, should the juveniles who are not being supervised as required by the compact commit crimes, during the period in which they are required to be supervised, which result in damage, injury, or death; such conduct could result in personal liability for damages to a victim of such crime, or members of the victim's family. ***(See for example Sterling v. Bloom, 723 P.2d 755) (ID 1986) (probation officer could be held personally liable for damages resulting from injuries to the plaintiff occurring while the probationer was under the control of the Idaho Board of Corrections) Hertog v. City of Seattle, 979 R2d 400 (Wash. 1998) (probation officers***

have a duty to third persons, such as a rape victim, to control the conduct of probationers to protect them from reasonably foreseeable harm).

Interstate Commission for Juveniles	Opinion Number 1-2010	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

State Requesting Opinion: Pennsylvania	**Dated:** January 25, 2010
Description: Receiving state's ability to sanction juveniles under ICJ Rule 5-101(1)	**Revised:** March 14, 2018[1]

Background & History:

Pursuant to ICJ Rule 9-101(3)[1], the State of Pennsylvania has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issue:

Pennsylvania would like to have the authority (as a receiving state) to sanction juveniles who are being supervised and continue to violate conditions of probation/parole. In some situations, the sending state does not have the resources to return the youth for violation hearings and other times the violations are not significant enough to warrant a retaking of the juvenile. This often results in "unsuccessful discharges" and thus not holding the juveniles accountable and putting communities at risk.

1. Does the phrase "same standards . . . that prevail for its own juveniles . . ." allow the receiving state, under this Rule to impose graduated sanctions?

2. Does Rule 5-101 or any other ICJ Rule address the receiving state's ability to sanction juveniles?

Applicable Rules:

Rule 5-101 in relevant part provides:

1. After accepting supervision, the receiving state will assume the duties of supervision over any juvenile, and in exercise of those duties will be governed by the same standards of supervision that prevail for its own juveniles released on probation or parole.

   …

3. Both the sending and receiving states shall have the authority to enforce terms of probation/parole, which may include the imposition of detention time in the receiving state. Any costs incurred from any enforcement sanctions shall be the responsibility of the state seeking to impose such sanctions.

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previous published opinion is available upon request from ICJadmin@juvenilecompact.org.

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

State Requesting Opinion: Pennsylvania	**Dated:** January 25, 2010
Description: Receiving state's ability to sanction juveniles under ICJ Rule 5-101(1)	**Revised:** March 14, 2018[1]

Analysis and Conclusions:

The intent of this rule, as clearly expressed by the text anticipates that once determined to be under supervision and transferred under the ICJ, Rule 5-101(1) requires that a receiving state's supervision of a juvenile will be "governed by the same standards of supervision that prevail for its own juveniles released on probation or parole." Pennsylvania has asked whether, under the authority of this rule or any other ICJ rule, it is permitted to impose 'graduated sanctions on a juvenile transferred into the State under the provisions of the ICJ. Although Pennsylvania divides its inquiry in this regard into two parts, the analysis of this question and applicable authorities allow both facets of this request to be answered together.

In determining the meaning of the language any statute or administrative rule promulgated pursuant to statutory authority, a cardinal rule of statutory construction begins with the assumption that in the absence of a special definition in the text of the statute or regulation, *"the ordinary meaning of that language accurately expresses the* legislative purpose." *Engine Mfrs. Assn. v. South Coast Air Quality Management Dist.*, 541 U.S. 246, 252, 124 S.Ct. 1756, 158 L.Ed.2d 529 (2004). As the U.S. Supreme Court reaffirmed, "Applying "settled principles of statutory construction," "we must first determine whether the statutory text is plain and unambiguous," and "[i]f it is, we must apply the statute according to its terms." *Carcieri v. Salazar*, 555 U.S. ----, ----, 129 S.Ct. 1058, 1063-1064, 172 L.Ed.2d 791 (2009); See also *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

Using these well accepted rules of statutory interpretation, it is clear that because the ICJ rules do not include a special definition of the terms "same standards . . . that prevail for its own juveniles. . ." the ordinary meaning of those terms leads to the inevitable conclusion that as the supervising State, Pennsylvania is thus permitted, under Rule 5-101(1), to impose 'graduated sanctions' upon any juvenile transferred under the compact if such standards are also applied to its own delinquent juveniles.

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previous published opinion is available upon request from ICJadmin@juvenilecompact.org.

Interstate Commission for Juveniles	Opinion Number 04-2010	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L Masters**		
Description: Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands.		**Dated:** July 22, 2010

Background:

Pursuant to Commission Rule 9-101.3, a request has been made by the state of Montana to address the following issues:

Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands.

Issues:

Whether the Interstate Compact for Juveniles and its duly authorized rules apply to juveniles residing in sovereign tribal nations and reservation lands.

Analysis and Conclusions:

Article I., Section 10, Clause 3 of the U.S. Constitution contains what is sometimes referred to as the 'Compact Clause' of the Constitution and provides, that States may enter into interstate compacts subject to Congressional consent when the subject matter of the compact has the potential to intrude upon the power of the federal government or alter the political balance of power between the states and the national government. See *U.S. Steel Corp., v. Multistate Tax Commission, 434 U.S. 452 (1978).* While it is clear that under the Compact Clause the states may enter into some interstate compacts without the necessity of seeking congressional approval, by contrast, the 'Treaty Clause' set forth in *Article I, Section 10, Clause 1* of the Constitution declares unequivocally that "No State, shall enter into Any Treaty, Alliance or Confederation."

Thus, it is clear that Congressional consent is always required before a state can enter into an arrangement with a foreign state or power, or before two or more states can enter into "treaties, alliances, and confederations." As applied to tribal nations, the U.S. Supreme Court has previously determined that any exercise of state power over tribes requires Congressional consent and coupled with the limiting language of the treaty clause it is reasonable to conclude that such consent is also required before a State may enter into such an agreement or compact with a recognized tribe, particularly where, as in the case of the Interstate Compact for Juveniles, it would be necessary for the states to collectively exercise authority over eligible transfers of juveniles. See *Oklahoma Tax Commission v.*

Sac and Fox Nation, 508 U.S. 114, 123-124 (1993); also *Oneida Indian Nation of New York State et al. v. County of Oneida New York, et al., 414 U.S. 661 (1974).* This is further evidenced by the requirement of federal statutes such as the *Indian Gaming Regulatory Act,* 25 U.S.C. *Sec. 2701 et seq.* which, among its extensive regulatory provisions, grants congressional consent to states to individually, upon request of a tribe, enter into compacts for the purposes of conducting gaming activities in that state.

Based upon the referenced provisions of the U.S. Constitution and decisions of the U.S. Supreme Court, in the absence of the Consent of Congress for tribes to enter into agreement with the states as members of the Interstate Compact for Juveniles, no such authority exists under which the provisions of the compact or its rules can regulate transfers of juveniles to and from sovereign tribal nations or reservation lands.

Interstate Commission for Juveniles	Opinion Number 05-2010	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L. Masters**		
Description: Clarification for juveniles who are undocumented immigrants.		**Dated:** Sept. 13, 2010 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], a request has been made by the state of Colorado to address the following issues:

Whether the Interstate Compact for Juveniles, and its duly authorized rules, apply to juveniles who are undocumented immigrants.

Issues:

Colorado asks the following:

1) Is it appropriate to ascertain if the proposed supervision juvenile is a citizen or in the country legally?

2) If the juvenile is not a citizen or here legally, can supervision be denied on those grounds and does this status make the juvenile ineligible for transfer?

3) Does or can the citizenship status of the transferring juvenile factor into the decision-making process?

4) What status would a "common-law" step-parent carry, if any, if the biological parent was incarcerated or deported?

Analysis and Conclusions:

The first three (3) questions all pertain to the eligibility of a juvenile who is an undocumented immigrant to be transferred under the compact and, if otherwise eligible, whether or not the juvenile's immigration status may be ascertained and considered as a factor in denying a transfer.

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Clarification for juveniles who are undocumented immigrants.	**Dated:** Sept. 13, 2010 **Revised:** March 14, 2018[1]

An undocumented immigrant who meets the definition of "*Juvenile*" under Article II (H) of the Compact and ICJ Rule 1-101, and seeks to transfer under the Compact and ICJ Rules, is subject to the jurisdiction of the Compact. While such person's status as an "undocumented" immigrant would not necessarily disqualify an immigrant from transferring under the Compact, the applicable rules may result in the denial of a transfer due to the inability of the immigrant to meet the criteria of the Compact in a given case. For example, under ICJ Rule 4-104(4), supervision may be denied in the receiving state if the juvenile is not in "substantial compliance with the terms and conditions of supervision required by the sending or receiving state." Presumably, both the sending and receiving state require that 'substantial compliance' with such terms and conditions include the requirement to obey all laws. Accordingly, it is certainly reasonable to conclude that it is appropriate to ascertain the immigration status in order to determine whether a juvenile is eligible for transfer under the Compact and to consider undocumented immigration status as a legitimate basis for denial of transfer of supervision.

If the sentencing court determines that the immigrant's status is that of being undocumented, and therefore presumably in violation of federal law, it is difficult to understand why such a court would release the juvenile to supervision in the community. However, if the sentencing court in the sending state is aware of this status and notwithstanding the same releases the juvenile to supervision, under the authority of ICJ Rule 4-104(4) the receiving state could still raise the juvenile's status as an undocumented immigrant **as a basis to deny the proposed transfer because it is a violation of federal law which is a reason for denial as not being in substantial compliance with the applicable law.**

With respect to question # 4, there is an implicit assumption of a legal recognition of the status of 'common law step-parent,' into whose custody a juvenile may be placed in the event of incarceration or deportation of the biological parent. There is no recognition of or definition for such a status under the Compact or ICJ Rules, both of which contemplate a "legal custodian" or "legal guardian" as determined or ordered by a Court to serve in the place of the parent. As such, a juvenile who is otherwise eligible for transfer and whose biological parent is incarcerated or deported could lawfully be placed with a "legal custodian" or "legal guardian."

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Health Insurance Portability and Accountability Act of 1996 (HIPAA) Exemptions for the Interstate Commission for Juveniles	**Dated:** Feb. 10, 2011

Background:

Pursuant to Commission Rule 9-101.3, a request has been made by the state of North Dakota to address the following issues:

States releasing information regarding sex offender evaluations, given that these evaluations are medical records and therefore protected under HIPAA.

Issues:

1. The applicability of the provision of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), **45 CFR Parts 160 and 164**, to the Interstate Commission for Juveniles

2. Whether or not the activities, including the disclosure and tracking of protected health information, of *state* agencies which administer the ICJ, acting pursuant to the provisions of the ICJ and its authorized rules, are exempt from the applicability of HIPAA

Analysis and Conclusions:

The HIPAA privacy rules are intended to protect an individual's privacy while allowing important law enforcement functions to continue. (See, **HIPAA Privacy Rule & Public Health, Guidance from Center for Disease Control and The U.S. Department of Health and Human Services, April 11, 2003).** Thus, HIPAA exempts certain disclosures of health information for law enforcement purposes without an individual's written authorization. The various conditions and requirements concerning these exempt disclosures are contained in the regulatory text of the HIPAA privacy rule and may be found at **45 CFR 164 et. seq**.

Under these provisions, protected health information may be disclosed for law enforcement purposes when such disclosures are required by law. Thus, disclosure of protected health information required to be furnished by or received from state agencies which administer the ICJ acting pursuant to the provisions of the Compact and its authorized rules is permissible. See, **45 CFR 164.512 (f)(1)(i).** In addition, exempt disclosures include those in which a response is required to comply with a court order. See, **45 CFR 164.512**

(f)(1)(ii)(A)-(B). Under this provision, the disclosure and tracking of protected health information, among authorized Compact Administrators' offices, concerning any juvenile subject to Compact supervision pursuant to court order, as required by the Compact and its authorized rules would be exempt from HIPAA.

The more general provisions of the HIPAA privacy rules allow disclosures of protected health information when consistent with applicable law and ethical standards, including disclosures to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public. See, **45 CFR 164.512 (j)(1)(i)**; or to identify or apprehend an individual who appears to have escaped from lawful custody. See, **45 CFR 164.512 (j)(1)(ii)(B)**. These provisions would apply to juveniles under ICJ supervision who have absconded or otherwise violated the terms of their supervision and need to be apprehended.

Additionally HIPAA specifically authorizes disclosures of protected health information to law enforcement officials who need the information in order to provide health care to the individual and for the health and safety of the individual. See, **45 CFR 164.512 (k)(5)**. Under these provisions, it appears that disclosures of health information which are required to provide for treatment of juveniles subject to the ICJ would also be exempt from HIPAA requirements.

It is also important to note that in the context of an interstate transfer of supervision under the Interstate Compact for Adult Offender Supervision, several courts have concluded that HIPAA does not provide either an explicit or implicit private right of action. See, *O'Neal v. Coleman, 2006 U.S. Dist. Ct., LEXIS 40702 (W.D. Wis. June 16, 2006 citing Johnson v. Quander, 370 F. Supp.2d 79, 99-100 (D.D.C. 2005)*; See also, *Univ. of Colorado Hospital v. Denver Publishing Co., 340 F. Supp.2d 1142, 1144-46 (D. Colo. 2004).* It is reasonable to predict that this analysis would also be applicable to interstate transfers under the ICJ should the question arise.

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Pleas and abeyance cases for non-adjudicated juveniles	May 26, 2011 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], a request has been made by the state of Colorado to address the following issue arising in the West Region of the ICJ Compact member states.

The case giving rise to this opinion request involves a "non-adjudicated" juvenile sex offender in Utah who was sentenced under a "plea and abeyance" order and is seeking to transfer to another state but was ordered to report to the Attorney General's Office without any special conditions or a probation officer being assigned. However, as a sex offender the juvenile is required to participate in an appropriate treatment or counseling program and the failure to do so may result in the plea and abeyance order being set aside.

Issues:

Is a "non-adjudicated" juvenile sex offender sentenced under a plea and abeyance order and assigned to report to the Attorney General's office without any special conditions or a probation officer, and who wishes to transfer to another state, subject to the jurisdiction of the ICJ?

Applicable Law and Rules:

Article II of the ICJ provides definitions, including:

> (H) "Juvenile" means: any person defined as a juvenile in any member state of by the rules of the Interstate Commission, including:
>
> (1) Accused Delinquent - a person charged with an offense that, if committed by an adult, would be a criminal offense;
> (2) Adjudicated Delinquent - a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
> (3) Accused Status Offender - a person charged with an offense that would not be a criminal offense if committed by an adult;

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

(4) Adjudicated Status Offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-offender - a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

ICJ Rule 1-101 provides definitions, including:

> Supervision: the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile.

ICJ Rule 4-101(1) provides:

"Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state."

ICJ Rule 4-101(2) provides:

"No state shall permit a juvenile who is eligible for transfer under this Compact to relocate except as provided by the Compact and these rules. . ."

Analysis and Conclusions:

Because the Interstate Compact for Juveniles (ICJ) is a contract between the states, its terms must be given their ordinary meaning and interpreted within the "four corners" of the document. Thus, the definition of the term "juvenile" also defines the "universe" of individuals subject to the revised ICJ. Additionally, this and other Compact terms are defined broadly to avoid an overly narrow reading or application of the provisions of the ICJ and its authorized rules. The Commission's rules also have definitions, consistent with the Compact statute, which must also be examined in addition to the terms of the Compact.

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Pleas and abeyance cases for non-adjudicated juveniles	**Dated:** May 26, 2011 **Revised:** March 14, 2018[1]

The definitions of "Juvenile" and "Non-offender" in the text of the Compact clearly intend that juveniles who are "in need of supervision who have not been accused or adjudicated a status offender or delinquent" could be subject to the Compact, including a juvenile sex offender sentenced under a "plea and abeyance" order, even though neither special conditions nor a probation officer have been assigned.

While no probation officer has been assigned, the juvenile in question has been ordered to report to the Attorney General's office for appropriate disposition and may be subject to the ICJ depending on the requirements of the sentencing order. Clearly, this constitutes "supervision" as defined by the ICJ Rules.

For example, a sex offender who is required to complete other terms and conditions such as a sex offender treatment or counseling program including any periodic reports required to be filed with the court or other agency, in addition to merely requiring the juvenile to comply with all laws, is not in actuality an "unsupervised juvenile" As such the relocation of such juveniles under such sentences is subject to the jurisdiction of the Interstate Compact for Juveniles and applications for transfer should continue to be submitted and investigated as required under the Compact.

Once determined to be under supervision and transferred under the ICJ, Rule 5-101(1) requires that a **"receiving state will assume the duties of supervision over any juvenile, and in exercise of those duties will be governed by the same standards of supervision that prevail for its own juveniles released on probation or parole."** The language of this rule assumes that there will be some level of supervision in the receiving state. By definition this rule does not permit the receiving state to provide no supervision and, at a minimum, the rules of the Compact contemplate that such a juvenile will be under some supervision for the duration of the sentence under the plea and abeyance order imposed by the sending state.

Moreover, during such period the juvenile would be subject to enforcement of the required sex offender counseling or treatment program under ICJ Rule 5-101(3) and the required progress reports under ICJ Rule 5-101(4). Reporting instructions would be required as called for under ICJ Rule 4-103(1) (or ICJ Rule 4-104(5), for a juvenile not categorized as a sex offender). Any fees incurred for treatment could be imposed on the sending state as authorized under ICJ Rule 5-101(6). Home evaluations are required to be conducted in

compliance with ICJ Rule 4-102(4). Collection of restitution, fines and other costs would be treated as permitted or required under ICJ Rule 5-101(8) – (9). The travel and transfer of the offender to a subsequent receiving state is subject to ICJ Rules 8-101 and 4-103. The closing of such a case would be governed by ICJ Rule 5-104 and, if necessary, the juvenile could be 'retaken' by pursuant to the requirements of Rules 5-103.

Summary

Under the Compact a "non-adjudicated" juvenile sex offender sentenced under a "plea and abeyance" order, but assigned to report to the Attorney General's Office without any special conditions or a probation officer being assigned, and who seeks to transfer to another state **is subject to the provisions of the ICJ, if the order not only requires compliance with all laws but whose sentence also includes provisions which, for example, require completion of other terms and conditions such as a sex offender treatment or counseling modification program.** Such a juvenile is not in actuality an "unsupervised juvenile" even though there are no special conditions or the assignment of a probation officer.

As such, the relocation of a juvenile under such a sentence is subject to the jurisdiction of the ICJ and applications for transfer of supervision should continue to be submitted and investigated as required under the Compact. Moreover, during the term of the sentencing order imposed by the sending state such a juvenile is subject to the rules of the Compact governing supervision of juveniles generally as provided in Chapters 4 and 5 of the ICJ Rules.

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Non-adjudicated juveniles held in secure detention for a failed supervision	October 24, 2011 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], a request has been made by the West Region of the ICJ Compact member states.

The case giving rise to this opinion request involves a general question concerning whether a "non-adjudicated" juvenile offender whose out-of-state supervision has failed, may be placed in a secure detention center while awaiting return to the sending state.

Issues:

Can a non-adjudicated juvenile offender, such as a youth subject to a deferred adjudication, whose out-of-state supervision under the Interstate Compact for Juveniles (ICJ) has failed, be placed in a secure detention center while awaiting return to the sending state?

Applicable Law and Rules:

ICJ Rule 1-101 provides definitions, including:

"Warrant: an order authorizing any law enforcement or peace officer to apprehend and detain a specified juvenile."

ICJ Rule 5-103(3)(c) states:

> A duly accredited officer of a sending state may enter a receiving state and apprehend and retake any such juvenile on probation or parole consistent with probable cause requirements, if any. If this is not practical, a warrant may be issued and the supervising state shall honor that warrant in full.

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Non-adjudicated juveniles held in secure detention for a failed supervision	**Dated:** October 24, 2011 **Revised:** March 14, 2018[1]

Analysis and Conclusions:

ICJ Rule 5-103 governs the return of a juvenile to the sending state when an ICJ supervision has failed. The text of the rule does not distinguish between a non-adjudicated juvenile and any other juvenile who is subject to transfer of supervision under the ICJ. While the text of the rule does not specifically mention secure detention, Section 3(c) of this rule directly empowers a *"duly accredited officer of a sending state"* to *"enter the receiving state and apprehend and retake any such juvenile,"* (one whose supervision has failed). Furthermore, in circumstances where this alternative *"is not practical,"* the rule explicitly authorizes a warrant to be issued and requires that *"the supervising state shall honor the warrant in full."* The term "warrant" under the Compact is specifically defined as an *"order authorizing any law enforcement or peace officer to apprehend and detain a specified juvenile."*

As in other cases of statutory construction, the provisions of the Compact statute and rules should be interpreted in harmony with other sections of the statute, and *"plain meaning is examined by looking at the language and design of the statute as a whole." See, Lockhart v. Napolitano, 573 F.3d 251 (6th Cir. 2009).* Consistent with a "harmonious" interpretation, reading these sections of the rule, including the defined terms, reveals a clear intent that where circumstances are such that the retaking and return, by the sending state, of a juvenile offender whose supervision has failed cannot otherwise be practically accomplished, the Compact authorizes apprehension and detention of the juvenile. The U.S. Supreme Court has held, ". . . interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *See, Nixon v. Missouri Mun. League, 541 U.S. 125 (2004); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).*

Summary:

Under the authority of ICJ Rule 5-103, and consistent with a "harmonious" interpretation of the provisions of the rule, including the defined terms used therein, where circumstances are such that the retaking and return, by the sending state, of a juvenile offender whose supervision has failed cannot otherwise be practically accomplished, the Compact and its rules authorize both apprehension and detention of a juvenile, subject to the other relevant provisions of the ICJ Rules regarding juvenile detention.

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Whether Health Insurance Portability & Accountability Act (HIPAA) exemption applies to transfers and returns of juveniles between non-member states	**Dated:** January 26, 2012 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], a request has been made by the West Region of the ICJ member states concerning transfers of supervision and return of juveniles to and from non-member states and whether the law enforcement exemptions from the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) would apply to transfers and returns of juveniles involving non-member states or territories[2].

Issue:

Whether the law enforcement exemptions from the provisions of the HIPAA would apply to transfers and returns of juveniles involving non-member states.

Applicable HIPAA Rules:

In considering this question it is useful to note that the HIPAA privacy rules are intended to protect an individual's privacy while allowing important law enforcement functions to continue. (*See HIPAA Privacy Rule & Public Health*, Guidance from Center for Disease Control and The U.S. Department of Health and Human Services, April 11, 2003). Thus, HIPAA exempts certain disclosures of health information for law enforcement purposes without an individual's written authorization. The various conditions and requirements concerning these exempt disclosures are contained in the regulatory text of the HIPAA privacy rule and may be found at 45 CFR 164 et. seq.

Under these provisions, protected health information may be disclosed for law enforcement purposes when such disclosures are required by law. Thus, disclosure of protected health information required to be furnished by or received from state agencies which administer the ICJ acting pursuant to the provisions of the compact and its authorized rules is permissible. [See 45

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

[2] As of March 1, 2018, all 50 states, the District of Columbia, and the U.S. Virgin Islands have adopted the Interstate Compact for Juveniles. Other U.S. territories are eligible to adopt the ICJ, but have not done so. These include: American Samoa, Guam, Northern Marian Islands, and the Commonwealth of Puerto Rico.

CFR 164.512 (f)(1)(i)]. In addition, exempt disclosures include those in which a response is required to comply with a court order. [See 45 CFR 164.512 (f)(1)(ii)(A)-(B)]. Under this provision, the disclosure and tracking of protected health information, among authorized compact administrators' offices, concerning any juvenile subject to compact supervision pursuant to court order, as required by the ICJ and its authorized rules would be exempt from HIPAA.

The more general provisions of the HIPAA privacy rules allow disclosures of protected health information when consistent with applicable law and ethical standards, including disclosures to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public. [45 CFR 164.512 (j)(1)(i)]; or to identify or apprehend an individual who appears to have escaped from lawful custody [See 45 CFR 164.51`2 (j)(1)(ii)(B)]. These provisions would apply to juveniles under ICJ supervision who have absconded or otherwise violated the terms of their supervision and need to be apprehended.

Additionally, HIPAA specifically authorizes disclosures of protected health information to law enforcement officials who need the information in order to provide health care to the individual and for the health and safety of the individual. [45 CFR 164.512 (k)(5)]. Under these provisions it appears that disclosures of health information which are required to provide for treatment of juveniles subject to the ICJ would also be exempt from HIPAA requirements.

Analysis and Conclusions:

Under the foregoing HIPAA rules, the law enforcement exemption [45 CFR 164.512 (f)(1)(i)] applies to "the disclosure and tracking of protected health information among authorized compact administrators' offices concerning any juvenile subject to compact supervision, pursuant to court order as required by the ICJ and its authorized rules would be exempt from HIPAA.

In considering whether these exemptions apply to transfers of supervision and return of juveniles involving non-member states, it is important to keep in mind that several U.S. territories have not adopted the Compact, including American Samoa, Guam, the Northern Mariana Islands or the Commonwealth of Puerto Rico. Until a territory adopts the Compact, no transfers of supervision or returns of juveniles are authorized or required.

As a consequence, because several territories are not members of the Compact, it is likely that transfers of supervision and return of juveniles to and from those territories would be determined by an administrative agency or court not to be covered by the above referenced HIPAA law enforcement exemption because it is not authorized to transfer juveniles, otherwise subject to the ICJ, to another state. Moreover, at least one federal court opinion on the subject suggests that immunity from a private cause of action by an individual under HIPAA would only apply to jurisdictions which are signatories to the interstate compact agreement in question. See Johnson v. Quander, 370 F.Supp.2d 79 (D.D.C. 2005).

Summary:

Based upon the provisions of the HIPAA administrative rules concerning exemptions from coverage and the above referenced authorities and analysis, the law enforcement exemptions from the HIPAA would not apply to transfers and returns of juveniles involving American Samoa, Guam, the Northern Mariana Islands or the Commonwealth of Puerto Rico.

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ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L. Masters**		
Description: Detention and supervision fees associated with new charges		**Dated:** April 10, 2012 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], the state of Idaho has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issues:

Issues:

If a juvenile is arrested on a new offense in a state other than the juvenile's home state, could the holding state's detention center bill the juvenile's family with detention fees while the new charge is going through the court process?

At what point would the hold on the new charge end and the ICJ hold begin? Would it be the responsibility of the holding state to notify the home state of when the new charges were settled and the ICJ process had begun?

Could a holding state ever bill the home state for the cost of detention fees? Some states statutorily are not allowed to pay for detention time in another state.

Applicable Compact Provisions and Rules:

Article I of the Interstate Compact for Juveniles states in relevant part:

"It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: . . . (F) equitably allocate the costs, benefits and obligations of the compacting states;"

ICJ Rule 1-101 provides definitions, including:

> Supervision: the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile."

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

ICJ Rule 5-101(5) provides:

"Neither sending states nor receiving states shall impose a supervision fee on any juvenile who is supervised under the provisions of the ICJ."

ICJ Rule 7-101 provides:

1. The home/demanding/sending state shall be responsible for the costs of transportation, for making transportation arrangements and for the return of juveniles within five (5) business days of being notified by the holding state's ICJ Office that the juvenile's due process rights have been met. This time period may be extended up to an additional five (5) business days with the approval from both ICJ Offices.

2. The holding state shall not be reimbursed for detaining or transporting juveniles unless the home/demanding/sending state fails to affect the return of its juveniles accordance with these rules.

ICJ Rule 7-103 provides:

"Juveniles shall be returned only after charges are resolved when pending charges exist in the holding/receiving state, unless consent is given by the holding/receiving and demanding/sending states' courts and ICJ Offices."

Analysis and Conclusions:

The primary and controlling question asked by the State of Idaho is whether or not a holding state, in which a juvenile arrested on a new offense in a state other than the juvenile's home state is detained, could impose detention fees upon the juvenile's family for costs incurred in the detention of such juvenile while the new charge proceeds through the court process?

ICJ Rule 5-101(5) currently prohibits the imposition of a "supervision fee on any juvenile who is supervised under the provisions of the ICJ." The term '**supervision**' is broadly defined in ICJ Rule 1-101 as "*the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply*

with regulations and conditions, other than monetary conditions, imposed on the juvenile." While the term 'fee' is not defined by the Compact, the plain meaning of the term is '*a charge or payment for a professional service' or 'a privilege' or 'allowed by law for the service of a public officer*.' See *Random House Dictionary of the English Language* (2nd ed. 1987).

As the Supreme Court has explained concerning the proper approach to interpretation of statutes or related regulations, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.,* 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (internal quotation marks omitted). "[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie v. U.S. Trustee,* 540 U.S. 526, 534, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004) (internal quotation marks omitted). Unless otherwise defined, we give words in a statute their ordinary, contemporary, meaning. *See Perrin v. United States,* 444 U.S. 37, 42, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979). Interpreting the terms supervision fee against the framework of these principles, it is apparent that a detention fee would certainly fall within the broad definition of these terms which encompass any fees related to the oversight exercised over a juvenile who is under ICJ supervision '*during which time the juvenile is required to report to or be monitored by appropriate authorities.'*

Article I (F) of the ICJ allows costs related to carrying out the purposes of the Compact to be equitably allocated among the member states. Thus, while the Commission appears to have the statutory authority under Article I of the Compact to include supervision fees as part of those costs, ICJ Rule 5-101(5) clearly reflects that the Commission has not seen fit to do so.

Because the current ICJ Rules appear to preclude detention fees from being imposed upon a juvenile or reimbursed except when there is a failure "to affect the return" of a juvenile' and no other charges are pending, the questions raised by Idaho concerning the point at which the detention on the new charge ends and the "ICJ detention" begins, or whether or not it would be the responsibility of the holding state to notify the home state of when the new charges were settled and the ICJ process had begun, are moot. However, should the Commission ever decide to amend the provisions of the ICJ Rules to allow such fees, these questions certainly appear to be appropriate areas of inquiry and might necessarily result in appropriate provisions which should be incorporated into any such amendment(s).

Idaho also asks whether a holding state could ever impose detention fees upon the home state, and asserts that some states are statutorily precluded from payment for detention time in another state. Under the above analysis, while ICJ Rule 5-101(5) only deals with imposition of supervision fees upon "a juvenile," the existence of statutory prohibitions in at least some Compact member states suggests that further research into the nature and extent of such prohibitions, and the number of states in which they exist, would be advisable before attempting to impose such a fee upon the home state. ***It should also be noted that ICJ Rule 7-101 allows a holding state to be reimbursed for detention if the home/demanding state "fails to affect the return" of the juvenile "within five (5) business days of being notified by the holding state's ICJ Office that the juvenile's due process rights have been met. This time period may be extended up to an additional five (5) business days with the approval from both ICJ Offices." However, it is clear that this rule cannot be applied while pending charges exist in the holding state. In fact, ICJ Rule 7-103 prohibits the return of such juveniles until pending charges are resolved, unless consent is given by the holding/receiving states' and demanding/sending states' courts and ICJ Offices.***

Summary:

In sum, while the Commission appears to have the statutory authority under Article I of the Compact to include supervision fees as part of those costs, ICJ Rule 5-101(5) clearly reflects that the Commission has not seen fit to do so. Because the current ICJ Rules appear to preclude detention fees, other related questions concerning imposition of such fees upon a juvenile are moot. Although ICJ Rule 5-101(5) only deals with imposition of supervision fees upon 'a juvenile,' statutory prohibitions against such fees caution against attempting to impose such a fee upon the home state in the absence of further research into the nature and extent of such prohibitions and the number of states in which they exist. ***Furthermore, ICJ Rule 7-101 allows a holding state to be reimbursed for detention if the home/demanding state "fails to affect the return" of the juvenile "within five (5) business days of being notified by the holding state's ICJ Office that the juvenile's due process rights have been met. This time period may be extended up to an additional five (5) business days with the approval from both ICJ Offices." However, it is clear that this rule cannot be applied while pending charges exist in the holding state. In fact, ICJ Rule 7-103 prohibits the return of such juveniles until pending charges are resolved, unless consent is given by the holding/receiving states' and demanding/sending states' courts and ICJ Offices.***

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ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: For purposes of the detention and return of a probation or parole absconder who is an 'adult' in the home/demanding state, but is still a 'juvenile,' in the holding state, must the holding state treat that person as an adult or does the law of the holding state apply?	**Dated:** August 23, 2012 **Revised:** March 14, 2018[1]

Background:

Pursuant to Commission Rule 9-101(3)[1], the state of Ohio has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

For purposes of detention and return of a person serving a juvenile probation or parole sentence who absconds or flees to avoid prosecution (youth with a warrant from another state) and who has the status of an adult in the home/demanding state (in this case Michigan), but is still classified as a juvenile in the holding state (in this case Ohio), must the holding state treat that person as an adult or does the law of the holding state regarding the age of majority apply?

Applicable Compact Provisions and Rules:

ICJ Rule 1-101 provides definitions, including:

"Juvenile: any person defined as a juvenile in any member state or by the rules of the Interstate Commission."

ICJ Rule 5-101(7) provides as follows:

"The age of majority and duration of supervision are determined by the sending state. Where circumstances require the receiving court to detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the receiving state."

Analysis and Conclusions

In determining whether or not ICJ compact supervision over a person defined as a "juvenile" is "triggered," under the compact, ICJ Rule 5-101(7) clearly specifies that the "age of majority" and thus whether or not the individual qualifies for supervision and transfer are determined by the "sending state." However, ICJ Rule 5-101(7), also requires that in the event a receiving state court is required to *"detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the receiving state."*

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion s available upon request from ICJadmin@juvenilecompact.org.

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
For purposes of the detention and return of a probation or parole absconder who is an 'adult' in the home/demanding state, but is still a 'juvenile,' in the holding state, must the holding state treat that person as an adult or does the law of the holding state apply?	August 23, 2012 **Revised:** March 14, 2018[1]

If the youth in question is serving a juvenile probation or parole sentence and absconds or flees to avoid prosecution (youth with a warrant from another state), ICJ Rule 5-101(7) creates an exception whereby the receiving state law regarding the age of majority applies to incarceration of **juveniles,** (emphasis supplied). This exception arises where ***"a receiving state court is required to detain any juvenile under the ICJ"*** (emphasis supplied). Even though such an individual is already classified as an adult in the State of Michigan, based on the foregoing provision of ICJ Rule 5-101(7), if detained and returned pursuant to the ICJ, such youth may be treated as a "juvenile."

As the Supreme Court has explained concerning the proper approach to interpretation of statutes or related regulations, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.,* 519 U.S. 337, 340 (1997) (internal quotation marks omitted).

Summary:

Based upon the provisions of the ICJ and ICJ Rule 5-101(7), if the youth in question is serving a juvenile probation or parole sentence and absconds or flees to avoid prosecution (youth with a warrant from another state), ICJ Rule 5-101(7) creates an exception whereby the receiving state law regarding the age of majority applies to incarceration of **juveniles,** where ***"a receiving state court is required to detain any juvenile under the ICJ"***. Under this rule, even though such an individual is already classified as an adult in the State of Michigan, based on this rule, if detained and returned pursuant to the ICJ, such youth must be treated as a "juvenile."

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion s available upon request from ICJadmin@juvenilecompact.org.

Interstate Commission for Juveniles	Opinion Number: 05-2012	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?	July 26, 2012 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], the State of Hawaii and the West Region of ICJ have requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issues:

Issues:

Effective March 1, 2012, ICJ Rule 4-101(2)(f) essentially prohibits the placement of minors in residential facilities through ICJ. Since its implementation, Hawaii has experienced problems with this rule and asks for guidance on how to proceed with these residential placements.

Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California, but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals with special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety as well as the safety of the community. In cases such as this, where supervision is necessary, but ICPC does not provide, are they eligible for supervision via ICJ.

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:
Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?

Dated:
July 26, 2012

Revised:
March 14, 2018[1]

There are liability issues if we as a state, know we are sending an individual who needs supervision, and are not providing the necessary supervision. It seems that we have mandates but no appropriate vehicle to meet the mandate. Your guidance on how states are to proceed in cases where ICPC is not appropriate is appreciated.

Applicable Compact Provisions and Rules:

ICJ Rule 1-101 provides as follows:

"Juvenile: any person defined as a juvenile in any member state or by the rules of the Interstate Commission."

ICJ Rule 4-101(2) provides, in relevant part, as follow:

"A juvenile shall be eligible for transfer under the ICJ if the following conditions are met:
. . .

f. i. Will reside with a parent, legal guardian, relative, non-relative or independently, excluding residential facilities;

ICJ Rule 4-101(3) provides:

"If a juvenile is placed pursuant to the ICJ and is also subject to the Interstate Compact on the Placement of Children (ICPC), placement and supervision through the ICPC would not be precluded."

ICJ Rule 4-101(5) provides:

"A juvenile who is not eligible for transfer under this Compact is not subject to these rules."

ICJ Rule 8-101(2) provides:

"Juveniles traveling to a residential facility for placement shall be excluded from this rule; however, states may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return for notification purposes."

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:
Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?

Dated:
July 26, 2012

Revised:
March 14, 2018[1]

Analysis and Conclusions:

In its request for an advisory opinion the State of Hawaii and the West Region states as follows:

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

The above referenced section of ICJ Rule 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in 'residential facilities.' Thus, the minor referred to in Case #1 is now not eligible for transfer through ICJ because of the referral to the residential treatment program in Utah. ICJ Rule 8-101, regarding Travel Permits, provides additional guidance by adding that "states may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return *for notification purposes" (emphasis provided).* Thus, even though juveniles traveling to a residential facility for placement are not eligible for transfer under ICJ, the ICJ still provides a vehicle for promoting public safety.

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals with additional special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety, as well as the safety of the community. In cases such as this, where supervision is necessary but ICPC does not provide, are they eligible for supervision via ICJ?

As in Case #1, the above referenced section of 4-101(2)(f)(i) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in 'residential facilities.' To promote public

safety, Hawaii "may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return for notification purposes," pursuant to ICJ Rule 8-101(2). However, as set forth in ICJ Rule 4-101(5) "A juvenile who is not eligible for transfer under this Compact is not subject to these rules." Therefore, supervision cannot be provided via ICJ.

Additional guidance regarding cases involving both ICJ and ICPC issues is available through the "Best Practice Guide for ICJ and ICPC Dual Jurisdiction Cases," available at the ICJ website (www.juvenilecompact.org) or from the ICJ National Office. This resource was developed as a result of a Memorandum of Agreement between the Interstate Commission for Juveniles and the Association of Administrators of the Interstate Compact for the Placement of Children.

Interstate Commission for Juveniles	Opinion Number: 01-2014	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L. Masters**		
Description: The Health Insurance Portability and Accountability Act (HIPAA) as it relates to youth and family information.		**Dated:** January 23, 2014

Background:

Pursuant to Commission Rule 9-101(3), the State of Rhode Island has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

The State of Rhode Island is requesting clarification on the application of the Health Insurance Portability and Accountability Act (HIPAA) as it relates to youth and family information shared through ICJ. Specifically, Rhode Island asks the following:

1. Does the Juvenile Interstate Data System (JIDS) satisfy HIPAA as it relates to both Personal Identifiable Information (PII) as well as Personal Health Information (PHI)?

2. How can the same information be protected in emails from state to state? Because JIDS is a document management system, requiring the majority of state's communication to be completed through email, if there is an exemption, how would it apply generally and how would it apply to non-delinquent runaways?

Applicable Compact Provisions and Rules:

ICJ Article I

ICJ Article I in relevant part states:

"The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. §112 has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime."

"It is the purpose of this compact, through means of joint and cooperative action among the compact states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return . . . (J) establish a system of uniform data collection on information pertaining to

juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and criminal justice administrators . . ."

ICJ Article III

ICJ Article III, K. provides as follows:

"The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange reporting requirements. Such methods of data collection, exchange and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records."

ICJ RULE 2-102: Data Collection

ICJ Rule 2-102-1 states as follows:

1. As required by Article III (K) of the compact, member states shall gather, maintain and report data regarding the interstate movement of juveniles who are supervised under this compact and the return of juveniles who have absconded, escaped or fled to avoid prosecution or run away. Each member state shall report annually by July 31st.

Analysis and Conclusions:

The first question posed by Rhode Island, as with any question regarding the application of HIPAA, should be analyzed in the context of the purpose of these privacy rules which were intended to protect an individual's privacy while allowing important law enforcement functions to continue. (**See HIPAA Privacy Rule & Public Health, Guidance from Center for Disease Control and The U.S. Department of Health and Human Services, April 11, 2003**). Thus, HIPAA exempts certain disclosures of health information for law enforcement purposes without an individual's written authorization. The various conditions and requirements concerning these exempt disclosures are contained in the regulatory text of the HIPAA privacy rule and may be found at **45 CFR 164 et. seq.** Under these provisions, protected health information may be disclosed for law enforcement purposes when a law requires such disclosures.

Based on these provisions and the above referenced provisions of the ICJ compact statute, clearly evincing an intent for the enforcement of laws concerning juvenile offenders and the protection of public safety, we have previously concluded in ICJ Advisory Opinion 1-2012 that disclosure of protected health information required to be furnished by or received from state agencies which administer the ICJ acting pursuant to the provisions of the compact and its authorized rules is permissible. [**See 45 CFR 164.512 (f)(1)(i)**].

In addition, exempt disclosures include those in which a response is required to comply with a court order. [**See 45 CFR 164.512 (f)(1)(ii)(A)-(B)].** Based upon this exemption and the above reference provisions of ICJ Article I, it is equally clear that a principal purpose of the compact is to *"ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority."* Thus, as previously stated in ICJ Advisory Opinion 1-2012:

> "Under this provision, the disclosure and tracking of protected health information, among authorized compact administrators' offices, concerning any juvenile subject to compact supervision pursuant to court order, as required by the ICJ and its authorized rules would be exempt from HIPAA."

Both the foregoing provisions of the compact and the ICJ rules require the compact member states to implement the law enforcement and public protection aspects of the compact through "a system of uniform data collection" (See Article I, J). It further specifies the means by which this purpose shall be achieved; "[S]uch methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records," (See Article III, K).

To comply with the mandates of the ICJ statute and duly authorized rules, the Commission developed the Juvenile Interstate Data System (JIDS), as identified above. This satisfies the HIPAA exemptions with respect to both Personal Identifiable Information (PII) as well as Personal Health Information (PHI).

With respect to the second question, regarding protection of the confidentiality concerning emails, the same analysis is applicable and the HIPAA exemptions cited herein can be applied to the law enforcement activity of the compact and states under the provisions of the ICJ statute and duly authorized rules. Moreover, the JIDS 'application', as set forth in JIDS Security documentation, ". . . is an electronic workflow system that facilitates state-to-state transfers, returns and travel for juveniles." Access to the system is required through a "secure web portal

provides automation to paper-based processes and creates accountability through all steps in the process. InStream maintains Advanced Encryption Standards defined by the National Institute of Standards and Technology (NIST) for content storage and transmission." (See JIDS Security Newsletter, attached and incorporated by reference herein). Further, the JIDS system meets the criteria set forth by NLETS, the interstate justice and public safety network for the exchange of law enforcement, criminal justice, and public safety related information and is furnished through a web service which is utilized by the U.S. Department of the Treasury and the U.S. Department of State, among others which require secure data exchange. Additionally, all information contained in JIDS is encrypted.

Finally, with regard to the application of the above referenced compact provisions and rules to non-delinquent runaways, reference is made to the more general provisions of the HIPAA privacy rules which allow disclosures of protected health information when consistent with applicable law and ethical standards, *including disclosures to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.* **[45 CFR 164.512 (j)(1)(i)];** *or to identify or apprehend an individual who appears to have escaped from lawful custody* **[See 45 CFR 164.51`2 (j)(1)(ii)(B)]**. (emphasis added).

As discussed in ICJ Advisory Opinion 1-2012, these provisions would apply to the return of juveniles who have absconded, escaped, fled to avoid prosecution or run away. Additionally, HIPAA specifically authorizes disclosures of protected health information to law enforcement officials who need the information in order to provide health care to the individual and for the health and safety of the individual. **[45 CFR 164.512 (k)(5)]**. Under these provisions, it appears that disclosures of health information required to provide treatment of juveniles subject to the ICJ, including non-delinquent runaways, would also be exempt from HIPAA requirements.

It is also important for compact administrators to be aware that at least one federal court opinion on the subject suggests that immunity from a private cause of action by an individual under HIPAA would apply to jurisdictions that are signatories to the interstate compact agreement in question. See Johnson v. Quander, 370 F.Supp.2d 79 (D.D.C. 2005).

Summary:

In sum, since the Commission, in compliance with the mandates of the ICJ statute and duly authorized rules, developed the Juvenile Interstate Data System (JIDS), as identified above, it

satisfies the HIPAA exemptions with respect to both Personal Identifiable Information (PII) as well as Personal Health Information (PHI).

HIPAA privacy rules allow disclosures of protected health information when consistent with applicable law and ethical standards, including disclosures to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public, or to identify or apprehend an individual who appears to have escaped from lawful custody.

Under these provisions, it appears that disclosures of health information required to provide for treatment of juveniles subject to the ICJ, including non-delinquent runaways, would also be exempt from HIPAA requirements.

JIDS Security Newsletter

Sent May 1, 2012

In preparation for the implementation of the Juvenile Interstate Data System (JIDS), the Technology Committee is publishing a number of short articles as part of the preparation process. Each article will discuss an aspect of the implementation with the goal of helping your staff to be prepared for a new way of doing business.

Overview of JIDS Security

JIDS is a web-based application developed for the Interstate Commission for Juveniles by InStream, Inc. The equipment to host JIDS is provided by Amazon on their government cloud servers.

The JIDS application is an electronic workflow system that facilitates state-to-state transfers, returns and travel for juveniles. The application's secure web portal provides automation to paper-based processes and creates accountability through all steps in the process. InStream maintains Advanced Encryption Standards defined by the National Institute of Standards and Technology (NIST) for content storage and transmission.

Site Security

InStream

Building security requires key card access at multiple points of entry into the building, into server areas, and document conversion work areas 24/7. Visitors are required to sign in when entering the InStream offices and are accompanied at all times.

The facility has security patrols during all non-business hours and is equipped with alarm monitoring and cameras at point of entry. Random audits occur on security logs, e-mail transmissions, system security and physical security.

Amazon Web Service

Amazon Web Service (AWS) datacenters are housed in nondescript facilities. Physical access is strictly controlled both at the perimeter and at building ingress points by professional security staff utilizing video surveillance, intrusion detection systems, and other electronic means. Authorized staff must pass a two-factor authentication a minimum of two times to access datacenter floors. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff.

AWS only provides datacenter access and information to employees and contractors who have a legitimate business need for such privileges. When an employee no longer has a business need for these privileges, his or her access is immediately revoked, even if they continue to be an employee of Amazon or Amazon Web Services. All physical access to datacenters by AWS employees is logged and audited routinely.

In order to provide end-to-end security and end-to-end privacy, AWS builds services in accordance with security best practices, provides appropriate security features in those services,

and documents how to use those features. AWS's compliance framework covers FISMA, PCI DSS, ISO 27001, SOC 1/SSAE 16/ISAE 3402 (formerly SAS 70 Type II), and HIPAA.

Amazon's Federal Government Customers include:

- Recovery Accountability and Transparency Board
- U.S. Department of the Treasury
- National Renewable Energy Laboratory at the U.S. Department of Energy
- U.S. Department of State
- U.S. Department of Agriculture
- NASA Jet Propulsion Laboratory
- European Space Agency

Amazon Web Service meets the following criteria set forth by NLETS, the interstate justice and public safety network for the exchange of law enforcement, criminal justice, and public safety related information:

- Provides a secure environment with redundant technical infrastructure and onsite expertise monitoring hardware and connectivity 24/7/365
- Monitored by both fixed and pan-tilt/zoom security cameras
- Protected by intrusion detection system with panic button activation
- Two-factor authentication for building access
- Biometric authorization for data center access
- Extensive pre-employment background investigation process for employees with data access
- On-site building security and data center monitoring staffed 24/7/365
- Robust, scalable, private, secure network
- Back-up generator and uninterrupted power supplies to ensure no loss of power
- Network racks are equipped with temperature and humidity sensors that are centrally monitored
- Site is protected by sophisticated, dual fire suppression systems
- Secondary hosting services are located at a Disaster Recovery location, allowing for multiple business continuity plans
- Remote services provided 24/7/365 by on-site technicians

Application Security

JIDS is a web-based application developed by InStream, Inc. and hosted by Amazon Web Service for ICJ. InStream is responsible for implementation and maintenance of all technical security controls protecting the application, as well as administrative controls dealing with the development and support of the application. ICJ is responsible for the administrative controls related to the operation of the application.

Encryption

All information contained in JIDS is encrypted. Security features include:

- Encryption for documents 'at rest' and document storage

- IIS SSL compatible (a secure infrastructure based on public-key cryptography by using digital certificates with Secure Sockets Layer (SSL))
- Allows changing Anonymous & IUSR IIS accounts
- File permissions securable by NTFS and security groups
- Able to encrypt plain-text passwords
- 128 bit encryption

Authentication
Users are uniquely identified to the system by their email address authenticated with a password.

Password Requirements
Passwords shall:

- be a minimum length of eight (8) characters, a mix of lowercase, uppercase and one special character
- not be a dictionary word or proper name
- not be the same as the User ID
- be changed within a maximum of every 90 days
- not be identical to the previous ten (10) passwords
- not be transmitted in the clear outside the secure location
- not be displayed when entered

A user will be allowed five (5) login attempts before being locked out.

Password Recovery
Users have the ability to reset their passwords by requesting a recovery that will facilitate the user being able to reset their password.

Authorization
All data is properly secured with specific rights customized to a group, project or user based on their role. JIDS uses a role based access control model to ensure that individual user access rights are sufficient to perform their required job functions. The workflow set up in JIDS requires review and sign-off at several levels to ensure processes are reviewed and approved as they progress through the system.

Interstate Commission for Juveniles	Opinion Number: 03-2014	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L. Masters**		
Description: Provisions for cooperative detention within ICJ		**Dated:** September 18, 2014 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], the State of North Dakota has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

North Dakota and Minnesota are jointly pursuing a contract for the joint use of a Juvenile Detention Center facility in located in Moorhead, Clay County, Minnesota that is near the border between North Dakota and Minnesota. This facility will be used for the cooperative detention of juveniles who are awaiting adjudication on charges of delinquency and delinquency related matters in Cass County, North Dakota, and who will be temporarily detained in the Minnesota facility.

North Dakota seeks clarification as to whether the provisions of the ICJ or ICJ rules apply to the proposed contract for cooperative detention of these alleged delinquent North Dakota juveniles in the Minnesota facility or is this prohibited by the terms of the Interstate Compact for Juveniles?

Applicable Compact Provisions and Rules:

ICJ Rule 4-101(1) states:

"Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state."

ICJ Rule 4-101(5) states:

"A juvenile who is not eligible for transfer under this Compact is not subject to these rules."

Article I of the Compact, in relevant parts, states:

The compacting states to the Interstate Compact recognize that each state is responsible for

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

> the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. . .

Article I of the Compact, in relevant parts, further states:

> It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: . . . (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles. . .

Analysis and Conclusions:

It is clear that the applicability of the Compact is limited to the "proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole . . ." as well as juveniles "who have absconded, escaped or run away from supervision and control." If the cooperative detention of North Dakota juveniles is for the purpose of temporarily keeping these juveniles in secure custody while awaiting adjudication on charges of delinquency and related matters, and does not involve any type of conditional, or other, release to the community, while under supervision, then the Compact does not apply to such juveniles. While not explicitly stated, Article I of the Compact is clear that a juvenile is not subject to the ICJ if no court-ordered supervision is imposed because of the underlying offense. As stated in the ICJ Bench Book, "A predicate for coverage under the Revised ICJ is 'supervision.'"

Moreover, ICJ Rule 4-101(1) only requires Compact party states to process referrals involving juveniles who "are under juvenile jurisdiction in the sending state." It is equally clear, under ICJ Rule 4-101(5)[1] that "a juvenile who is not eligible for transfer under this Compact is not subject to these rules."

Even if there is some form of conditional release for education or employment purposes, among the intended purposes of the ICJ, which are stated in Article I, includes the following:

> "It is the purpose of this Compact, through means of joint and cooperative action among the Compacting states to: . . . (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services . . ."

Because the term "cooperative institutionalization" is not defined in the Compact, the common meaning of the term as defined in the dictionary controls. See *Keegan v. U.S., 325 U.S. 478 (1945).* Cooperative means "involving two or more people or groups working together to do something," while "institutionalization" means "to put in the care of an institution." Taken together these terms in the context of the provisions of ICJ Article I (D) would clearly embrace the situation described in this request for informal legal guidance by which the two (2) states are working together to place these delinquent juveniles in the care of an institution.

Summary:

In sum, the proposed contract for the cooperative use of a Juvenile Detention Center facility located in Moorhead, Clay County, Minnesota and near the border between North Dakota and Minnesota for the temporary detention of juveniles awaiting adjudication on charges of delinquency in Cass County, North Dakota and detained in the Minnesota facility, is not prohibited by the terms of the Interstate Compact for Juveniles. In the absence of a transfer of supervision as defined by the terms of the Interstate Compact for Juveniles, such juveniles are not subject to these rules pursuant to Article I of the ICJ and ICJ Rules 4-101(1) and 4-101(5). Alternatively, because such an arrangement constitutes a contract **"for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services . . ." as contemplated in ICJ Article I, (D),** it is not prohibited by the Compact, even if such juveniles are conditionally released into the community for education or employment**.**

Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: Ashley H. Lippert** **Chief Legal Counsel: Richard L. Masters**		
Description: ICJ authority in cases where approval of supervision may violate court orders		**Dated:** December 11, 2014 **Revised:** March 14, 2018[1]

Background:

Pursuant to Commission Rule 9-101(3)[1], a West Region subgroup, consisting of Idaho, Montana, Nevada, and Oregon, is requesting an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issue:

The ICJ Rules require a receiving state to sign off as approving or denying supervision on the Form VIII (Home Evaluation Report Form). ICJ Rule 4-104(4) requires a receiving state to accept supervision in all cases where there is a custodial parent/legal guardian residing in the receiving state and no parent/legal guardian remains in the sending state, with no consideration of the legal ramifications for the youth, parent, victim, and receiving state when the resulting transfer of supervision violates the youth's court orders. The states in this workgroup are unwilling to sign off as approving supervision with a parent/legal guardian that would put the youth in violation of his/her court orders.

The West Region subgroup is requesting a legal opinion on the following:

Under the current rules, can a receiving state legitimately accept supervision when the intended transfer of supervision violates no contact orders or other court ordered conditions of supervision?

Applicable Compact Provisions and Rules:

Article I of the ICJ provides, in relevant part, that:

> It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:
>
> (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; and

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

(B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

ICJ Rule 1-101 in relevant part provides as follows:

> Supervision: the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile.

ICJ Rule 4-104(4) provides as follows:

> Supervision may be denied when the home evaluation reveals that the proposed residence is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state, except when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state.

Analysis and Conclusions:

The West Region subgroup is understandably concerned about the potential for endangering the safety of a victim if a juvenile delinquent is transferred from a sending state to a receiving state when no custodial parent or legal guardian resides in the sending state, but such a parent or guardian does reside in the receiving state. Admittedly, there could be situations in which a supervision transfer violates existing 'no contact' orders or other legal requirements involving a previous victim, such as a sibling or other family member. However, ICJ Rule 4-104(4) also recognizes the rights of a custodial parent or legal guardian, which must be considered in the determination of whether or not a proposed transfer of supervision is suitable or legally authorized.

The question posed directly addresses a possible dichotomy created by the language of the existing provisions of ICJ Rule 4-101(4). Can a receiving state legitimately accept supervision when the intended residence violates 'no contact orders' or other court ordered conditions of

supervision? Clearly, neither the provisions of the ICJ, nor the ICJ Rules contemplate, or should be interpreted to allow such a result.

Article I of the ICJ provides in Sections A and B that:

> "It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:
>
> (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; and
>
> (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;"

Moreover, ICJ Rule 1-101 clearly defines "Supervision" to mean the oversight exercised by the authorities of the sending and receiving states, during which time the juvenile is required to report or be monitored by appropriate authorities **and to comply with regulations and conditions as determined by a court or appropriate authority (emphasis supplied).**

Based upon the plain meaning of both the above referenced provisions of the ICJ and the ICJ Rules, it is clear that a receiving state is not authorized to violate court ordered conditions of supervision. Article I (A) of the Compact expressly requires that compact officials "ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision . . . in the receiving state **as ordered by the adjudicating judge or parole authority in the sending state" (emphasis supplied).** As the Supreme Court has explained concerning the proper approach to interpretation of statutes or related regulations, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning . . . [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.,* 519 *U.S. 337, 340 (1997) (internal quotation marks omitted).*

It is equally clear that under Article I (B) of the Compact, officials in Compact Member States are also unequivocally required to **"adequately protect"** the public safety interests of the citizens, **"including the victims of juvenile offenders." (emphasis supplied). It is axiomatic**

that administrative rules, such as the above ICJ Rule, promulgated by an administrative agency, such as the Interstate Commission for Juveniles, cannot exceed the delegated authority granted to it by the statute. See *Federal Power Commission v. Texaco, Inc., 417 U.S. 380, 394 (1974)* ("It, [the applicable statute], does not authorize the Commission to set at naught an explicit provision of the Act.") *Id*. at p. 394.

Summary:

In summary, based upon the terms of the Compact, the above referenced Compact provisions, ICJ Rules and the legal authorities cited herein, that ICJ Rule 4-104(4) does not authorize a receiving state to violate 'no contact' orders or other court ordered conditions of the adjudicating judge or parole authority in the sending state.

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated: February 24, 2015
ICJ authority to conduct records checks for another state on juveniles not subject to ICJ.	Revised: March 1, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3), the ICJ Executive Committee has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

ICJ member states are receiving occasional requests to conduct records checks on juveniles not currently involved in the ICJ process, but as a matter of courtesy. This has caused members of the ICJ Executive Committee, who have become aware of this practice, to pose a number of concerns related to the legal authority to conduct such records checks.

Applicable Compact Provisions and Rules:

ICJ Article I, in relevant part, provides that:

> It is the purpose of this Compact, through means of joint and cooperative action among the Compacting states to: . . . (J) establish a system of uniform data collection **of information pertaining to juveniles subject to this Compact** that allows access by authorized juvenile justice and criminal justice officials; (emphasis supplied).

ICJ Article III (K) provides that:

> **The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange reporting requirements.** Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records. (emphasis supplied).

ICJ Rule 2-102(1)[1] provides as follows:

"As required by Article III (K) of the compact, the Interstate Commission shall gather, maintain and report data regarding the interstate movement of juveniles who are supervised under this

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

compact and the return of juveniles who have absconded, escaped or fled to avoid prosecution or run away."

ICJ Rule 2-106[2] provides as follows:

"Upon request by a member state ICJ Office, other member state ICJ Offices may share information regarding a juvenile who crosses state lines to determine if they are or may be subject to the ICJ."

Analysis and Conclusions:

The above referenced provisions of the ICJ Compact and Rules, clearly evince an intent to provide authority to the ICJ member states to collect, maintain, report, and exchange data 'concerning' or 'pertaining' to the "interstate movement of juveniles who are 'subject to' and 'supervised under this Compact.'" These provisions further permit such data to be collected and exchanged with regard to "the return of juveniles who have absconded, escaped or fled to avoid prosecution or run away." See ICJ Article III (K); ICJ Rule 2-102(1) and ICJ Rule 2-106.

Both the foregoing provisions of the ICJ and the ICJ Rules require the Compact member states to implement the law enforcement and public protection aspects of the Compact through "a system of uniform data collection," (See Article I (J)) and shall be by means of, "[S]uch methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records," (See Article III (K)).

Consistent with these requirements, the Commission has developed the Juvenile Interstate Data System (JIDS), as referenced above. Because of the sensitive nature of this information, as was previously pointed out in ICJ Advisory Opinion 01-2014, the JIDS 'application,' as set forth in JIDS' Security documentation, ". . . is an electronic workflow system that facilitates state-to-state transfers, returns and travel for juveniles." Access to the system is required through a "secure web portal provides automation to paper-based processes and creates accountability through all steps in the process. InStream maintains Advanced Encryption Standards defined by the National Institute of Standards and Technology (NIST) for content storage and

[2] To provide additional guidance regarding this issue, ICJ Rule 2-106 was adopted September 27, 2017, effective March 1, 2018.

transmission." (See ICJ Ad. Op. 01-2014 and the JIDS Security Newsletter, attached and incorporated by reference therein). Further, JIDS meets the criteria set forth by NLETS, the interstate justice and public safety network for the exchange of law enforcement, criminal justice, and public safety related information and is furnished through a web service which is utilized by the U.S. Department of the Treasury and the U.S. Department of State, among others, which require secure data exchange. Additionally, all information contained in JIDS is encrypted.

It is apparent that while collection and dissemination of data is authorized under the Compact provisions and ICJ Rules, this authority is limited by the terms of the Compact to ***"data 'concerning' or 'pertaining' to the "interstate movement of juveniles who are 'subject to' and 'supervised under this Compact.'"*** See ICJ Art. III (K) and ICJ Rule 2-102(1). Additionally, the Commission has, as it is legally obligated to do, engaged in the 'due diligence' required to protect this information from both unauthorized access and disclosure by ICJ member states through the establishment and maintenance of the JIDS system as described above.

The information, about which the ICJ Executive Committee is concerned in making this opinion request, is described as "records checks on juveniles not currently involved in the ICJ process, but as a matter of courtesy." Thus, the express language of the foregoing Compact statute provisions in Article I (J) and Article III (K) as well as Rule 2-102(1) does not appear to authorize the collection or sharing of information concerning the interstate movement of juveniles who are not 'subject to' or 'supervised under' this Compact. As the U.S. Supreme Court has determined with respect to statutory construction, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." See *Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).*

Summary:

In sum, the express language of the foregoing Compact Statute provisions in Article I (J) and Article III (K), as well as Rule 2-102 (1), does not appear to authorize the collection or sharing of information concerning the interstate movement of juveniles who are not 'subject to' or 'supervised under' this Compact. However, pursuant to Rule 2-106, state ICJ Offices may share information regarding a juvenile who crosses state lines to determine if they are or may be subject to the ICJ.

JIDS Security Newsletter

Sent May 1, 2012

In preparation for the implementation of the Juvenile Interstate Data System (JIDS), the Technology Committee is publishing a number of short articles as part of the preparation process. Each article will discuss an aspect of the implementation with the goal of helping your staff to be prepared for a new way of doing business.

Overview of JIDS Security

JIDS is a web-based application developed for the Interstate Commission for Juveniles by InStream, Inc. The equipment to host JIDS is provided by Amazon on their government cloud servers.

The JIDS application is an electronic workflow system that facilitates state-to-state transfers, returns and travel for juveniles. The application's secure web portal provides automation to paper-based processes and creates accountability through all steps in the process. InStream maintains Advanced Encryption Standards defined by the National Institute of Standards and Technology (NIST) for content storage and transmission.

Site Security

InStream

Building security requires key card access at multiple points of entry into the building, into server areas, and document conversion work areas 24/7. Visitors are required to sign in when entering the InStream offices and are accompanied at all times.

The facility has security patrols during all non-business hours and is equipped with alarm monitoring and cameras at point of entry. Random audits occur on security logs, e-mail transmissions, system security and physical security.

Amazon Web Service

Amazon Web Service (AWS) datacenters are housed in nondescript facilities. Physical access is strictly controlled both at the perimeter and at building ingress points by professional security staff utilizing video surveillance, intrusion detection systems, and other electronic means. Authorized staff must pass a two-factor authentication a minimum of two times to access datacenter floors. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff.

AWS only provides datacenter access and information to employees and contractors who have a legitimate business need for such privileges. When an employee no longer has a business need for these privileges, his or her access is immediately revoked, even if they continue to be an employee of Amazon or Amazon Web Services. All physical access to datacenters by AWS employees is logged and audited routinely.

In order to provide end-to-end security and end-to-end privacy, AWS builds services in accordance with security best practices, provides appropriate security features in those services,

and documents how to use those features. AWS's compliance framework covers FISMA, PCI DSS, ISO 27001, SOC 1/SSAE 16/ISAE 3402 (formerly SAS 70 Type II), and HIPAA.

Amazon's Federal Government Customers include:

- Recovery Accountability and Transparency Board
- U.S. Department of the Treasury
- National Renewable Energy Laboratory at the U.S. Department of Energy
- U.S. Department of State
- U.S. Department of Agriculture
- NASA Jet Propulsion Laboratory
- European Space Agency

Amazon Web Service meets the following criteria set forth by NLETS, the interstate justice and public safety network for the exchange of law enforcement, criminal justice, and public safety related information:

- Provides a secure environment with redundant technical infrastructure and onsite expertise monitoring hardware and connectivity 24/7/365
- Monitored by both fixed and pan-tilt/zoom security cameras
- Protected by intrusion detection system with panic button activation
- Two-factor authentication for building access
- Biometric authorization for data center access
- Extensive pre-employment background investigation process for employees with data access
- On-site building security and data center monitoring staffed 24/7/365
- Robust, scalable, private, secure network
- Back-up generator and uninterrupted power supplies to ensure no loss of power
- Network racks are equipped with temperature and humidity sensors that are centrally monitored
- Site is protected by sophisticated, dual fire suppression systems
- Secondary hosting services are located at a Disaster Recovery location, allowing for multiple business continuity plans
- Remote services provided 24/7/365 by on-site technicians

Application Security

JIDS is a web-based application developed by InStream, Inc. and hosted by Amazon Web Service for ICJ. InStream is responsible for implementation and maintenance of all technical security controls protecting the application, as well as administrative controls dealing with the development and support of the application. ICJ is responsible for the administrative controls related to the operation of the application.

Encryption

All information contained in JIDS is encrypted. Security features include:

- Encryption for documents 'at rest' and document storage

- IIS SSL compatible (a secure infrastructure based on public-key cryptography by using digital certificates with Secure Sockets Layer (SSL))
- Allows changing Anonymous & IUSR IIS accounts
- File permissions securable by NTFS and security groups
- Able to encrypt plain-text passwords
- 128 bit encryption

Authentication
Users are uniquely identified to the system by their email address authenticated with a password.

Password Requirements
Passwords shall:

- be a minimum length of eight (8) characters, a mix of lowercase, uppercase and one special character
- not be a dictionary word or proper name
- not be the same as the User ID
- be changed within a maximum of every 90 days
- not be identical to the previous ten (10) passwords
- not be transmitted in the clear outside the secure location
- not be displayed when entered

A user will be allowed five (5) login attempts before being locked out.

Password Recovery
Users have the ability to reset their passwords by requesting a recovery that will facilitate the user being able to reset their password.

Authorization
All data is properly secured with specific rights customized to a group, project or user based on their role. JIDS uses a role based access control model to ensure that individual user access rights are sufficient to perform their required job functions. The workflow set up in JIDS requires review and sign-off at several levels to ensure processes are reviewed and approved as they progress through the system.

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Signatures on the IA/VI Form	**Dated:** August 24, 2015 **Revised:** March 1, 2018[1]

Background:

Pursuant to Commission Rule 9-101(3), the state of Minnesota has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

Minnesota is requesting a formal advisory opinion regarding the signatures required on the Form IA/VI Application for Services and Waiver. Frequently Minnesota receives a transfer request where the Form IA/VI is not signed by the Judge, or in the case of parole, the compact official. In these cases, states refuse to provide the signed document until the transfer is approved. It is Minnesota's position the judge or compact official should be signing the document before the request is accepted. In fact, the way the form is written, an investigation should not be submitted prior to the judge or compact official signing the form.

Minnesota's practice has been to conduct the investigation, but not approve the transfer until after the judge signs the document. There have been times the sending state will take several months to get the judge's signature and cases where they refuse to get the signature at all until the case is accepted. In Minnesota's experience, the juvenile is already in our state and when we deny the transfer, they leave the juvenile in Minnesota anyway.

In a recent case, the sending state refused to provide the signed Form IA/VI so when the reply was due Minnesota denied the request because the Form IA/VI was not signed by the judge. The sending state allowed the denial to sit in JIDS without being processed for over a month. Eventually, the sending state did put the Form IA/VI with the judge's signature in JIDS and sent a Form V activating the case even though Minnesota had denied the request. As a result, the juvenile was in Minnesota for several months while waiting for the judge's signature and during that time was not being supervised.

The following are the issues Minnesota is asking be addressed:

1. Based on the language on the Form, should the request even be sent without the required signature of the judge or compact official allowing the juvenile to make the request?
2. If the investigation can be sent, should it be investigated without the judges or compact official's signature?
3. Should it be accepted without the signature of the judge or compact official?

4. What happens if the case is accepted and the signature is never obtained?
5. If the signature is not necessary for the transfer to be investigated or approved, why is the signature required on the form, could that create a legal challenge?

Applicable Compact Provisions and Rules:

ICJ Rule 4-101(2) provides:

"No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules."

ICJ Rule 4-102[1] provides:

1. Each ICJ Office shall develop policies/procedures on how to handle ICJ matters within their state.

2. The sending state shall maintain responsibility until supervision is accepted by, and the juvenile has arrived in, the receiving state.

    a. State Committed (Parole) Cases – When transferring a juvenile parolee, the sending state shall not allow the juvenile to transfer to the receiving state until the sending state's request for transfer of supervision has been approved, except as described in 4-102(2)(a)(ii).

        i. The sending state shall ensure the following referral is complete and forwarded to the receiving state forty-five (45) calendar days prior to the juvenile's anticipated arrival: Form IV Parole or Probation Investigation Request, Form IA/VI Application for Services and Waiver, and Order of Commitment. The sending state shall also provide copies (if available) of the Petition and/or Arrest Report(s), Legal and Social History, and any other pertinent information deemed to be of benefit to the receiving state. Parole conditions, if not already included, shall be forwarded to the receiving state upon the juvenile's

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

release from an institution. Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to the juvenile relocating to the receiving state.

ii. When it is necessary for a State Committed (parole) juvenile to relocate prior to the acceptance of supervision, under the provision of Rule 4-104(4), the sending state shall determine if the circumstances of the juvenile's immediate relocation justifies the use of a Form VII Out-of-State Travel Permit and Agreement to Return, including consideration of the appropriateness of the residence. If approved by the sending state, it shall provide the receiving state with the approved Form VII Out-of-State Travel Permit and Agreement to Return along with a written explanation as to why ICJ procedures for submitting the referral could not be followed.

iii. If not already submitted, the sending state shall provide the complete referral to the receiving state within ten (10) business days of the Form VII Out-of-State Travel Permit and Agreement to Return being issued. The receiving state shall make the decision whether or not it will expedite the referral.

b. Probation Cases – The sending state shall ensure the following referral is complete and forwarded to the receiving state. Form IV Parole or Probation Investigation Request, Form IA/VI Application for Services and Waiver, Order of Adjudication and Disposition, Conditions of Probation and Petition and/or Arrest Report(s). The sending state should also provide Legal and Social History, and any other pertinent information (if available). Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to relocating if the juvenile is not already residing in the receiving state.

3. The sending state shall forward additional documentation, if available, at the request of the receiving state. The receiving state shall not delay the investigation pending receipt of the additional documentation. If the juvenile is already residing in the receiving state, the

receiving state shall obtain the juvenile's signature on the Form IA/VI Application for Service and Waiver.

Analysis and Conclusions:

Minnesota asks several questions which all ultimately can be reduced to a central issue, namely whether a request for transfer of supervision of an eligible juvenile under the compact can permissibly be processed without the signature of the 'sentencing' judge or compact official?
An examination of the ICJ rules reveals that the unambiguous language of ICJ Rule 4-102 (2)(a)(i) and (2)(b) leave no question that in both parole and probation cases, the ICJ Office in the sending state **shall ensure that referral documents**, **including the Form IA/VI, are "complete and forwarded to the receiving state"** (emphasis supplied). However, Rule 4-102(3), states that ". . . The receiving state shall not delay the investigation pending receipt of the additional documentation, If the juvenile is already residing in the receiving state, the receiving state shall obtain the juvenile's signature on the Form IA/VI Application for Services and Waiver."

Since the term "complete" is not defined in either the provisions of the Compact or ICJ rules, recourse to the dictionary is all that is necessary in order to determine the plain meaning of the word, which is, "having all the necessary or appropriate parts, elements, or steps." (Webster's Dictionary 2015). Without question, Form IA/VI requires the signature of a judge or compact official in order to be "complete," but the provisions of Rule 4-102(3) create an exception which allows Form IA/VI to be processed with the judge's signature alone if the juvenile is already residing in the receiving state. While the better practice might be to eliminate the need for the judges' signature, the current language of the applicable rules can only be interpreted in harmony with each other if Rule 4-102(3) is treated as an exception.

The above language of ICJ Rule 4-102(2) is "plain and unambiguous" in its mandatory obligation placed upon the sending state to "ensure" that Form IA/VI is "complete and forwarded to the receiving state." As the U.S. Supreme Court has made clear, "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." See *Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).* It is also necessary to interpret these provisions in harmony with each other if possible. As pointed out in FDA v. Brown & Williamson Tobacco Corporation 529 U.S. 120, 121 (2000), ". . . the court

should not confine itself to examining a particular statutory provision in isolation. Rather, it must place the provision in context, interpreting the statute to create a symmetrical and coherent regulatory scheme. Id at 121. Thus, based on the above language of ICJ Rules 4-101 and 4-102, the sending state is required to obtain the signature of the judge or Compact official in order to comply with this rule subject to the limited exception described.

Summary:

Though Minnesota asks several questions, the ultimate issue whether a request for transfer of supervision of an eligible juvenile under the compact can permissibly be processed without the signature of the 'sentencing' judge or compact official. ICJ Rule 4-102(2)(a)(i) and (2)(b) leave no question that in both parole and probation cases, the ICJ Office in the sending state **shall ensure that referral documents**, **including the Form IA/VI, are "complete and forwarded to the receiving state."** (emphasis supplied). However, Rule 4-102(3) states ". . . The receiving state shall not delay the investigation pending receipt of the additional documentation. If the juvenile is already residing in the receiving state, the receiving state shall obtain the juvenile's signature on the Form IA/VI Application for Services and Waiver." Based on the literal language of ICJ Rule 4-102, the sending state is required to obtain the signature of the judge or Compact official in order to comply with this rule, subject to the limited exception noted in Rule 4-102(3).

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ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description: Pre-adjudication home evaluation requests	**Dated:** July 28, 2016 **Revised:** March 14, 2018[1]

Background:

Pursuant to ICJ Rule 9-101(3)[1], the ICJ Rules Committee has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

The ICJ Rules Committee is requesting a formal advisory opinion regarding a sending states ability to request that a receiving state conduct a home evaluation prior to a juvenile being adjudicated.

The following are the issues the Rules Committee is asking be addressed:

1. Can a state request a home evaluation for a juvenile who is pending adjudication for charges in the sending state?

2. What must the sending state provide when making such a request?

3. Is the receiving state required to provide a recommendation for acceptance or denial based on this information and the results of the home evaluation?

Applicable Compact Provisions and Rules:

ICJ Rule 1-101 provides the following definition:

"Home Evaluation: an evaluation and subsequent report of findings to determine if supervision in a proposed residence is in the best interest of the juvenile and the community."

ICJ Rule 4-101(2), regarding Eligibility Requirements for Transfer of Supervision, in relevant part states:

[1] This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:
Pre-adjudication home evaluation requests

Dated:
July 28, 2016

Revised:
March 14, 2018[1]

> No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules. A juvenile shall be eligible for transfer under the ICJ if the following conditions are met: . . .
>
> > b. is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state; and . . .

ICJ Rule 4-102(4), regarding Sending and Receiving Referrals, states:

"The receiving state shall, within forty-five (45) calendar days of receipt of the referral, forward to the sending state the home evaluation along with the final approval or disapproval of the request for supervision or provide an explanation of the delay to the sending state."

Analysis and Conclusions:

The Rules Committee asks if a state is permitted to request a home evaluation for a juvenile who is pending adjudication for charges in in the sending state, and, if so, what must the sending state provide in making such a request and whether the receiving state is required to provide a recommendation for acceptance or denial based on this information and the results of the home evaluation?

While the existing ICJ Rules don't explicitly prohibit a sending state from requesting a home evaluation for a juvenile pending adjudication, the term "home evaluation" is only used in the definitions provided in ICJ Rule 1-101 and in the specified procedures for sending and receiving ICJ referrals in ICJ Rule 4-102. These specified procedures are required to be followed with respect to a referral for transfer of a juvenile supervision case in which the juvenile is eligible for transfer under ICJ Rule 4-101 which provides the eligibility requirements for ICJ transfers.

Under the provisions of ICJ Rule 4-101(2), a juvenile is eligible for transfer only if the conditions specified in sub-sections a. through f. are satisfied. These conditions include the requirement that the juvenile "is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state. . ."

As in other cases of statutory construction, the provisions of the Compact statute and ICJ Rules should be interpreted in harmony with other sections of the statute, or in this case the above

referenced ICJ Rules and *"plain meaning is examined by looking at the language and design of the statute as a whole."* See, *Lockhart v. Napolitano, 573 F.3d 251 (6th Cir. 2009).* As the U.S. Supreme Court has further clarified, [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.,* 519 *U.S. 337, 340 (1997) (internal quotation marks omitted).*

Consistent with such a "harmonious" and consistent interpretation of the ICJ Rules, the above referenced provisions providing the context within which the term "home evaluation" is used provides an appropriate means of determining the intent of a statute or rule. Accordingly, when read together in the context of the current ICJ Rules, it seems clear that a request for a home evaluation is intended to be used when a request for a transfer of supervision is made by a sending state on behalf of a juvenile who is "eligible for transfer under ICJ," which includes the requirement that the juvenile "is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state." *See ICJ Rule 4-101(2)(b).*

Based upon the above provisions of the ICJ Rules and legal analysis, while a sending state is not explicitly prohibited from requesting a home evaluation for a juvenile pending adjudication on charges in the sending state, under the above referenced ICJ Rules, a receiving state is not required to conduct such a home evaluation or report. Since the answer to this question, to which the two subsidiary questions are raised is in the negative, it is unnecessary to address them.

Summary:

Based upon the above provisions of the ICJ Rules and legal analysis, while a sending state is not explicitly prohibited from requesting a home evaluation for a juvenile pending adjudication on charges in the sending state, under the above referenced ICJ Rules, a receiving state is not required to conduct such a home evaluation or report.

Interstate Commission for Juveniles	Opinion Number: 02-2017	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: MaryLee Underwood** **Chief Legal Counsel: Richard L. Masters**		**Dated:** **October 6, 2017**
Description: Out-of-State Juvenile Sentenced to Incarceration		

Background:

Pursuant to ICJ Rule 9-101(3), the state of Arizona has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

Arizona is requesting a formal advisory opinion regarding whether a juvenile who has been adjudicated delinquent and sentenced to a period of confinement in Iowa may be placed in an Arizona secured facility to serve a court-ordered term of incarceration, with costs to be paid by the State of Iowa.

Applicable Compact Provisions and Rules:

Article I of the Compact, in relevant parts, states:

> "The compacting states to the Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others."

Article I of the Compact further states:

> "It is the purpose of this compact, through means of joint and cooperative action among the contracting states to: … (D) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles."

Rule 4-101 (1) states:

> "Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state."

Rule 4-101(2) , in relevant parts, states:

> "No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules. A juvenile shall be eligible for transfer under ICJ if the following conditions are met:
>
> …
>
> f. i. will reside with a legal guardian, relative, non-relative or independently, excluding residential facilities; or

ii. is a full time student at an accredited secondary school, or accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment.

Rule 4-101 (5) states:

"A juvenile who is not eligible for transfer under this Compact is not subject to these rules."

Analysis and Conclusions:

The applicability of the Compact is clearly limited to the "proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole . . ." and juveniles "who have absconded, escaped or run away from supervision and control." Because this juvenile was already sentenced and will be transferred to serve a period of confinement in a secure detention facility, the juvenile does not qualify as a "juvenile under juvenile jurisdiction in the sending state," as required by Article I of the Compact and ICJ Rule 4-101(1). Furthermore, juvenile is not eligible for transfer because the conditions described in ICJ Rule 4-101(2)(f) are not met. Therefore, pursuant to ICJ Rule 4-101(5), the juvenile is not subject to ICJ Rules.

However, it is noteworthy that Article I of the Compact also provides that one of the ICJ's purposes is to authorize "joint and cooperative action among the compacting states to: . . . (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services . . ." Standing alone, this provision is arguably broad enough to embrace the above situation.

Nonetheless, as was the case with the facility described in ICJ Advisory Opinion 03-2014, the current ICJ Rules do not contemplate the logistical implications which such a group of juveniles would entail. Furthermore, pursuant to ICJ Rule 4-101 (5), "A juvenile who is not eligible for transfer under this Compact is not subject to these rules." Therefore, while the ICJ does not prohibit the arrangement described above, it does not apply to such juveniles because of the nature of their status as 'incarcerated.'

Summary:

The ICJ does not prohibit a juvenile who has been adjudicated delinquent and sentenced to a period of confinement in Iowa from being placed in out-of-state correctional facilities in Arizona to serve a court ordered term of incarceration. However, the ICJ does not apply to such juveniles because their status as 'incarcerated' means they are not subject to the ICJ.

Interstate Commission for Juveniles	Opinion Number: 01-2018	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: MaryLee Underwood** **Chief Legal Counsel: Richard L. Masters**		**Dated:** **January 25, 2018**
Description: Is a sending state required to transfer supervision of a juvenile adjudicated there for an offense but who resides with a parent in the receiving state in a case where the parent may be homeless? If so, can enforcement action be taken if the sending state refuses to implement the transfer under the ICJ?		

Background:

Pursuant to ICJ Rule 9-101(3), the state of Vermont has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the issues described below.

Issues:

1. Is Vermont (sending state) required to transfer supervision to New Hampshire (receiving state) where the juvenile was adjudicated for an offense committed in Vermont and also attends school in Vermont, but resides with a parent in New Hampshire?

2. When there is no parent or legal guardian residing in the sending state, can a sending state refuse to transfer supervision based on information that the parent is homeless or at risk of homelessness?

3. Can enforcement action be taken against a sending state if a court refuses to implement provisions of the ICJ?

Applicable Compact Provisions and Rules:

Article I of the Compact, in relevant parts, states:

> "It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: . . . (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance. . ."

Article IV of the Compact, in relevant parts, states:

> "The Commission shall have the following powers and duties: . . .
>
> 4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.
>
> . . .
>
> 8. To establish and appoint committees and hire staff which it deems necessary for the

carrying out of its functions

. . .

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

Articles VII (B) (3) states:

"The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact."

Article XI (B) (1), in relevant part, states:

"If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;
b. Alternative Dispute Resolution;
c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. . . "

Article XIII (B) (1) states:

"All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states."

Rule 101, in relevant parts, states:

"<u>Relocate:</u> when a juvenile remains in another state for more than ninety (90) consecutive days in any twelve (12) month period."

ICJ Advisory Opinion

Issued by:
Executive Director: MaryLee Underwood
Chief Legal Counsel: Richard L. Masters

Dated:

January 25, 2018

Description: Is a sending state required to transfer supervision of a juvenile adjudicated there for an offense but who resides with a parent in the receiving state in a case where the parent may be homeless? If so, can enforcement action be taken if the sending state refuses to implement the transfer under the ICJ?

Rule 4-101 (1) states:

> "Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state."

Rule 4-101 (2), in relevant parts, states:

> "No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules…"

Rule 4-104 (4) states:

> "Supervision may be denied when the home evaluation reveals that the proposed residence is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state, except when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state."

Rule 9-103 (2) states:

If the Commission determines that any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Commission may impose any or all of the following penalties.

a. Remedial training and technical assistance as directed by the Commission;
b. Alternative dispute resolution;
c. Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Commission;
d. Suspension and/or termination of membership in the Compact. . ."

<u>Analysis and Conclusions</u>:

Regarding the question of whether Vermont is required to transfer supervision in cases such as that described above, the answer is unequivocally "yes." The Interstate Compact for Juveniles (ICJ) is a Congressionally-authorized, legally-binding interstate compact which is both statutory

and contractual and was developed specifically to regulate the interstate movement of delinquent and status offense juveniles.

ICJ Rule 4-101(2) provides: "No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules." ICJ Rule 101 defines "relocate" to mean "when a juvenile remains in another state for more than ninety (90) consecutive days in any twelve (12) month period." Thus, if the juvenile in question continues to reside in New Hampshire and probation is ordered by the Vermont court, the Compact and the ICJ Rules are clearly applicable and require that supervision must be transferred.

With respect to the second question, while ICJ Rule 4-104 addresses home evaluations conducted in all ICJ cases to assess **whether a proposed residence is suitable**, the applicable rule also recognizes that parents have constitutionally protected interests in child rearing. It provides that, notwithstanding a finding that the proposed residence is unsuitable, supervision must be transferred if there is no legal guardian in the sending state. (*emphasis added*).

ICJ Rule 4-104(4) provides: "**Supervision may be denied when the home evaluation reveals that the proposed residence is unsuitable** or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state, ***except when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state"*** *(emphasis added).*

Thus, under the provisions of the ICJ and its authorized rules, the State of Vermont, as the "sending state," is not permitted to refuse to transfer supervision under the ICJ, even though available information suggests that the parent is homeless or at risk of homelessness, because there is no parent or legal guardian residing in the sending state.

The legal authority requiring states to enforce the provisions of the ICJ and authorized rules is well settled. As a congressionally approved interstate compact, the provisions of the ICJ and its duly authorized rules enjoy the status of federal law. *See Cuyler v. Adams*, 449 U.S. 433, 440 (1981); *Carchman v. Nash*, 473 U.S. 716, 719 (1985) ("The agreement is a congressionally sanctioned interstate compact within the Compact Clause and thus is a federal law subject to

federal constructions." (Citation omitted)); *see also Alabama v. Bozeman*, 533 U.S. 146 (2001) and *Reed v. Farley*, 512 U.S. 339 (1994); *also; M.F. v. N.Y. Exec. Dep't, Div. of Parole, 640 F.3d 491(2d Cir. 2011); Doe v. Pennsylvania Board of Probation & Parole*, 513 F.3rd 95, 103 (3rd Cir. 2008). The duly promulgated rules are equally binding upon the parties to the compact.

By entering the ICJ, the member states contractually agree on certain principles and rules. All state officials and courts are required to effectuate the terms of the compact and ensure compliance with the rules. *In Re Stacy B., 190 Misc.2d 713, 741 N.Y.S.2d 644 (N.Y. Fam.Ct. 2002)* ("The clear import of the language of the Compact is that the state signatories to the compact have agreed as a matter of policy to abide by the orders of member states . . . and to cooperate in the implementation of the return of runaway juveniles to such states.") Thus, the supervision of youth engaged in interstate travel that does not meet ICJ requirements is a violation of the Compact.

One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commissions through the vehicle of an interstate compact. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951). Pursuant to *Dyer* and other U.S. Supreme Court cases, the states may validly agree, under the terms of an interstate compact with other states, to delegate to interstate commissions, or agencies, legislative and administrative powers and duties. *Hinderlider v. La Plata River & Cherry Creek Ditch Co*., 304 U.S. 92 (1938); *Scott v. Virginia*, 676 S.E.2d 343, 346 (Va. App. 2009); *Dutton v. Tawes*, 171 A.2d 688 (Md. 1961); *Application of Waterfront Commission of New York Harbor*, 120 A.2d 504, 509 (N.J. Super. 1956). Accordingly, the rules of the compact are legally authorized and approved by the Commission, and no state which is a party to the contractually binding provisions of the compact is permitted to unilaterally modify any of these requirements under either the contract clause (Art. I, Sec. 10, Cl.1) or the compact clause (Art. I, Sec. 10, Cl.1) of the U.S. Constitution, pursuant to which these rules are transformed into federal law and enforceable under the Supremacy Clause. See *Cuyler*, supra., p. 440; *Carchman*, supra., p. 719).

Should a compact member state refuse to enforce the provisions of the Compact or its authorized rules, remedies for breach of the Compact can include granting injunctive relief or awarding damages. *See e.g., South Dakota v. North Carolina, 192 U.S. 286, 320-21 (1904); Texas v. New*

Mexico, 482 U.S. at 130 ("The Court has recognized the propriety of money judgments against a State in an original action, and specifically in a case involving a compact. In proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a State."). The Eleventh Amendment provides no protection to states in suits brought by other states. *Kansas v. Colorado, 533 U.S. 1, 7 (2001)* (in proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a state). In its most recent pronouncement on the subject, the U.S. Supreme Court unequivocally held that obligations imposed by a duly authorized interstate commission are enforceable on the states. Moreover, such commissions may be empowered to determine when a state has breached its obligations and may, if so authorized by the compact, impose sanctions on a non-complying state. *See Alabama v. North Carolina, 560 U.S.360 (2010).*

In addition, the Court, in *Alabama v. North Carolina, supra.* made clear that an interstate compact commission composed of the member states may be a party to an action to enforce the compact if such claims are wholly derivative of the claims that could be asserted by the party states. *Id.* Moreover, the Court held that when construing the provisions of a compact, in giving full effect to the intent of the parties, it may consult sources that might differ from those normally reviewed when an ordinary federal statute is at issue, including traditional canons of construction and the *Restatement (Second) of Contracts. Id. at 2308-12.*

In light of the above authority, and the fact that the explicit language of the ICJ requires that "the courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent" makes it incumbent upon judges and other state officials to understand the requirements of the ICJ and its rules as well as the consequences of non-compliance. Under Article I of the Compact, among the purposes of the Commission is to "monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance." Article IV of the Compact provides that among the powers and duties of the Commission is "to enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to, the use of judicial process." Article XIII (B) provides that "all lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission are binding upon the compacting states."

Moreover, Article IV also provides that the Interstate Commission has the power and duty "to establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions. . ." and "to perform such functions as may be necessary or appropriate to achieve the purposes of this compact." Articles VII and XI of the Compact authorize the interstate commission, in the reasonable exercise of its' discretion, to enforce the compact through various means set out in Article XI (B) which include required remedial training and technical assistance, imposition of fines, fees and costs, suspension or termination from the compact, and judicial enforcement in U.S. District Court against any compacting state in default of the compact or compact rules with the prevailing party being entitled to recover all costs of such litigation including reasonable attorney's fees.

Under the above referenced compact provisions and pursuant to the delegated statutory authority of the compact, the Commission has also promulgated Rule 9-103 (2) under which the Interstate Commission is empowered with the authority and charged with the duty to determine whether ". . . any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the bylaws or any duly promulgated rules . . ." and in the event such a determination is made the Commission is empowered to "impose any or all" of the penalties set forth in that rule and for which authority is expressly provided in the above referenced provisions of the compact.

Summary:

Vermont (sending state) is required to transfer supervision to New Hampshire (receiving state) when the juvenile was adjudicated for an offense committed in Vermont and also attends school in Vermont but resides with a parent in New Hampshire. When there is no parent or legal guardian residing in the sending state, the sending state cannot refuse to transfer supervision based on information that the parent is homeless or at risk of homelessness. In the event of non-compliance enforcement action is statutorily authorized if a court of the sending state refuses to implement provisions of the ICJ.

INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Why Your State Can Be Sanctioned for Violating the Compact

September 2012

At the request of the ICJ Executive Committee, to ensure courts and other agencies are aware of ICJ's requirements and rules, the following legal analysis has been prepared as a resource to document both the legal authority and binding nature of the compact and its rules on the member states. Also emphasized, are the legal consequences of non-compliance and the sanctions which the Commission is authorized to impose on an offending state under the terms of the compact.

The Interstate Compact for Juveniles (ICJ) is a formal agreement between member states that seeks to promote public safety by systematically controlling the interstate movement of juveniles on probation or parole as well as the return of juveniles who have left their state of residence. The Interstate Commission for Juveniles (Commission) is charged with overseeing the day-to-day operations of the ICJ and through its rule making powers, seeks to achieve the goals of the ICJ.

The Commission is also empowered to monitor compliance with the interstate compact and its duly promulgated rules, and where warranted, initiate interventions to address and correct noncompliance. Common misconceptions regarding the rules and their authority have led to violations of the compact. Examples of noncompliance with interstate compact rules include:

- Failing to apprehend and detain a juvenile for the purposes of retaking and return;
- Allowing a juvenile sex offender to travel to a receiving state without the receiving state's approval;
- The termination of a juvenile's supervision to prevaricate any delays in effecting their return to another state.

While judicial immunity applies to actions taken by courts and those court staff for liability, which may arise in the performance of duties, which are integral to the judicial function and qualified immunity, provides some protection from civil liability for prosecutors and other state officials monitoring the compact. Neither judges, prosecutors nor other state officials can immunize a state from liability, which results from their actions arising under the terms of an interstate compact to which the state has bound itself by legislative enactment of the compact. *See Alabama v. North Carolina, 560 U.S._ _, 130 S.Ct. 2295, 176 L.Ed.2d 1070 (June 1, 2010), also Texas v. New Mexico, 462 U.S. 554, 564 (1983)*

By entering into this compact, the member states contractually agree on certain principles and rules and all state officials and courts are required to effectuate the terms of the compact and ensure compliance with the rules. *In Re Stacy B., 190 Misc.2d 713, 741 N.Y.S.2d 644 (N.Y. Fam.Ct. 2002)* ("The clear import of the language of the Compact is that the state signatories to the compact have agreed as a matter of policy to abide by the orders of member states . . . and to cooperate in the implementation of the return of runaway juveniles to such states.") Once entered, the terms of the compact as well as any rules and regulations authorized by the compact supersede substantive state laws that may be in conflict. *See West Virginia ex rel. Dyer, supra at 29.* This applies to prior law (*See Hinderlider, infra,* 304 U.S. at 106) and subsequent statutes of the signatory states. *See Green v. Biddle,* 21 U.S. (8 Wheat.) 1, 92 (1823). It is well settled that as a congressionally approved interstate compact, the provisions of the ICJ and its duly authorized rules enjoy the status of federal law. *See*

Cuyler v. Adams, 449 U.S. 433, 440 (1981); *Carchman v. Nash*, 473 U.S. 716, 719 (1985) ("The agreement is a congressionally sanctioned interstate compact within the Compact Clause and thus is a federal law subject to federal constructions." (Citation omitted)); *see also Alabama v. Bozeman*, 533 U.S. 146 (2001) and *Reed v. Farley*, 512 U.S. 339 (1994); *and Doe v. Pennsylvania Board of Probation & Parole*, 513 F.3rd 95, 103 (3rd Cir. 2008).

The duly promulgated rules are equally binding upon the parties to the compact. One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commissions through the vehicle of an interstate compact. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951). It has been held that the states may validly agree, by interstate compact with other states, to delegate to interstate commissions, or agencies, legislative and administrative powers and duties. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938); Scott v. Virginia, 676 S.E.2d 343, 346 (Va. App. 2009); *Dutton v. Tawes*, 171 A.2d 688 (Md. 1961); *Application of Waterfront Commission of New York Harbor*, 120 A.2d 504, 509 (N.J. Super. 1956). Thus, rules of the compact are legally authorized and approved by the Commission and no state which is a party to the contractually binding provisions of the compact is permitted to unilaterally modify any of these requirements.

In *Dyer*, the Court also made clear that an interstate compact cannot be "… given final meaning by an organ of one of the contracting states." Member states may not take unilateral actions, such as the adoption of conflicting legislation or the issuance of executive orders or court rules that violate the terms of a compact. *See Northeast Bancorp v. Bd. of Governors of Fed. Reserve System*, 472 U.S. 159, 175 (1985). *See Wash. Metro. Area Transit Auth. v. Once Parcel of Land*, 706 F.2d 1312, 1318 (4th Cir. 1983); *Kansas City Area Transp. Auth. v. Missouri*, 640 F.2d 173, 174 (8th Cir. 1981). *See also McComb v. Wambaugh*, 934 F. 2d 474, 479 (3rd Cir. 1991); *Seattle Master Builders Ass'n v. Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986); *Rao v. Port Authority of New York*, 122 F. Supp. 595 (S.D.N.Y. 1954), aff'd 222 F.2d 362 (2nd Cir. 1955); *Hellmuth & Associates, Inc. v. Washington Metropolitan Area Transit Authority*, 414 F. Supp. 408, (Md. 1976).

The legal standing of compacts as contracts and instruments of national law applicable to the member states annuls any state action in conflict with the compact's terms and conditions. Therefore, once adopted, the only means available to change the substance of a compact (and the obligations it imposes on a member state) are through withdrawal and renegotiation of its terms, or through an amendment to the compact (or in this case, the administrative rules) adopted by all member states in essentially the same form.

The contractual nature of the compact controls over any unilateral action by a state; no state being allowed to adopt any laws "impairing the obligation of contracts," including a contract adopted by state legislatures pursuant to the Compact Clause. *See* U.S. Const. art. I, § 10, cl. 1 ("No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts …"); *see also West Virginia ex rel. Dyer, supra* at 33; *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 101 Colo. 73 (1937), *rev'd* 304 U.S. 92 (1938).

In interpreting and enforcing compacts the courts are constrained to effectuate the terms of the agreement (as binding contracts) so long as those terms do not conflict with constitutional principles. Once a compact between states is approved, it is binding on the states and its citizens. *See, New Jersey v. New York, 523 U.S. 767 (1998).* Thus, "Unless the compact . . . is somehow unconstitutional, no court may order relief inconsistent with its express terms, no matter what the equities of the circumstances might otherwise invite." *New York State Dairy Foods v. Northeast Dairy Compact Comm'n, 26 F. Supp. 2d 249, 260 (D. Mass. 1998), aff'd, 198 F.3d 1 (1st Cir. 1999), cert. denied, 529 U.S. 1098 (2000).* For example, in *Texas v. New Mexico, 462 U.S. 554, 564 (1983)* the Supreme Court sustained exceptions to a special master's recommendation to enlarge the Pecos River Compact Commission, ruling that one consequence of a compact becoming "a law of the United States" is that "no court may order relief inconsistent with its express terms." However, congressional consent may change the venue in which compact disputes are ultimately litigated.

Because congressional consent places the interpretation of an interstate compact in the federal courts, those same courts have the authority to enforce the terms and conditions of the compact. No court can order relief inconsistent with the purpose of the compact. *See, New York State Dairy Foods v. Northeast Dairy Compact Comm'n, 26 F. Supp. 2d 249**,** affirmed, 198 F.3d 1, 1999 (1st Cir. Mass. 1999), cert. denied 529 U.S. 1098 (2000).* However, where the compact does not articulate the terms of enforceability, courts have wide latitude to fashion remedies that are consistent with the purpose of the compact. The U.S. Supreme Court addressed this matter observing, "That there may be difficulties in enforcing judgments against States counsels caution, but does not undermine our authority to enter judgments against defendant States in cases over which the Court has undoubted jurisdiction, authority that is attested to by the fact that almost invariably the 'States against which judgments were rendered, conformably to their duty under the Constitution, voluntarily respected and gave effect to the same.'" *See, Texas v. New Mexico, 482 U.S. 124,130, 131 (1987).* "By ratifying the Constitution, the States gave this Court complete judicial power to adjudicate disputes among them . . . and this power includes the capacity to provide one State a remedy for the breach of another." *Id. at 128.*

Remedies for breach of the compact can include granting injunctive relief or awarding damages. *See e.g., South Dakota v. North Carolina, 192 U.S. 286, 320-21 (1904); Texas v. New Mexico, 482 U.S. at 130* ("The Court has recognized the propriety of money judgments against a State in an original action, and specifically in a case involving a compact. In proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a State."). The Eleventh Amendment provides no protection to states in suits brought by other states. *Kansas v. Colorado, 533 U.S. 1, 7 (2001)* (in proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a state).

In its most recent pronouncement on the subject, the U.S. Supreme Court unequivocally held that obligations imposed by a duly authorized interstate commission are enforceable on the states. Moreover, such commissions may be empowered to determine when a state has breached its obligations and may, if so authorized by the compact, impose sanctions on a non-complying state. *See Alabama v. North Carolina, 560 U.S._ _, 130 S.Ct. 2295, 176 L.Ed.2d 1070 (June 1, 2010).*

In addition, the Court made clear that an interstate compact commission composed of the member states may be a party to a compact lawsuit under the original jurisdiction of the U.S. Supreme Court if such claims are wholly derivative of the claims that could be asserted by the party states. *Id.* Moreover, the Court held that when construing the provisions of a compact, in giving full effect to the intent of the parties, it may consult sources that might differ from those normally reviewed when an ordinary federal statute is at issue, including traditional canons of construction and the *Restatement (Second) of Contracts. Id. at 2308-12.*

In light of the above authority, and the fact that the explicit language of the compact requires that "**the courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent**" makes it incumbent upon judges and other state officials to understand the requirements of the ICJ and its rules as well as the consequences of non-compliance. Under Article I of the Compact, among the purposes of the Commission is to **"monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance."** Article IV of the Compact provides that among the powers and duties of the Commission is **"to enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to, the use of judicial process."** Article XIII (B.) provides that **"all lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission are binding upon the compacting states."**

Moreover, Article IV also provides that the Interstate Commission has the power and duty "to establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions. . ." and "to perform such functions as may be necessary or appropriate to achieve the purposes of this compact." Articles VII and XI of the Compact authorizes the interstate commission, in the reasonable exercise of its' discretion, to enforce the compact either through various means set out in Article XI, Section B (which includes required remedial training and technical assistance, imposition of fines, fees and costs, suspension or termination from the compact, and judicial enforcement in U.S. District Court against any compacting state in default of the compact or compact rules with the prevailing party being entitled to recover all costs of such litigation including reasonable attorney's fees.)

Under the above compact provision and pursuant to the delegated statutory authority of the compact, the Commission has also promulgated Rule 9-103 (2.) under which the Interstate Commission is empowered with the authority and charged with the duty to determine whether ". . . any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules . . ." and in the event such a determination is made **the Commission is empowered to "impose any or all" of the penalties set forth in that rule and for which authority is expressly provided in the above referenced provisions of the compact.**

The compact's governing structure anticipates that enforcement of the compact through judicial process will be used only in those cases where training and technical assistance, alternative dispute resolution or fines, fees, and costs have been unsuccessful. However, where necessary, the provisions for enforcement through federal court action to secure injunctive and other appropriate relief is a powerful tool to secure compliance with the

provisions of the compact and compact rules. Before the ICJ statute was enacted by the states to replace the old Association of Juvenile Compact Administrators, the enforcement of the compact was generally left to either the goodwill of the member states or through an ill-defined and cumbersome process before the U.S. Supreme Court. Goodwill can only go so far, and the provisions of ICJ clearly articulate a system of enforcement with which compliance with the compact can be obtained through an escalating series of alternatives culminating in federal litigation which can provide injunctive and monetary relief and recovery of attorney's fees and costs.

INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Temporary Secure Detention of Non-Adjudicated Juvenile Runaways

October 2013

The ICJ Executive Committee requested the following legal analysis to ensure courts and other agencies are aware of ICJ's requirements and rules. This analysis will serve as a resource to document the circumstances under which a non-adjudicated juvenile may permissibly be detained under the ICJ as a recognized exception to the Juvenile Justice and Delinquency Prevention Act (JJDPA) and the continued need for this exemption to be maintained.

In Rule 1-101, the Compact defines "Runaway" as "persons within the juvenile jurisdictional age limit established by the home state who have voluntarily left their residence without permission of their legal guardian or custodial agency but who may or may not have been adjudicated." Pursuant to ICJ Rules 6-101, 6-102, and 6-103, a non-delinquent runaway may be securely detained to allow such juvenile to be safely returned to a parent or guardian having custody of the youth. While the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) generally prohibits placing status offenders in custody, the relevant provisions of the reauthorization of the JJDPA, 42 U.S.C. §5633(a), clearly provide an exemption for secure detention for out-of-state runaway youth held under the ICJ.

As stated in guidance received from OJJDP, 42 U.S.C. 5633(a), by its language, creates an exemption to the deinstitutionalization of status offenders and permits detention of *"juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;"* See 42 U.S.C. 5633(a)(11)(A)(iii). Moreover, there is no specific time frame set forth in the above provision. Section 42 U.S.C. 5633(a)(11)(A)(iii) clearly allows such detention as long as the juvenile is being 'held in accordance with the Interstate Compact on Juveniles.' This includes the duly authorized administrative rules promulgated under the authority of the ICJ.

A cardinal rule of statutory construction begins with the assumption that in the absence of a special definition in the text of the statute or regulation, ***"the ordinary meaning of that language accurately expresses the legislative purpose."*** *Engine Mfrs. Assn. v. South Coast Air Quality Management Dist.*, 541 U.S. 246, 252, 124 S.Ct. 1756, 158 L.Ed.2d 529 (2004). As the U.S. Supreme Court recently reaffirmed, "Applying "settled principles of statutory construction," "**we must first determine whether the statutory text is plain and unambiguous**," and **"[i]f it is, we must apply the statute according to its terms."** *Carcieri v. Salazar*, 555 U.S. ----, ----, 129 S.Ct. 1058, 1063-1064, 172 L.Ed.2d 791 (2009); See also *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

The literal language of 42 U.S.C. 5633(a)(11)(A)(iii) contains no conditions or limitations on the exemption other than the juveniles are "held in accordance with the Interstate Compact on Juveniles as enacted by the State." Therefore, any State which has enacted the ICJ is permitted to secure detention for out-of-state runaway youth.

However, compact offices should also take note of the concerns previously expressed by OJJDP and the Coalition for Juvenile Justice ("CJJ"). One concern is the proposed Valid Court Order ("VCO") exemption 'phase out' and the growing trend, verified by the current efforts of CJJ to eliminate such exemptions. This suggests that alternatives to secure detention and correctional placements need to be identified for status offenders, including

 *Amendments to ICJ Rules effective February 1, 2016 impacted rules referenced in this White Paper. As a result, White Paper: Temporary Secure Detention of Non-Adjudicated Juvenile Runaways is superseded to the extent of rule amendments effective February 1, 2016.

runaways, as this aspect of juvenile compact administration is considered going forward. *See Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration, Coalition for Juvenile Justice, 2013*

According to CJJ, ". . . judges and courts face complex challenges as a result of laws that allow youth, by virtue of their minor status, to be charged in juvenile court for "status offenses," i.e., actions that are not illegal at the age of adulthood, including curfew violations, possession of alcohol and tobacco, running away and truancy." CJJ, in its recent monograph, also reports that:

> "Placing children and youth who commit status offenses in locked detention jeopardizes their safety and well-being. Too often, detained youth are held in overcrowded, understaffed facilities—environments that can exacerbate unmet needs and breed social tension or even violence. Yet, of the estimated 150,700 status offense cases annually petitioned to the courts, nationwide, nearly 10 percent are placed in locked confinement at some stage between referral to court and disposition. In addition, nearly 20 percent of non-delinquent youth, including status offenders, charged with technical violations of court orders and non-offending youth detained for 'protective custody,' are placed in living units with youth who have killed someone."

With respect to the Valid Court Order exception, which is similar to that provided for the ICJ, the CJJ brief notes that, "While the DSO prohibition against locked detention of status offenders has stood since 1974, since 1984 the valid court order (VCO) exception to the DSO core requirement has allowed detention of adjudicated status offenders, under certain conditions, if they violate a VCO or direct order from the court. These orders can be as general as "stop running away from home" or "attend school regularly." Almost half of the U.S. states and territories prohibit use of the VCO exception in statute or do not actively utilize the exception. In 30 states where the exception is used, it is typically used by a single court or a small number of judges, at times to excess."

Interestingly, while the above referenced CJJ study mentions 'running away' as an example of the status offenses which should not be a basis for detention of juveniles, no reference is made to either interstate runaways or the ICJ. Presumably, this was not an oversight because the above referenced exception to the relevant provision of the JJDPA found at 42 U.S.C. §5633(a) 11(A) iii expressly references "**juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State"** (emphasis added).

Notwithstanding the fact that the "ICJ exemption," has not been specifically mentioned, it seems prudent to provide CJJ and other stakeholders, such as the National Council of Juvenile and Family Court Judges ("NCJFCJ"), with statistical data showing the numbers of interstate runaways and the limited options for effecting the apprehension and safe return of such juveniles to the custody of their parents or guardians in another state. Case studies and anecdotal accounts by Judges from various jurisdictions about the widespread and inherent difficulties to accomplish the safe return of an interstate runaway without the use of some form of secure detention should be highlighted. Frequently this is due to factors such as the lack of availability of alternative facilities at the time of recovery or apprehension of

these youth who are often found 'after hours' when such facilities or programs are either closed or have no space for such runaways.

Particular emphasis should be placed upon the need to balance the possible risk to the juvenile's safety by secure detention in an appropriate facility against the even greater safety risk of allowing such a juvenile to remain 'on the streets' as a runaway or in the company or custody of adults or others who present an imminent threat to the child's physical and emotional well-being (such as those who might involve these youth in prostitution or drug abuse).

Additionally, the proposed reauthorization of the JJDPA currently before Congress should be reviewed and consideration given to providing input to relevant legislative committees to insure that the ICJ exemption is preserved and the public policy served by doing so adequately explained.

Finally, compact offices should be actively involved in opposing any local efforts in State Courts to eliminate the responsible use of secure detention for the limited purpose of apprehending and the safe return of interstate runaways as well as making appropriate recommendations to members of Congress from each State concerning this important aspect of the administration of the ICJ.

4 *Amendments to ICJ Rules effective February 1, 2016 impacted rules referenced in this White Paper. As a result, White Paper: Temporary Secure Detention of Non-Adjudicated Juvenile Runaways is superseded to the extent of rule amendments effective February 1, 2016.

Interstate Commission for Juveniles

Memorandum

To: **All ICJ Offices**

From: **Ashley Lippert, Executive Director**
Richard L. Masters, General Counsel

Date: **May 20, 2010**

Re: **Notice of Clarification of OJJDP Policy on Secure Detention of Runaways**

In response to a request by the ICJ National Office, please see the attached legal opinion clarifying current federal law and policy regarding the secure detention of runaways, under the Interstate Compact for Juveniles from Hon. Kathi L. Grasso, Senior Juvenile Justice Policy and Legal Advisor, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

This opinion, and the cited portions of the U.S. Code and OJJDP policy, clarify that it is permissible under federal law and policy for ICJ Compact Administrators to temporarily detain runaways under the ICJ in order to secure their safe return to the jurisdictions where they reside or where other appropriate custody exists.

As cited in this opinion, the relevant provisions of both the reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5633 (a) and the excerpt from the *OJJDP Guidance Manual for Monitoring Facilities Under the JJDPA of 2002* clearly provide an exemption for secure detention for out-of-state runaway youth held under the ICJ. In addition, this opinion indicates that the pending version of the reauthorization bill currently under consideration by the U.S. Congress does not change the status of the above referenced exemption.

Compact offices should also take note of the concerns expressed by Ms. Grasso in calling our attention to the proposed Valid Court Order ("VCO") exemption 'phase out' and the growing trend, evidenced by this proposal, which suggests that alternatives to secure detention and correctional placements need to be identified for status offenders, including runaways, as this aspect of juvenile compact administration is considered going forward.

Please direct any further inquiries in this regard to the national office.

Interstate Commission for Juveniles
2760 Research Park Drive | P.O. Box 11910 | Lexington, KY 40578
859.244.8000 | Fax: 859.244.8001

Dear Ashley:

You have sought OJJDP guidance on behalf of the Interstate Commission for Juveniles (ICJ). You asked OJJDP to confirm for you whether the attached OJJDP policy as presented by John Wilson, then Acting OJJDP Administrator, in 1994 is still in effect as it relates to out-of-state runaway youth who are held in a receiving state pursuant to the Interstate Compact on Juveniles. I have conferred with OJJDP leadership and staff on your question. We have concluded that this policy is no longer in effect as it relates to the subject population.

The JJDPA

The Juvenile Justice and Delinquency Prevention Act (JJDPA) was reauthorized, effective 2003. It was modified and created an exemption to the deinstitutionalization of status offenders (DSO) core requirement to permit the subject population to be held in secure detention. The current JJDPA DSO provisions are as follows:

42 U.S.C. 5633(a):

11) shall, in accordance with rules issued by the Administrator, provide that--

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding--

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of Title 18 or of a similar State law;

(ii) juveniles who are charged with or who have committed a violation of a valid court order; and

(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State (emphasis added);

shall not be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles--

(i) who are not charged with any offense; and

(ii) who are--

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities;

(From Westlaw, 5/13/10)

The OJJDP Guidance Manual for Monitoring Facilities Under the JJDPA of 2002

OJJDP's 2007 Guidance Manual provides the following in Section 3.2 (this manual is currently being reviewed for possible revisions; we anticipate that this guidance will remain the same in light of current law):

"Out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a warrant or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the DSO requirement. Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total."

The Reauthorization of the JJDPA

As we previously discussed, the U.S. Congress is considering the reauthorization of the JJDPA. The Senate Judiciary Committee has passed S. 678 which includes provisions that provide for a phase-out of the Valid Court Order (VCO) exemption to DSO. Approximately four weeks ago, the House Committee on Education and Labor held a hearing on the JJDPA reauthorization. We anticipate the introduction of a counterpart House bill.

Although the current version of S. 678 does not appear to change the above-stated exemption for secure detention for out-of-state runaway youth held in accordance with the Interstate Compact on Juveniles, it is important for the ICJ to be aware of the proposed phase-out of the VCO as it reflects a growing trend that alternatives to secure detention and correctional placements need to be identified for status offenders, including runaways. The U.S. Department of Justice has issued a "views" letter to Senator Leahy, Chairman of the Senate Judiciary Committee, in support of S. 678, including its provisions relevant to the phase-out of the VCO. Also, the National Council of Juvenile and Family Court Judges recently supported a resolution in support of the ultimate elimination of the VCO.

Assuming the JJDPA is reauthorized with the VCO phase-out, and sufficient appropriations, OJJDP will provide training and technical assistance to the states to facilitate the VCO phase-out. We will highlight evidence-based and promising approaches to responding to the needs of status offenders, including runaways, and their families. We would anticipate conferring with our colleagues at USHHS' Youth Services Bureau, the federal agency that oversees the implementation of runaway and homeless youth programs to gather information about best practices. As part of these efforts, we would be interested in working with the Interstate Commission for Juveniles (ICJ) to provide judges and others with insights on alternatives to placement in secure correctional and detention facilities for out-of-state runaways. It may be appropriate at a

future date for OJJDP to convene a meeting with you and others to learn more about the Commission's work and identify potential collaborative activities.

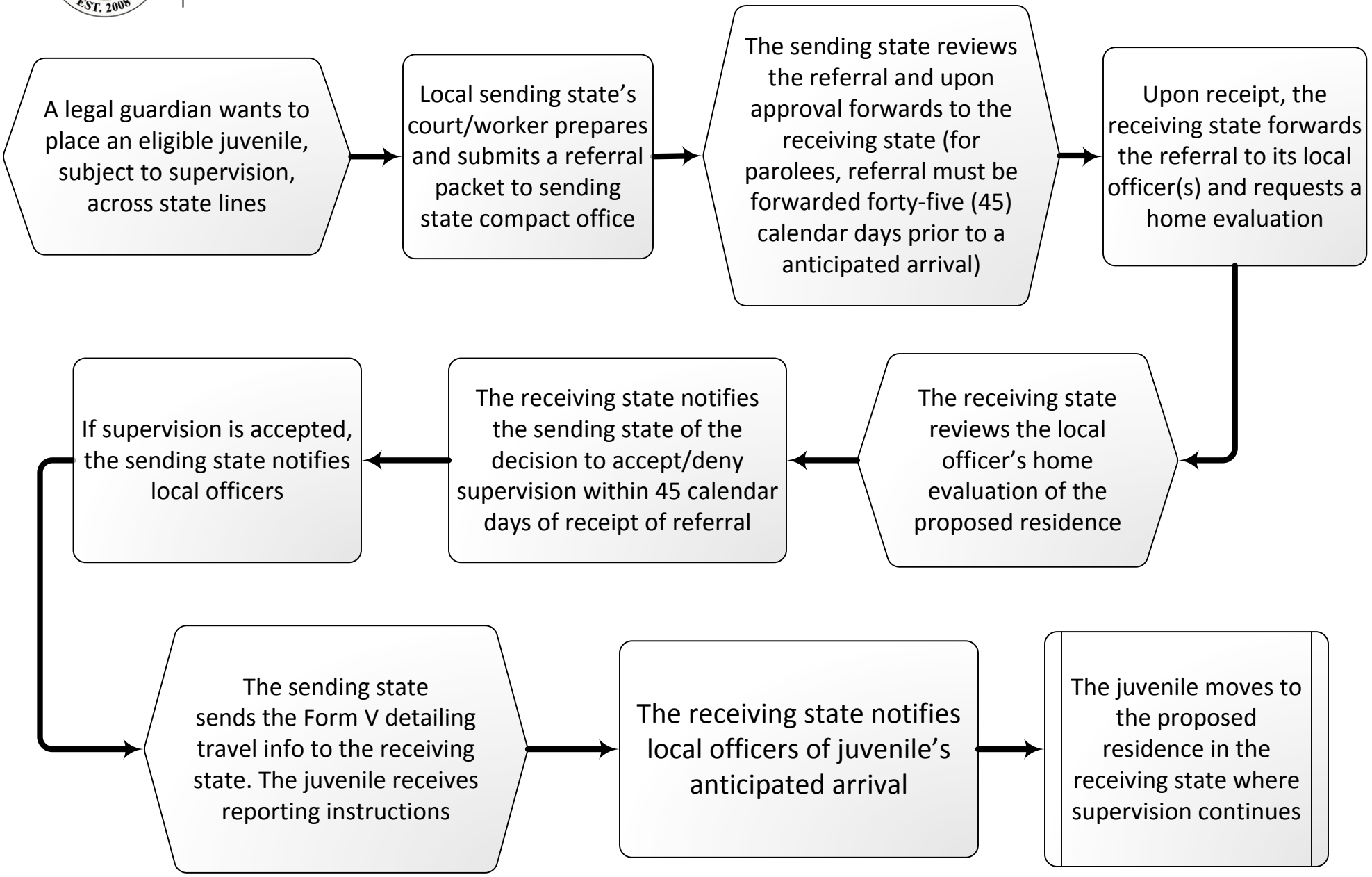
In light of the earlier statement regarding OJJDP policy, it may not be necessary for us to convene a conference call on Friday, the 21st as tentatively planned However, if you believe a conference call is in order, please let me know.

Of course, do not hesitate to let me know if you have any questions regarding this memo or other matters.

Kathi

Kathi L. Grasso
Senior Juvenile Justice Policy and Legal Advisor
Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs
United States Department of Justice
810 7th Street, NW
Washington, DC 20531
(202) 616-7567
kathi.grasso@usdoj.gov

Overview of the Transfer of Supervision



Travel Permit Overview

Mandatory

Mandatory for the following juveniles traveling out-of-state for a period in excess of 24 consecutive hours who meet the criteria set forth in A or B:

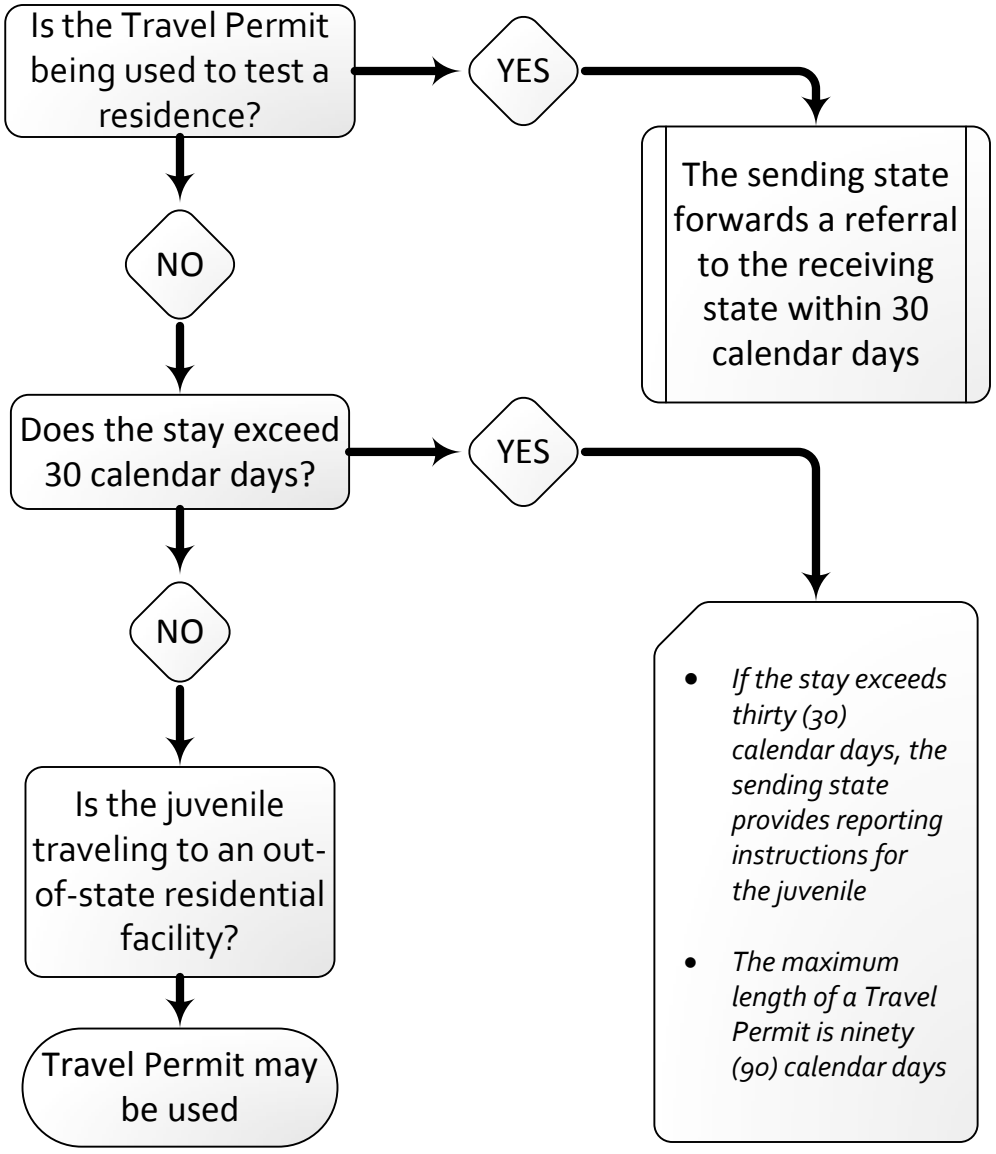
A. Juveniles who have been adjudicated and are on supervision for one of the following:

- Sex-related offenses;
- Violent offenses resulting in injury/death; or
- Offenses committed with a weapon.

B. Juveniles who are one of the following:

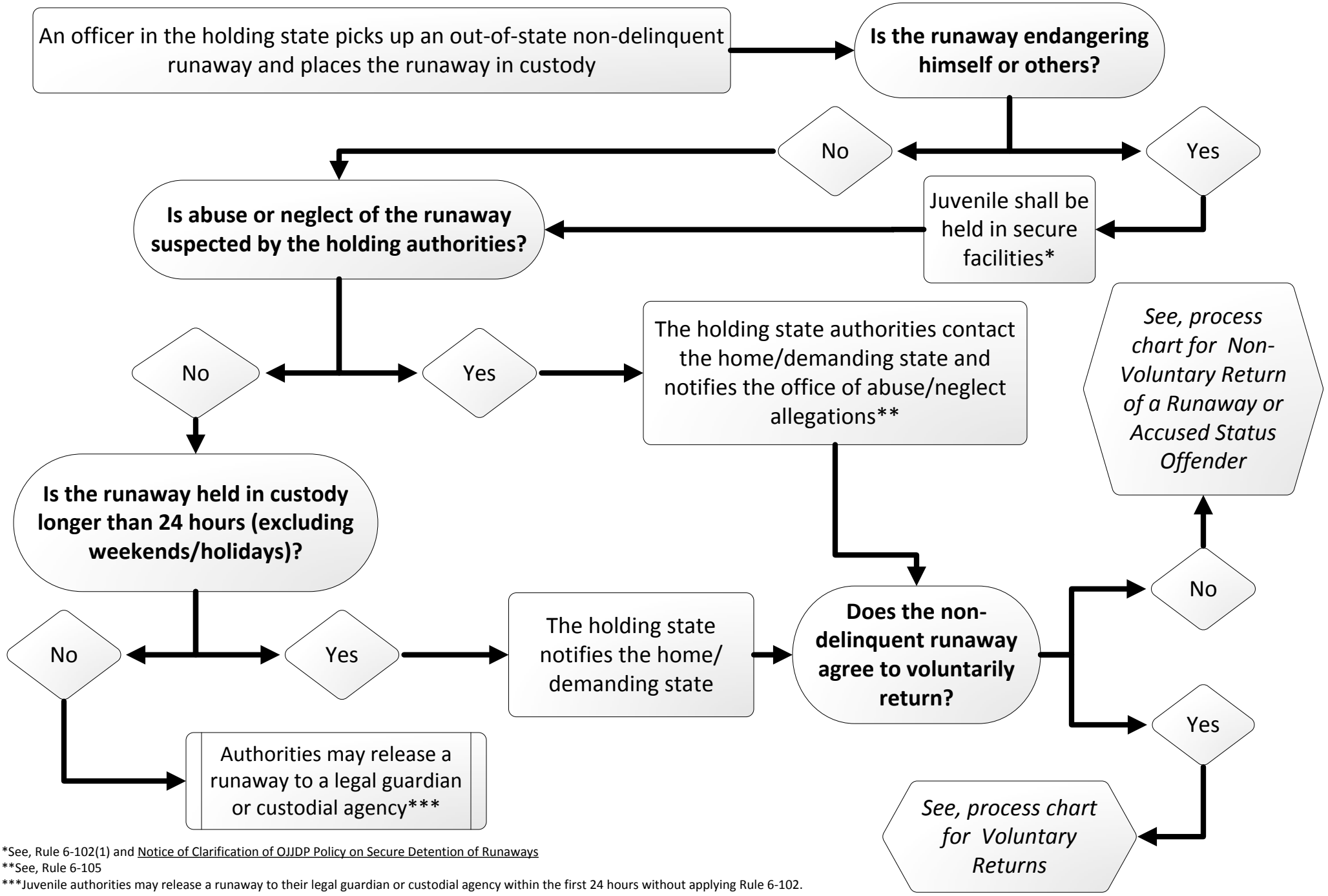
- State committed;
- Subject to ICJ and are relocating pending a transfer of supervision;
- Returning to the sending state;
- Transferring to a subsequent state(s), with approval of the sending state; or
- Transferred and the victim notification laws, policies, and practices require notification.

Discretionary



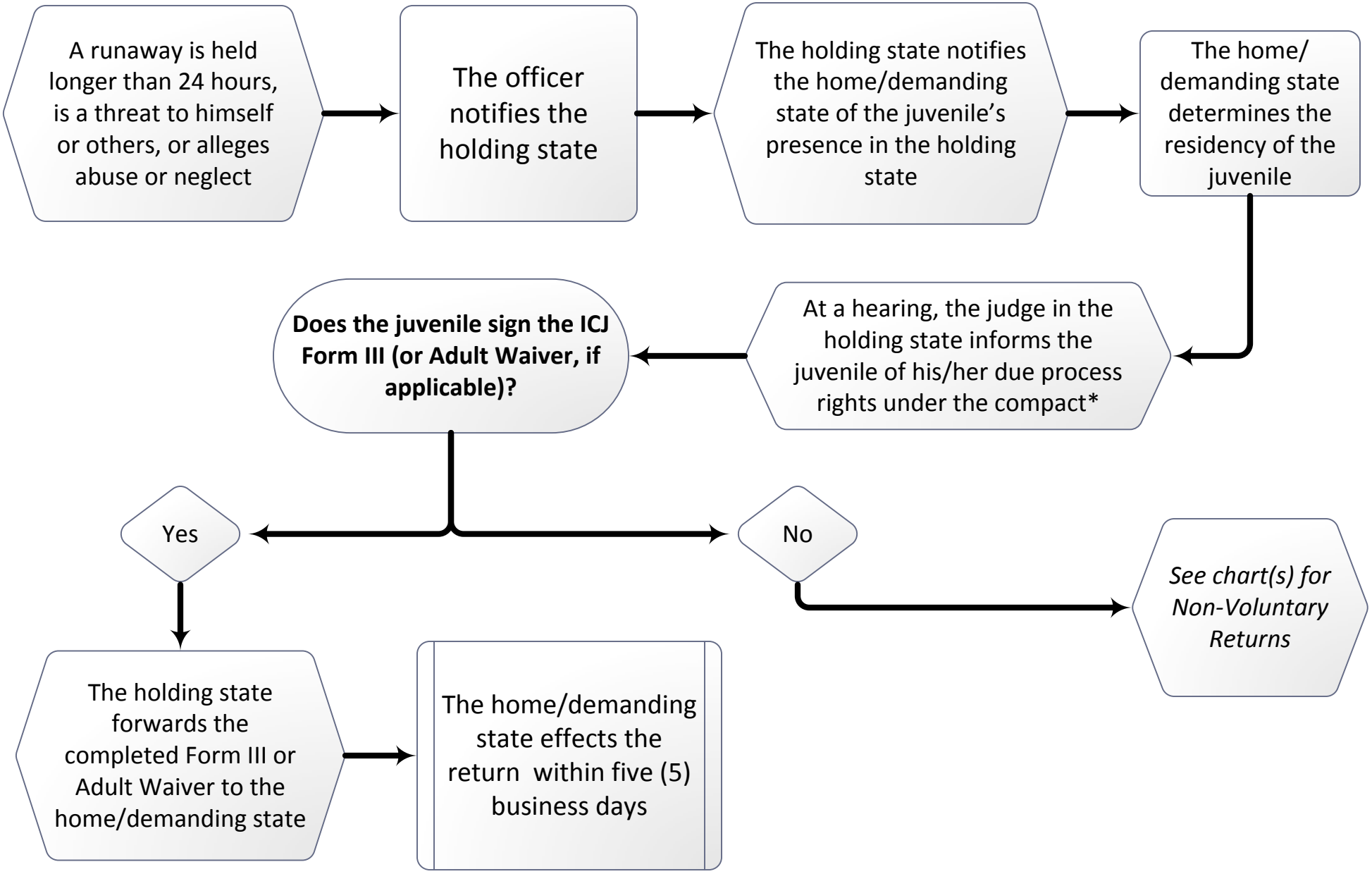
Authorization for out-of-state travel shall be approved at the discretion of the supervising person. *See,* Rule 8-101(4)
The sending state is responsible for victim notification. *See,* Rule 8-101(5)

Release of a Non-Delinquent Runaway



*See, Rule 6-102(1) and Notice of Clarification of OJJDP Policy on Secure Detention of Runaways
**See, Rule 6-105
***Juvenile authorities may release a runaway to their legal guardian or custodial agency within the first 24 hours without applying Rule 6-102.

Voluntary Return of a Juvenile



*See, Rule 6-102(5): The court may elect to appoint counsel or a guardian ad litem to represent the juvenile.

Non-Voluntary Return of a Runaway or Accused Status Offender

1. Runaway or accused status offender does NOT sign the ICJ Form III,
2. The juvenile's whereabouts are known but he/she is not in custody

Appropriate authority in home/demanding state prepares a petition within sixty (60) calendar days of notification:
1. of refusal of the juvenile to return voluntarily, or
2. to request the court to take the juvenile into custody

Legal guardian or custodial agency petitions court in home/demanding state for requisition*

When it is determined that the juvenile should be returned, the judge in the home/demanding state shall sign the Form I Requisition for Runaway Juvenile.

The holding state forwards the requisition to the appropriate court

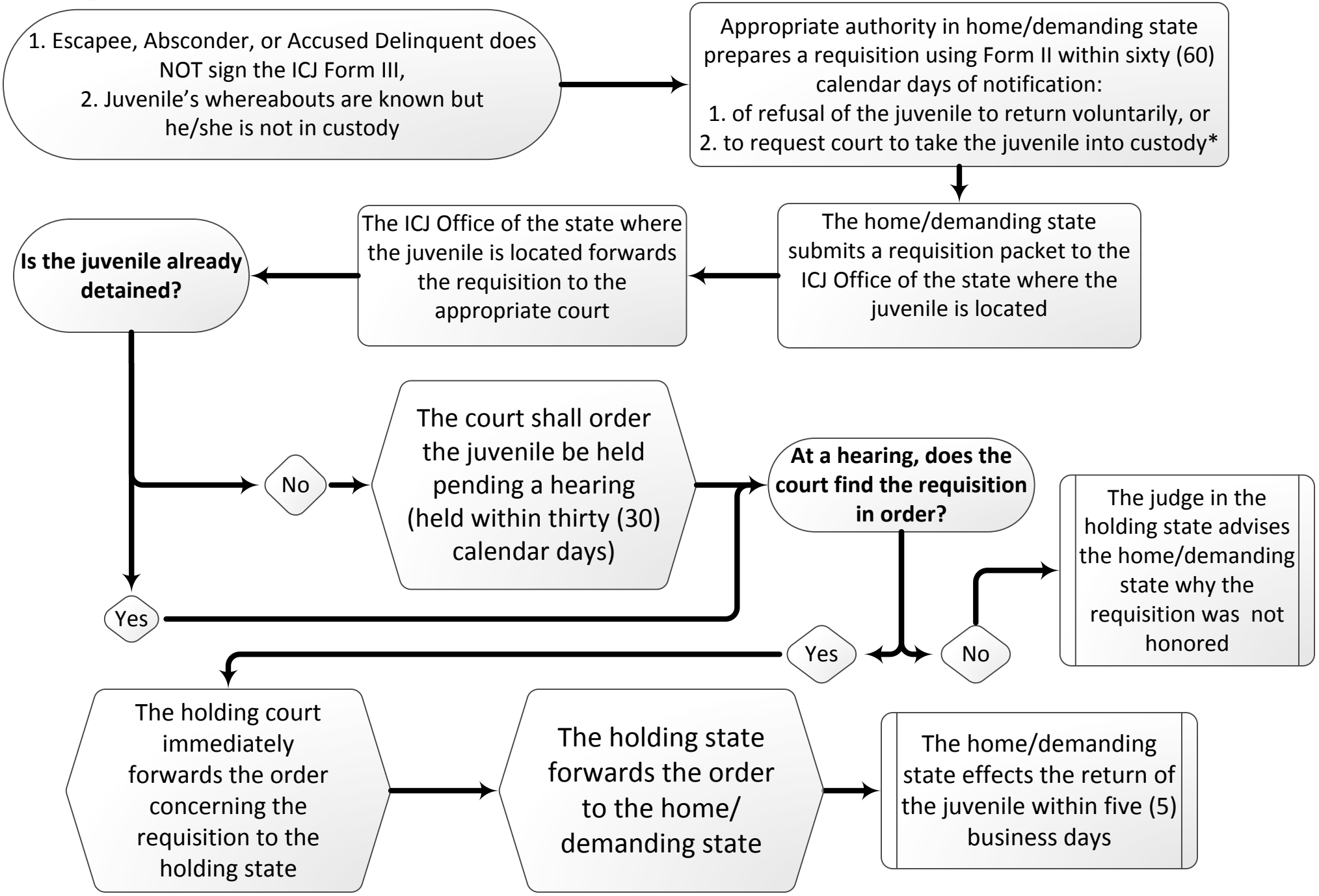
If the requisition is honored at the hearing, the holding court forwards the requisition order to the holding state

The holding state forwards the order to the home/demanding state

The home/demanding state effects the return within five (5) business days

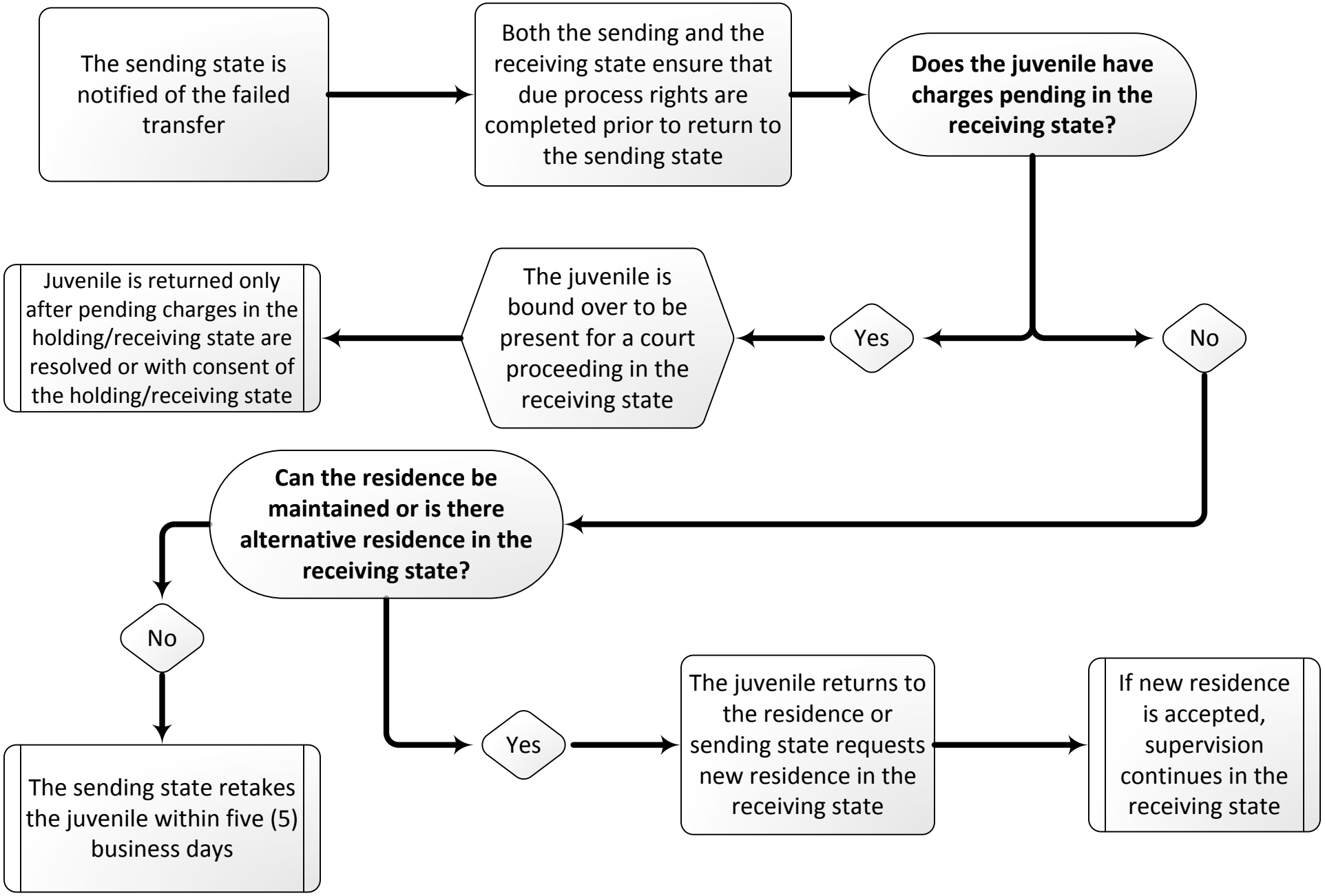
*If the legal guardian or custodial agency in the home/demanding state is unable or refuses to initiate the requisition process on a runaway, then the home/demanding state's appropriate authority shall initiate the requisition process on behalf of the juvenile, in accordance with Rule 6-103. When abuse or neglect is reported, see Rule 6-105.

Non-Voluntary Return of an Escapee, Absconder, or Accused Delinquent

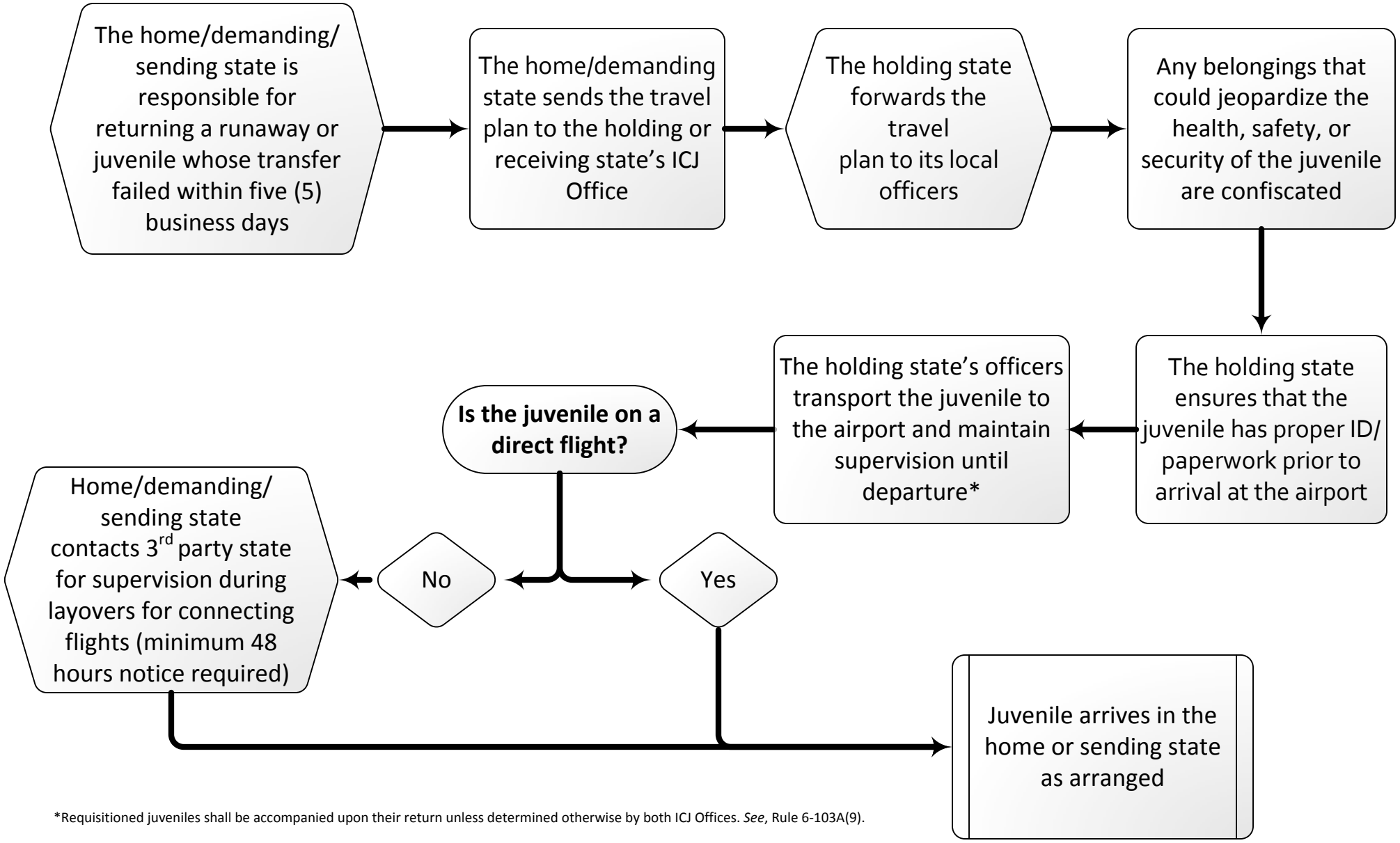


*Probation/parole escapees, absconders or accused delinquents who have been taken into custody on a warrant shall be detained in secure facilities until returned by the demanding state, according to Rule 6-103A(1)

Return of a Juvenile Due to a Failed Transfer of Supervision



Transportation Overview for Returning a Juvenile to the Home/Demanding/Sending State via Air



*Requisitioned juveniles shall be accompanied upon their return unless determined otherwise by both ICJ Offices. *See*, Rule 6-103A(9).