INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Bench Book for Judges
& Court Personnel

Version 3.0

TABLE OF CONTENTS

- Advisory Opinion 1-2010
  Receiving state's ability to sanction juveniles under ICJ Rule 4-104.1
  (January 25, 2010)

- Advisory Opinion 2-2010
  Which rules apply according to effective date
  (January 2009)

- Advisory Opinion 3-2010 *(Superseded by rule changes effective January 1, 2011)*
  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
  (March 31, 2010)

- Advisory Opinion 4-2010
  Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands
  (July 22, 2010)

- Advisory Opinion 5-2010
  Clarification for juveniles who are undocumented immigrants
  (September 13, 2010)

- Advisory Opinion 1-2011
  HIPAA Exemptions for the ICJ
  (February 2, 2011)

- Advisory Opinion 2-2011
  Determining which juveniles the new ICJ applies
  (May 26, 2011); *January 26, 2012*

- Advisory Opinion 3-2011
  Pleas and Abeyance Cases for Non-Adjudicated Juveniles
  (May 26, 2011)

- Advisory Opinion 4-2011
  Non-Adjudicated Juveniles Held in Secure Detention for a Failed Placement
  (October 24, 2011)

- Advisory Opinion 1-2012
  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
  (January 26, 2012)

- Advisory Opinion 2-2012
  Detention and supervision fess associated with new charges

(April 10, 2012)

- Advisory Opinion 3-2012
  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
  (August 23, 2012)

- Advisory Opinion 4-2012
  Issuing a travel permit for a juvenile subject to a delinquency petition but who is not yet adjudicated
  (July 26, 2012)

- Advisory Opinion 5-2012
  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
  (July 26, 2012)

Appendix V – Notice of Clarification of OJJDP Policy on Secure Detention of Runaways
(May 20, 2010)

Appendix VI – Legal Memorandum – Guidance on Subsequent Transfers of Juveniles To and From Non-Member States
(October 18, 2011)

Appendix VII – Process Charts

- Overview of the Transfer of Supervision

- Travel Permit Overview

- Release of a Runaway to a Parent or Legal Guardian within 24 Hours

- Voluntary Return of a Juvenile

- Non-voluntary Return of a Non-delinquent Juvenile

- Non-voluntary Return of an Escapee, Absconders, or Accused Delinquent

- Return of a Juvenile Due to a Failed Placement

- Transportation Overview for Returning a Juvenile to the Home or Sending State

LATEST DEVELOPMENTS IN THE ICJ
2013

Since the last update of the ICJ *Bench Book for Judges and Court Personnel* in March 2012, changes to rules and rule interpretation have prompted modifications to this reference. Among the most important rule changes are:

- Amendment to Rule 4-102 defines procedures for placing a juvenile parolee across state lines prior to formal acceptance under the provision of Rule 5-101(4).
- Amendment to Rule 4-103 provides procedures allowing a juvenile sex offender to go to the receiving state prior to acceptance of supervision when they are moving with a parent or legal guardian. The amendment further outlines the process allowing the juvenile to travel, report, and meet registration requirements.
- Amendment to Rule 5-102 replaces in entirety the previous rule regarding travel permits. The new rule specifies a higher risk population based on the nature of the adjudicating offense.
- Amendment to Rule 6-102 allows for the acceptance of adult waivers in lieu of the juvenile consent to return form, ICJ Form III.
- The creation of a new rule for absconders, Rule 6-104A. This new rule addresses the process for locating juvenile absconders and the notifications required when the juvenile is not located.

In addition to several rule changes, the Commission has issued a number of advisory opinions concerning the Compact and its rules.

- While the Commission has the statutory authority under Article I of the Compact to assess supervision fees, ICJ Rule 4-104 (4) 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 4-104 (4) only deals with imposition of supervision fees upon 'a juvenile,' statutory prohibitions against such fees caution against attempting to impose a detention fee upon the home state. *See*, Advisory Opinion 2-2012.
- Under the authority of the ICJ, if a juvenile is serving a juvenile probation or parole sentence, and absconds or flees to avoid prosecution, Rule 4-104(6) creates an exception whereby the receiving state law regarding the age of majority applies to incarceration of juveniles. Even though such an individual may be classified as an adult in their home state, based on this rule, if detained and returned pursuant to the ICJ, this individual may be treated as a "juvenile." *See*, Advisory Opinion 3-2011.
- An "accused juvenile delinquent" is not permitted to travel from one state to the other for visits exceeding forty-eight hours without a travel permit. Further, based upon the definition of 'juvenile' as provided in both the ICJ and ICJ Rule 1-101, as well as the requirements of Rule 4-103(1), once a juvenile is adjudicated delinquent as a sex offender, in the absence of either an approval of a transfer request or reporting instructions, allowing such juvenile to move across state lines violates both the Compact and the foregoing ICJ Rules. *See*, Advisory Opinion 4-2012.

- ICJ Rule 4-101(2)(f)(1) explicitly excludes a juvenile who will reside in a 'residential facility' from eligibility for transfer under the ICJ. *See*, Advisory Opinion 5-2012.

HOW TO USE THIS BENCH BOOK

As used in this Bench Book, the use of the term "1955 ICJ" refers to the original juvenile compact developed in that year and which governed the relationship of the states until recently. The "Revised ICJ" refers to the most recent major revision of the ICJ first published as model legislation by the Council of State Governments (CSG) in 2004 and now in effect in 46 jurisdictions as a replacement for the 1955 compact. The Revised ICJ contains transition provisions to manage the relationship between states that continue to operate under the 1955 ICJ and those that have adopted the Revised ICJ.

Because each state codifies its laws differently, it is impossible to reference each state's laws within this Bench Book. Therefore, particular provisions of the Revised ICJ are references to the Model Interstate Compact for Juveniles published by the Council of State Governments in 2004. Users of this Bench Book are strongly encouraged to check their individual state codes for proper legal citation.

As used in this Bench Book, the term "ICAOS" refers to the Interstate Compact for Adult Offender Supervision, a compact that replaced the Interstate Compact on Probation and Parole. References to the ICAOS are meant to be analogous given the similarity in purposes and structure.

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 "compact process" we now have 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). *See also*, Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution – A Study in Interstate Adjustments*, 34 Yale L.J. 685 (1925); CAROLINE BROUN, MICHAEL L. BUENGER, MICHAEL H. MCCABE & RICHARD L. MASTERS, THE EVOLVING USE AND THE CHANGING NATURE OF INTERSTATE COMPACTS: A PRACTITIONER'S GUIDE (ABA Publishing 2006).

QUICK REFERENCE GUIDE

This section provides readers an at-a-glance view of the issues covered in the ICJ Bench Book. If more information is needed, please reference the appropriate section within the ICJ Bench Book. Other materials, such as Advisory Opinions, Process Charts, and Legal Memorandums are also available for reference in the appendices. Please contact the ICJ National Office for further information as needed.

MODEL INTERSTATE COMPACT FOR JUVENILES

Article XIII
Binding Effect of Compact and Other Laws

Section A Other Laws

Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
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

All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

- The requisite number of states approved the Revised Interstate Compact for Juveniles (ICJ) in 2008.
- The Revised ICJ authorizes the Commission to adopt binding rules to effectuate the purpose of the agreement. Rules adopted by the Commission are statutory in effect.
- 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.

2.10.1 General Principles of Enforcement

The Interstate Commission for Juveniles allows for the enforcement of the Compact on member states for noncompliance through:

- Remedial training and technical assistance
- Alternative dispute resolution, including mediation or arbitration
- Fines
- Suspension or termination from the Compact
- Legal enforcement

2.10.2 Judicial Enforcement (Art. 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. *See,* Art. VII § A(2).

3.1 General Purposes of the Juvenile Justice System

The Revised ICJ is concerned exclusively with juvenile delinquents and status offenders when one state transfers their supervision responsibilities to another state.

3.2 Juveniles Covered by the Revised ICJ

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.

The term "juvenile" means any person defined as a juvenile in *any* member state.

The Revised 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, Rule 1-101.

3.3.1 General Eligibility Considerations

The Revised ICJ and its rules help facilitate the transfer of supervision for a juvenile, regardless of the underlying nature of the offense.

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 parent, legal guardian, relative, non-relative or independently, excluding residential facilities; or is a full time student at a secondary school, accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment. *See*, Rule 4-101(2)(a).

3.3.2 Length of Supervision Requirements

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; 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; and
- The transfer is not solely for the purposes of collecting restitution. *See,* Rule 4-104.

3.3.3 Restrictions on Eligibility to Transfer

The receiving state may reject a proposed transfer if:

(a) the proposed placement 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. *See,* Rule 5-101(4).

Rule 5-101(4) allows an "override" of the receiving state's authority to deny a placement when there is no custodial parent or guardian in the sending state and a custodial parent or guardian resides in the receiving state. In this circumstance, the receiving state has no discretion to deny the placement, even if there are concerns about the placement.

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 placement is in the best interests of the juvenile delinquent, it cannot effectuate that disposition outside the terms of the Revised ICJ.

3.3.5 Status Offenders

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. The 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.

3.3.6 Runaways

A runaway is defined as a child under the juvenile jurisdictional age limit established by the state who has run away from his/her place of residence without the consent of the parent, guardian, person, or agency entitled to his/her legal custody. The Revised ICJ applies to runaways exclusively in the context of returning them to the state where the parent or legal guardian reside.

3.4 Sentencing Considerations

The Revised ICJ does not limit the prosecutor's discretion or the sentencing authority of a judge, so long as that authority does not implicate interstate matters. The Revised ICJ is generally applicable to all dispositional outcomes. The use of deferred adjudication, treatment options, custodial placements, and the like do not restrict the application of the Revised ICJ.

A court or executive authority cannot avoid the Revised ICJ by classifying its disposition as "deferred". Since 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.

3.5 Processing Referrals

Rule 4-101 requires that for 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.

Juveniles on probation, parole or any other form of supervision are subject to the Revised ICJ, assuming the length of time requirements are met. A juvenile who is not eligible for transfer under the Revised ICJ is not subject to these rules.

3.5.1 Authority to Accept/Deny Referrals

Only the receiving state's ICJ administrator or designee shall authorize or deny the transfer of supervision of a juvenile after considering a recommendation by the investigating officer. Rule 5-101 effectively prohibits any authority, other than the ICJ administrator or designee, from accepting or denying supervision of a juvenile. Local authorities, judges or other personnel have no authority to accept or deny a placement outside the prior authorization or denial of a state's ICJ administrator.

3.5.2 Sending and Receiving Referrals

Each ICJ Office shall forward all its cases within (5) five business days of receipt. 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. The ICJ Office in the receiving state should:

- Request its local offices complete a home evaluation within thirty (30) calendar days after receipt of referral; and
- 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 cooperative supervision.

3.6 Transfer of Supervision

Transferring supervision does not transfer the jurisdiction of the case or relieve sending state authorities of their obligation 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.

The jurisdiction of a case 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 Requirement

The transfer of supervision is a "cooperative" effort between the two states in support of the court's dispositional order. Supervision remains with the sending state until the receiving state agrees in writing to assume supervision. *See,* Rule 4-102. 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. *See,* Rule 5-101(5).

The Revised ICJ prohibits authorities in a sending state from exercising supervision powers under standards that are different from those they apply to their own delinquent juveniles. *See,* In re Crockett, 159 Cal.App.4th 751 (Cal. App. 1 Dist., 2008).

A receiving state assumes responsibility for conducting visitation and supervision over a juvenile. The receiving state must provide to the sending state quarterly progress reports. Additional reports should be sent when specific concerns arise.

Both the sending and receiving states have authority to enforce the terms of supervision, which may include the imposition of detention time in the receiving state. *See,* Rule 4-104(2). Costs associated with enforcement actions are the responsibility of the state seeking to impose a sanction. The age of majority and duration of supervision are controlled by the laws of the sending state. The type of incarceration and laws governing age of majority are determined by the laws of the receiving state.

3.6.2 New Violations in the Receiving State

The Revised ICJ does not prohibit officials in a receiving state from filing new charges against a juvenile for actions committed in that state.

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

The juvenile or juvenile's family makes restitution 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.

3.6.4 Expedited Transfers

When it is necessary to place a juvenile out of state prior to the acceptance of supervision, under the provision of Rule 5-101(4), the sending state shall determine if the circumstances of the juvenile's immediate placement justify the use of a travel permit, including consideration of the appropriateness of the placement. If approved, the sending state provides the receiving state with an approved travel permit. See, Rule 4-102(3)(a).

3.6.5 Travel Permits (*See*, Appendix VII Process Charts)

Travel permits are mandatory for juveniles traveling out-of-state for a period in excess of twenty-four (24) consecutive hours and who have committed or which the adjudicated offenses or case circumstances include any of the following:

a. Sex-related offenses;
b. Violent offenses that have resulted in personal injury or death;
c. Offenses committed with a weapon;
d. Juveniles who are state committed;
e. Juveniles testing placement and who are subject to the terms of the Compact;
f. Juveniles returning to the state from which they were transferred for the purposes of visitation;
g. Juveniles transferring to a subsequent state(s) with the approval of the initial sending state;
h. Transferred juveniles in which 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.

Authorization for out-of-state travel is approved by the supervising person. An exception would be when the sending state has notified the receiving state that travel must be approved by the sending state's appropriate authority. The authorized Travel Permit should be provided and received prior to the juvenile's movement.

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.

3.6.6 Transfer of Supervision of Juvenile Sex Offenders

A juvenile sex offender's supervision may be transferred to another state, which is obligated upon acceptance to supervise the offender under the same standards it applies to in-state sex offenders. 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.
- When it is necessary to place a juvenile sex offender out of state with a custodial parent or legal guardian prior to the acceptance of supervision, under the provision of Rule 5-101(4), the sending state shall determine if the circumstances of the juvenile's immediate placement justify the use of a travel permit, including consideration of the appropriateness of the placement.
    - The sending state must provide an approved travel permit along with 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.
- In conducting home evaluations for juvenile sex offenders, the receiving state shall ensure compliance with local policies or laws to issuing reporting instructions. If the proposed placement is unsuitable, the receiving state may deny acceptance.
- 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.

3.7 Victim Notification

Compliance with victim notification requirements is 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 in the initial packet using the Victim Notification Form. The Victim Notification Form shall include the specific information regarding what will be required and the timeframes for which it must be received.

Throughout the duration of the supervision period, the supervising person through the receiving state's ICJ Office 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.

3.8 Closing a Case

Only the sending state has the authority to terminate jurisdiction over a juvenile under supervision in 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.
- Upon notice to the sending state, when the court order that formed the basis of supervision expires.
- Upon notice to the sending state, when the period of parole or probation expires.
- When a sending state fails to make a placement within ninety (90) days after acceptance by the receiving state unless a request for extension has been made and an appropriate explanation provided. *See,* Rule 4-106.
- 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.

Jurisdiction over a case remains with the state court where the charges forming the basis for supervision were prosecuted.

4.1 Extradition

Neither the constitutional provisions nor statutes governing extradition appear to make a special exception for juveniles. 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.

4.2.1 Waiver of Extradition Under the Revised ICJ

If it is determined necessary to return a juvenile whose placement has failed to the sending state and the ICJ Application for Compact Services and Waiver Form (ICJ Form IA/VI) has the appropriate signatures, no further court procedures will be required for the juvenile's return.

All applications for transfer must include a signed waiver concerning return or extradition to the sending state. Subject to certain requirements, a sending state has authority to enter a receiving state and retake a juvenile. 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.

4.2.2 Uniform Extradition Act Considerations

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. This waiver must be in writing, in the presence of a judge, after the judge has informed the fugitive of his rights under the statute.

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 UCERA. The offender's agreement to waive extradition waives the need for formal extradition proceedings. 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 Violation Reports

A receiving state must furnish written progress reports to authorities in the sending state on a quarterly basis. A receiving state provides additional reports in cases where there are concerns regarding the juvenile or there has been a change in placement. Based upon these reports and other factors, if it is determined to be necessary to return a juvenile whose placement has failed to the sending state and the ICJ Application for Compact Services and Waiver Form (ICJ Form IA/VI) has the appropriate signatures, no further court procedure is required for the juvenile's return. *See*, Rule 6-104(1).

4.4 Retaking/Rendition

The Revised ICJ and its rules authorize officers of a sending state to enter a receiving state or a state to which a juvenile has absconded to retake a juvenile. 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. *See,* Rule 6-104(4).

In cases where the ICJ placement has failed, 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. Officers need only establish their authority and the identity of the juvenile. Authorities in a receiving state may not prevent, interfere with or otherwise hinder the transportation of the juvenile back to the sending state.

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. 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. The receiving state "will assume the duties of visitation and supervision over probationers or parolees of any sending state." The terms and conditions imposed upon the juvenile are governed by the same standards that prevail for the receiving state's own juveniles released on probation and parole. *See,* Rule 4-104.

4.5.1 Return of Juveniles Under the Revised ICJ

The return process under the Revised ICJ 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,* Compact, Art. VII, Sec.A.2.

4.5.2 Release of Runaways to Parent or Legal Guardian

A runaway may be released to a parent or legal guardian 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 juvenile may be released to the parent or legal guardian without applying the procedures set out in Rule 6-102.

If the parent or legal guardian is unable or unwilling to pick up the juvenile within that timeframe, 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 state. *See,* Rule 6-101(2).

Challenges to detention of runaways under this section have not been successful. *See,* 42 U.S.C. §5633(a)(11)(A)(iii); *see also*, Notice of Clarification of OJJDP Policy on Secure Detention of Runaways, May 20, 2010, available at http://www.juvenilecompact.org/Legal.aspx

When a holding state has reason to suspect abuse or neglect by a parent or 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.

If a runaway who alleges abuse or neglect agrees to a voluntary return, the ICJ Form III must indicate who will assume responsibility for the juvenile if the juvenile will not be returning to a parent or legal guardian.

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 a parent or legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with Rule 6-103. *See,* Rule 6-101.

4.5.3 Voluntary Return of Out-of-State Juveniles

Non-delinquent juveniles, probation and parole absconders, escapees, and accused delinquents may be voluntarily returned under Rule 6-102. 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. 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 with the consent of the holding state or after charges are resolved when pending charges exist in the holding state. *See,* Rule 6-107.

At a court hearing, 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. If the juvenile consents to return, the juvenile signs the approved ICJ Form III, which is filed with the compact office in the holding state.

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 ICJ Form III, provided the waiver is signed by the juvenile and the judge.

If a runaway who alleges abuse or neglect agrees to a voluntary return, the ICJ Form III must indicate who will assume responsibility for the juvenile if the juvenile will not be returning to a parent or legal guardian. The holding state shall forward a copy of the consent to the compact office in the home/demanding state. Juveniles are required to be returned by the home/demanding state within five (5) business days of receiving ICJ Form III. This period may be extended up to an additional five (5) working days with approval from both ICJ Offices.

The home/demanding state is responsible for the costs of transportation and for making transportation arrangements. 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.

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

Non-delinquent juveniles, probation and parole absconders, escapees, and accused delinquents are subject to arrest and detention upon request of either the home/demanding or sending state. This 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,* Rule 6-103.

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 Rule 6-102, or to request that a court take a juvenile into custody that is allegedly located in its jurisdiction. Once in detention, such a juvenile may be held for a maximum of ninety (90) calendar days.

When the juvenile is a non-delinquent runaway, the parent, legal guardian, or custodial agency must petition the court of jurisdiction in the home/demanding state for a requisition pursuant the requirements of Rule 6-103(3)(a) - (d). If the parent or legal guardian in the home/demanding state is unable or refuses to initiate the requisition process, the home/demanding state is required to do so. 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 a parent or legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with Rule 6-103. *See,* Rule 6-101(6).

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 Rule 6-103(7). Once the home/demanding state's ICJ office receives the requisition, it verifies that the documentation is in order and it forwards the documentation to the ICJ Office of the state where the juvenile is located. Upon receipt, this ICJ Office forwards the documentation to the court. The court is required to hold the juvenile pending a hearing on the requisition if the juvenile is not already in custody. A hearing on the requisition must occur within thirty (30) calendar days of receipt of the requisition.

If the requisition is in order, the court shall order the juvenile's return to the home/demanding state. If the requisition is denied, the court issues 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. Duly accredited officers of a compacting state, upon establishment of their authority and the identity of the juvenile being returned, may transport the juvenile through any and all states party to this compact.

The home/demanding state is responsible for the costs of transportation and for making transportation arrangements. *See,* Rule 6-105. Juveniles are to be returned only with the consent of the holding state or after charges are resolved when pending charges exist in the holding state. *See,* Rule 6-107.

4.5.5 Return of Juveniles After Failed Placements

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 placement has failed to the sending state, and the ICJ Application for Compact Services and Waiver Form (ICJ Form IA/VI) 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. A warrant may be issued and the supervising state (receiving state) shall honor the warrant. The sending state returns the juvenile within five (5) business days upon receiving notice of the failed placement.

With limited exceptions, the decision to retake a delinquent juvenile rests solely in the discretion of the sending state. *See,* Rule 6-104(4). 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.

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 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 Authority v. Coniglio*, 610 N.E.2d 1196 (Ohio Ct. App. 1993)

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 require that the sending and receiving states comply with hearing requirements.

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.

4.5.7 Hearing Requirements

Juveniles who are adjudicated delinquent and subject to the Revised ICJ have limited rights. Conditional release is a privilege not guaranteed by the Constitution; it is a matter of pure discretion on the part of sentencing or corrections authorities. Courts have held that revoking

conditional release to probation or parole triggers only very limited rights. *See, In Re Gault*, 387 U.S. 1 (1967).

Beside the rules of the Commission, several U.S. Supreme Court cases may affect the process for return of juveniles whose placements have failed due to violating the terms and conditions of their supervision. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Carchman v. Nash*, 473 U.S. 716 (1985). 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, supra*. 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, People ex rel. Silbert v. Cohen*, 29 NYS 2d 12 (1971). Although a juvenile is not be entitled to all the due process procedures provided in an ordinary criminal trial, he is entitled to receive sufficient due process. See *In Re Anthony*, 763 A.2d 136 (Md. 2000) ("Many of the constitutional safeguards afforded criminal defendants are applicable to juveniles.") also *In Re Roneikas,* 920 A.2d 496 (Md. App. 2007).

4.5.7.2 Right to Counsel

Under the Revised 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,* Rule 6-103(10).

In 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*, *supra* at 788.

The requirement to provide counsel would generally not be required 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. No liberty interest is at stake because the juvenile has no right to be supervised in another state.

4.5.7.3 Specific Considerations for Hearings Under the Revised ICJ

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. 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. 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.

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. Pennsylvania Board of Probation and Parole*, 958 A.2d 582 (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.

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. A parole officer not recommending revocation can act as a hearing officer without raising constitutional concerns. 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. The *Gagnon* and *Morrissey* decisions do not require a probable cause type hearing in all circumstances of retaking.

4.5.7.5 Detention/Bail Pending Return

A juvenile offender subject to a warrant issued under ICJ jurisdiction has no right to bail. The Revised ICJ and its rules impose an absolute prohibition against admitting a juvenile to bail when the home/demanding state enters a warrant into NCIC as a "no bond/bail warrant."

5.2.1 Liability – General Considerations

42 U.S.C. § 1983 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.

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. Pennsylvania Board of Probation and Parole*, 513 F.3d 95 (3rd Cir. 2008).

5.3.3 Types of "Acts" Under the Revised ICJ

The distinction between discretionary acts and ministerial acts 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.*, Rule 4-102; Rule 4-104(2); Rule 5-102. Each of these rules imposes a specific, non-discretionary obligation on state officials.

By contrast, Rule 5-101 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 sending state official issue travel instructions once the decision to accept a placement is made.

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.

Many states have waived sovereign immunity for the failure to perform or the negligent performance of ministerial acts. The failure to perform a ministerial act, or the negligent performance of such an act, can expose state officials to liability if a person is injured as a result thereof.

5.5 Judicial Immunity

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. probation and parole authorities typically have quasi-judicial immunity.

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. These actions are not entitled to immunity.

Generally, probation and parole officers have absolute judicial immunity where their actions are integral to the judicial process. Several courts have held that actions such as supervision, as distinguished from investigation, are administrative in nature and not a judicial function entitled to judicial immunity.

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. 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.

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.

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.

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 County 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.
- **The foreseeability of an offender's actions** and the foreseeability of 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. Philadelphia*, 2004 U.S. App. LEXIS 4631 (3rd Cir. 2004).
- **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 Services, *Inc.*, 56 S.W.3d 900, 902 (Tex. Ct. App.2001).

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.

CHAPTER 1
UNDERSTANDING INTERSTATE COMPACTS & THE GENERAL LAW OF 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 Revised ICJ is a substantial revision to the 1955 compact, and much has changed in the legal environment since that compact was first adopted. As noted in the introduction and as will be explained in this chapter, interstate compacts are not mere agreements between the states subject to parochial interpretations or selective application. They are not a series of recommended procedures or discretionary proposals that may be disregarded for convenience. Compacts are not uniform laws (such as the Uniform Child Custody Jurisdiction Act) or mere administrative agreements between the executive officials of member states. They are, first and foremost, statutory contracts that bind the member states, their officials, and their citizens to an agreed set of principles and understandings. Understanding their unique standing in the American legal regime is important to applying their terms and conditions correctly and avoiding costly mistakes that may land a state in serious legal jeopardy *vis-à-vis* fulfilling its contracted obligations.

1.1 Who Must Comply with an Interstate Compact?

As will be discussed further in this *Bench Book*, interstate compacts are binding on the signatory states. This means that once a state legislature adopts a compact, it binds all state officials and citizens to an enforceable agreement governing the subject matter of the compact. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938) (states and their citizens are bound by the terms of compact). *See also*, *Frontier Ditch Co. v. Southeastern Colo. Water Conservancy Dist.*, 761 P.2d 1117 (Colo. 1998). For example, a boundary compact binds the citizens of the member states to a new border arrangement. Police officers, judges, probation officers, tax authorities and the general public cannot disregard the compact or take it as mere suggestion of where the new border lies.

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 a discretionary agreement; it binds the member states, its officials (including judges, court personnel and probation and parole authorities) and its citizens to a set of principles that determine the circumstances, procedures, and supervision requirements applicable to interstate transfers. *See, In re Lee Dale Crockett*, Case No. A117772 (Cal. App. 1st Dist., January 31, 2008) ("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 a petitioner than it would on its own juvenile probationers.") The failure to comply with the

[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.

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. Tennessee*, No. 04-526-KSF (E.D. Ky. June 13, 2005) ("[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[.]"). *See also*, *Doe v. Pennsylvania*, 513 F.3d 95 (3rd Cir. 2008) (as signatory to the ICAOS, Pennsylvania is bound by its terms and may not unilaterally alter the conditions for transfer of offenders or impose requirements on out-of-state offenders that it would otherwise not impose on in-state offenders); *In re Lee Dale Crockett*, Case No. A117772 (Cal. App. 1st Dist., January 31, 2008). 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. Why is this so?

1.2 Status of Interstate Compacts

Understanding the status of an interstate compact begins with this basic point: Interstate compacts are *formal agreements between states* that are both (1) statutory law, and (2) interstate contractual agreements. 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 regulatory scheme). At the federal level, the enforcement of compacts is controlled by the Contracts Clause of the U.S. Constitution and, to a lesser extent, by the Supremacy Clause, depending on the substantive nature of the compact and its impact on the basic principles of federalism.

Historically, compacts were used to settle boundary disputes. The more modern usage of compacts has been in the area of regulating interstate matters due to the fact that a state may not regulate matters beyond its borders. An interstate compact or a federal law becomes the only mechanisms by which interstate matters are bindingly resolved. The Congress or a federal regulatory agency acts sometimes on behalf of, and not infrequently without regard for, state interests. Therefore, compacts are the only formal mechanisms by which individual states can reach beyond their borders and collectively regulate the conduct of other states and the citizens of other states. See *Colorado v. Kansas*, 320 U.S. 383, 392 (1943) (Interstate disputes "may appropriately be composed by negotiation and agreement, pursuant to the compact clause of the federal constitution. We say . . . that such mutual accommodation and agreement should, if possible, be the medium of settlement instead of invocation of our adjudicatory power."). See also *Tarrant Regional Water District v. Herrmann*, 656 F.3d 1222, 1235 (10th Cir. 2011).

Beginning in 1921 with the adoption of the New York-New Jersey Port Authority Compact, states have adopted a large number of compacts regulating a range of matters as diverse as water use, land development and the environment, transportation systems, regional economic development, crime control, and child welfare. Both the 1955 ICJ and the Revised ICJ are examples of a regulatory compact managing the complex interstate relations governing the movement and supervision of juvenile offenders. Today there are some 200 compacts in place, many of which now fall into the category of "regulatory compacts" or "administrative compacts"

similar to the Revised ICJ. Consequently, the Revised ICJ is part of a long and accelerating use of interstate compacts to solve a number of multilateral state issues beyond boundary disputes. Compacts are aptly described as instruments that regulate matters that are sub-federal, supra-state in nature.

The combined legislative powers of Congress and of the states permit a wide range of permutations and combinations of power necessary for governmental action. *See, Seattle Master Builders v. Northwest Power Planning Council*, 786 F.2d 1359 (9th Cir.1986). The subject matter of an interstate compact is not 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.

PRACTICE NOTE: Unless the states agree that members have reserved some individual powers, the state courts are required both as a matter under the Supremacy Clause, where applicable, and as a matter of contract law to apply the terms and conditions of a 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.

1.3 Compacts Are Not Uniform Laws

A compact is not a "uniform law" as that term is typically construed and applied. Compacts, unlike laws such as the Uniform Commercial Code or the Uniform Criminal Extradition and Rendition Act, are not subject to unilateral amendment by a state. Once adopted, a state cannot repeal the compact unless the language of the agreement authorizes such an act, and even then only as provided in the agreement. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951). States cannot unilaterally change the substance of a compact because the terms and conditions of the states' agreement define the obligations of each member state. For example, in *Nebraska v. Central Interstate Low-Level Radioactive Waste Comm'n*, 207 F.3d 1021, 1026 (8th Cir. 2000), 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. The court noted the following:

> "[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."

Consequently, no state or state official can act in contravention of the terms of a compact. *See, 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).). See Gillette Co. v. Franchise Tax Board, 147 Cal. Rptr. 3d. 603 (2012). Compacts stand as probably the only exception to the

general rule that a sitting state legislature cannot irrevocably bind future state legislatures. *See generally,* CAROLINE N. BROUN, MICHAEL L. BUENGER, MICHAEL H. MCCABE & RICHARD L. MASTERS, THE EVOLVING USE AND THE CHANGING ROLE OF INTERSTATE COMPACTS, A PRACTITIONER'S GUIDE § 1.2.2 (ABA Publishing, 2006). 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. *See, Northeast Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985).

Therefore, compacts have standing as both binding state law (within the member states) *and* as a contract (between the member states). They may be "uniform" in language but they are certainly not "uniform laws" in effect or status. Because of their contractual nature, a state law that contradicts or conflicts with a compact is unenforceable, absent some reservation 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 of trumping a contradictory provision of a state's constitution. *See, Washington 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 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 relative to the Revised ICJ and like administrative compacts.

1.4 Compacts Are Not Administrative Agreements

As contracts, compacts constitute solemn "treaties" between the member states acting as quasi-sovereigns within a federal union. *See, Rhode Island v. Massachusetts*, 37 U.S. 657, 725 (1838) (compacts operate with the same effect as treaties between sovereign powers). Compacts are not administrative agreements between states executed by executive branch agencies. *General Expressways, Inc. v. Iowa Reciprocity Board*, 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."). Compacts are, by nature, more formal and binding than other interstate administrative agreements. Administrative arrangements between states would not rise to the level of an interstate compact unless (1) the legislatures of the member states have adopted the agreement or properly delegated to an executive authority the power to enter into an agreement with other states, and (2) the agreement amounts to a contract between the member states not subject to unilateral alteration. *See, Sullivan v. DOT, Bureau of Driver Licensing*, 708 A.2d 481 (1998) (Drivers' 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).

1.5 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 can extend to the creation of interstate commissions through an interstate compact**.** *See, West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951), also Corr v. Metro Washington Airports Authority, __ F.Supp.2d __, 2011 WL 2680471 (E.D. Va, 2011) States may validly agree by compact with other states to delegate to such commissions or agencies legislative and administrative powers and duties. *See, Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938); *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). 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.___ (June 1, 2010). An interstate commission 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.*

1.6 When Congressional Consent is Required

Although a strict reading of the Compact Clause appears to require congressional consent in every case, the Supreme Court has determined that "no compact" does not mean "every compact". The compact clause is triggered only by those agreements that would alter the balance of political power between the states and federal government or intrude on a power reserved to Congress. *Virginia v. Tennessee*, 148 U.S. 503 (1893). *See also*, *Northeast Bancorp v. Federal Reserve System*, 472 U.S. 159 (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). Thus, 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. *U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978). In this circumstance, however, the compact continues to be a contract between the states, the meaning of which may be subject to the Supreme Court's original jurisdiction over disputes between the states. The compact is not "federalized" for purposes of enforcement and interpretation and does not become a "law of the United States." *Cuyler v. Adams*, 449 U.S. 433, 438 (1981). Such a compact is interpreted under principles of state law, not federal law. Whether the Revised ICJ is a subject for congressional consent has not been fully addressed since juvenile matters have traditionally rested within the authority of the states and because juvenile delinquency is not technically a criminal matter. *See, discussion at* § 2.6 *infra*.

PRACTICE NOTE: A compact not requiring congressional consent does not present a federal question. It must be construed as state law. *McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991). However, where congressional consent is required, because the compact intrudes on federal interests, the lack of consent renders the agreement void as between the states.

Notwithstanding the question of consent, the validity of the revised ICJ as an enforceable contract is not in question. Where a compact does not intrude on federal interests, the agreement does not require congressional consent. *See, New Hampshire v. Maine*, 426 U.S. 363 (1976). Even where congressional consent is given, the mere act of consent is not dispositive of whether the compact actually required consent. *See, U.S. Steel Corp., supra,* 470-71 ("The mere form of the interstate agreement cannot be dispositive . . . . The relevant inquiry must be one of impact on our federal structure.") But whether the Revised ICJ requires, or has received, congressional consent does not change the fact that it is a valid interstate compact fully enforceable upon the states under the original jurisdiction of the Supreme Court.

Congressional consent is given in one of three ways:

- Consent can be implied after the fact, 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*, *supra.*

- Consent can be explicitly given after the fact, as in the case of border compacts, by enacting legislation that specifically recognizes and consents to the compact.

- Consent can be given in advance by Congress adopting legislation encouraging states to adopt compacts to solve particular problems. For example, the ICAOS, the adult counterpart to the Revised ICJ, is based on congressional consent granted under the Crime Control Act of 1934, 4 U.S.C.A. § 112(a), 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." Advanced consent may also be given by Congress approving interstate compacts contingent upon their approval by federal executive branch officials. *See, e.g.,* 42 U.S.C. § 675 (2004).

1.7 Implications of Congressional Consent

Where required, the nature of the compact changes significantly once Congress grants its consent. Consent transforms an interstate compact into the "law of the United States" under the Law of the Union Doctrine. *See, Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Therefore, Congressional consent "transforms the States' agreement into federal law under the Compact Clause." *Id.* Although articulated in *Cuyler v. Adams*, the rule that congressional consent transforms the states' agreement into federal law has been recognized for some time. *See, Delaware River Joint Toll Bridge Comm'n v. Colburn*, 310 U.S. 419, 427 (1940) ("[W]e now conclude that the construction of such a compact sanctioned by Congress by virtue of Article I, § 10, Clause 3 of the Constitution, involves a federal 'title, right, privilege or immunity'[.]"). 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, Bush v. Muncy*, 659 F.2d 402, 407 (4 Cir. 1981), *cert. denied*, 455 U.S. 910 (1982).

This is not to suggest that every dispute arising under an interstate compact must be litigated in the federal courts. Under the Supremacy Clause, state courts have the same obligation to give force and effect to the provisions of a congressionally approved compact as do the federal courts. It is, however, ultimately the U.S. Supreme Court that retains the final word on the interpretation and application of congressionally approved compacts and the Court will give the compact a federal interpretation. *See, Delaware 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.").

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. A court's duty in interpreting a compact involves ascertaining the intent of the parties. *See, Sullivan v. Kidd,* 254 U.S. 433, 439 (1921) ("[T]reaties are to be interpreted upon the principles which govern the interpretation of contracts . . . with a view to making effective the purposes of the high contracting parties"); *Wright v. Henkel*, 190 U.S. 40, 57 (1903) ("Treaties must receive a fair interpretation, according to the intention of the contracting parties").

Once a compact between states has been approved, it is the law of the case 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 a compact dispute is ultimately litigated.

PRACTICE NOTE: One consequence of the "transformational" rationale articulated by the Supreme Court in *Cuyler v. Adams* is that congressional consent places the interpretation and enforcement of interstate compacts in the purview of the federal courts. *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 507 F.2d 517 (9th Cir. 1974) ("[A] congressionally sanctioned interstate compact within the Compact Clause is a federal law subject to federal construction."). *Carchman v. Nash*, 473 U.S. 716, 719 (1985). *See also*, *West Virginia ex rel. Dyer v. Sims*, *supra* at 28 ("A state cannot be its own ultimate judge in a controversy with a sister state. To determine the nature and scope of obligations as between states, whether they arise through the legislative means of compact or the 'federal common law' governing interstate controversies, is the function and duty of the Supreme Court of the Nation.")

1.8 Restraints on Congress's Authority

In giving consent, Congress is not required to accept a compact as presented nor is Congress constrained in imposing limitations or conditions on the member states as a condition precedent to consent. Congress is fully within its authority to impose conditions on states when granting consent because the act of consent is a political not legal judgment. 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. *See, e.g.,* 16 U.S.C § 544, *et seq.* (2004) (imposing certain conditions on the states participating in the Columbia River Gorge Compact including the creation of the Columbia River Gorge Commission). Although states may negotiate a compact and obtain universal assent to the instrument, Congress retains full authority to alter, amend, or set conditions on the compact as part of granting its consent. *See, Columbia River Gorge United-Protecting People & Property v. Yeutter*, 960 F.2d 110 (Cir. 9th 1992); *Seattle Master Builders v. Pacific N.W. Elec. Power*, 786 F.2d 1359, 1364 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987).

PRACTICE NOTE: 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. *See, Petty v. Tennessee-Missouri Bridge Commission*, *supra*. (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).

The conditions that Congress can impose on the member states may include the waiver of Eleventh Amendment immunity for compact commissions and agencies. *See, Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959). Selection of jurisdiction and venue for litigating disputes can be another condition. *See,* 42 U.S. 14616 (2004) ("Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority."). Because of the purely gratuitous nature of consent, Congress may extract as part of its consent to an interstate compact conditions that it might not otherwise extract in other contexts. *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 43 n.1 (1988) (concession that Congress can exact with respect to entities created by compacts may be much greater than what it can exact in other contexts).

Congress does not pass upon a compact in the same manner as a court decides a question of law. As noted, congressional consent is an act of political judgment about the compact's potential impact on national interests and, if approved, to impose any conditions necessary to mitigate harm to those interests. *See, Waterfront Comm'n of New York Harbor v. Constr. & Marine Equip. Co.*, 928 F. Supp. 1388 (D.C.N.J. 1996). In short, the Congressional consent requirement is an exercise of political judgment as to the appropriateness of the compact vis-à-vis national concerns, not a legal judgment as to the correctness of the form and substance of the agreement. There are virtually no limitations on Congress's right to grant, withhold, or condition its consent, save a finding that the compact itself violates constitutional principles.

1.9 Withdrawal of Consent and Limitations on Congress's Legislative Authority

There are few limitations on Congress's *legislative* authority as applied to the substance of a compact. The granting of consent in no way limits Congress's ability to exercise its legislative prerogatives, even to the extent that such an exercise significantly impacts or impairs the workings of an interstate compact. *See, 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). It must also be noted that even where consent is given, the act of consent does not limit Congress's authority to subsequently legislate in the very area governed by a compact, with one exception. The territorial integrity of the states is guaranteed by Article IV of the Constitution. Once Congress consents to a state boundary compact, it may not subsequently adopt legislation undoing the states' agreement.

PRACTICE NOTE: While adopting an interstate compact binds all future state legislatures and restricts the ability of states to act in contravention of a compact, no restrictions are imposed upon Congress. Congress can utilize its vast legislative power – concurrent with or subsequent to granting consent – to alter the purpose or regulatory authority of a compact or by altering the landscape in which the compact operates. Compacts are not afforded a special status different from that to which the states are otherwise entitled.

The general view is that the granting of consent can result in changing the application of federal law to the states or entities subject to the compact. For example, in *McKenna v. Washington Metropolitan Area Transit Authority*, 829 F.2d 186 (D.C. Cir. 1987), the U.S. Court of Appeals for the District of Columbia held that Congress's consent to the WMATA Compact altered the application of the Federal Employers' Liability Act (FELA) to the WMATA and exempted it from liability under that act.

1.10 Withdrawal of Congressional Consent

Once Congress grants its consent to a compact, the general view is that consent cannot be withdrawn or additional conditions subsequently added *to the compact*. Although the matter has not been resolved by the U.S. Supreme Court, two lower federal courts have held that congressional consent, once given, is not subject to alteration. *See, Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962); *Mineo v. Port Authority of New York and New Jersey*, 779 F.2d 939 (3rd Cir. 1985). It should be noted, however, that notwithstanding *Tobin*, in at least one instance Congress has specifically reserved the right to withdraw consent by passing a law to that effect. Legislation granting 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." *See,* 42 U.S.C. § 2021d (d) (2004). Because of the time-limited nature of these compacts, the specific reserve of authority, and the prior notice to the states, subsequent withdrawal of consent may be appropriate and defensible in this limited context. Moreover, the specific reservation of authority provides ample notice to member states that one condition of consent is the reservation of Congress's authority to withdraw consent. Thus, the concern expressed in *Tobin* that withdrawal of consent could lead

to unknown problems may be obviated when the states accept a compact containing a withdrawal condition.

1.11 Federal Enforcement of Interstate Compacts

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); *Alabama v. North Carolina*, No. 132 slip op. (U.S. June 1, 2010) (Court may not impose monetary sanctions if the compact is silent on this matter). 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 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.'" *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). However, a state may not act as a surrogate for its citizens, but must have a direct interest in the original action brought against a sister state. *Maryland v. Louisiana*, 451 U.S. 725, 737 (1981); *see also, New Hampshire v. Louisiana*, 108 U.S. 76 (1883) (Eleventh Amendment applies and acts to bar jurisdiction where the State and the attorney-general are only nominal actors in the proceeding).

1.12 Eleventh Amendment Issues for Compact Agencies

In general, the delegation of state authority through a compact to an interstate commission does not presumptively imbue such commissions with the status of a "state agency" for purposes of Eleventh Amendment immunity. Compact agencies are usually under the control of "special interests" or "gubernatorial appointed" representatives and are, therefore, considered two or more steps removed from popular control or control by a local government. Bi-state entities created by compacts are not subject to the unilateral control of any one of the states. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994) (Port Authority is financially self-sufficient; it generates its own revenues, and it pays its own debts. Requiring the Port Authority

to answer in a federal court to injured railroad workers who assert a federal statutory right, under the Federal Employers' Liability Act to recover damages does not touch the concerns, the states' solvency and dignity, that underpin the Eleventh Amendment.) In general, courts presume that an entity created pursuant to the Compact Clause does not qualify for Eleventh Amendment immunity unless there is good reason to believe that the states structured the entity to arm it with the states' own immunity, and that, if applicable, Congress concurred in that purpose. *See, Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391 (1979). *See also, Watters v. Wash. Metro. Area Transit Auth.*, 295 F.3d 36 (D.C. Cir. 2002), *cert. denied* 538 U.S. 922 (2003).

The Eleventh Amendment may protect an interstate compact commission or agency *if the compact evidences an explicit and unequivocal intent* by the states and Congress (if consent is required) to do so to grant such immunity. The Supreme Court has noted that as long as the compact provisions reveal the intent of the states to have direct financial and legal responsibility for the operation and administration of a compact-created commission, immunity is generally not waived. Thus, Eleventh Amendment immunity is available to an interstate commission if: (1) the states have direct (as distinguished from indirect) financial responsibility for funding the operations of the agency, and (2) the states assume legal responsibility for the administration of the compact. *See, Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391 (1979). Compact commissions that are self-funding, and whose operations are generally independent of direct state oversight, do not enjoy Eleventh Amendment immunity. *See, Hess*, *supra*. A compact that is silent on Eleventh Amendment immunity does not confer such immunity, the presumption running against conferring immunity on "non-state" entities. *See, Watters v. Wash. Metro. Area Transit Auth.*, 295 F.3d 36 (2002) (The three signatories conferred their respective sovereign immunities, including the Eleventh Amendment immunity of the two states, upon WMATA; there was nothing to indicate a waiver of WMATA's immunity against a suit for breach of duty to enforce an attorney's lien). The Supreme Court has been cautious in extending Eleventh Amendment immunity to entities that are not "states." *See, Lake County Estates, Inc. v. Tahoe Reg'l Planning Agency*, *supra* at 410 ("It is true, of course, that some agencies exercising state power have been permitted to invoke the Amendment in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself. But the Court has consistently refused to construe the Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a 'slice of state power.'"). Therefore, whether Eleventh Amendment immunity has been waived can only be determined by examining the compact language and the intent of the states as revealed by that language.

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. *Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Assoc.*, 450 U.S. 147, 150, 67 L. Ed. 2d 132, 101 S. Ct. 1032 (1981); *accord 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 v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994). This has not, however, been

judicially determined. Even if the Eleventh Amendment does not offer protection, the Commission may be immune from suit under the laws of the states that created the Commission. Such immunity is governed by state sovereign immunity considerations not Eleventh Amendment considerations. Again, whether the "sue and be sued" provision of the Revised ICJ constitutes a waiver of state sovereign immunity in this context has not been judicially determined; some courts have interpreted "sue and be sued" provisions as a waiver of immunity depending on the language of the provision. *See, Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299 (1990) (New York and New Jersey consented to suit against PATH in federal court.). *But see, Tooke v. City of Mexia,* 197 S.W.3d 325 (Texas Supreme Ct. 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.") also,*Watters v. Wash. Metro. Area Transit Auth.*, *supra* at 40 ("We may find a waiver of sovereign immunity 'only where stated by the most express language or by such overwhelming implications from the text [of the compact] as will leave no room for any other reasonable construction.'" (Citations omitted).

1.13 Judicial Interpretation of Interstate Compacts

Because a compact is a contract, it must be enforced with the terms and conditions of the compact. No court has authority to provide relief that is inconsistent with the compact. *Texas v. New Mexico*, 462 U.S. 554 (1983). However, in interpreting a compact, courts have latitude in discerning the intent and purpose of an agreement. Federal courts must address disputes arising under a congressional approved compact just as if a court were addressing a federal statute. The first and last order of business of a court addressing an interstate compact "is interpreting the compact." *Id.* at 567, 568. Absent a federal statute making state statutory or decisional law applicable, the controlling law is federal law; and, absent federal statutory guidance, the governing rule of the decision would be fashioned by the federal court in the mode of the common law. *See, Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 674-679 (1974).

Although courts acknowledge that interstate compacts are contracts, to the extent they are binding agreements between member states, courts also recognize the unique features and functions of compacts. Though a contract, an interstate compact represents a political compromise between "constituent elements of the Union," as opposed to a commercial transaction. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994). Such an agreement is made to "address interests and problems that do not coincide nicely with either national boundaries or State lines, interests that may be badly served or not served at all by the ordinary channels of National or State political action." *Id.* Consequently, concerning congressionally approved compacts, the right to sue for breach of the compact differs from a right created by a commercial contract; it does not arise from state common law but from federal law.

While contract principles may form the interpretation of a compact, and the remedies available in the event of a breach, the underlying action is not like a contract action at common law as heard in the English law courts of the late Eighteenth Century. Courts may look to extrinsic evidence, when appropriate, to determine the intent of the parties and to effectuate the desired result of the compact. In giving full effect to the intent of the parties, they may consult sources that might differ from those normally reviewed when an ordinary federal statute is at

issue. *Alabama v. North Carolina,* 560 U.S. __ (Kennedy, J. concurring) (June 1, 2010). Extrinsic evidence such as a compact's legislative history or the negotiation history may be examined in interpreting an ambiguous provision of a compact. *Arizona v. California*, 292 U.S. 341 (1934); *Green v. Bock Laundry Machine Co.*, 490 U.S. 504 (1989); *Pierce v. Underwood*, 487 U.S. 552, (1988); *Blum v. Stenson*, 465 U.S. 886 (1984). Thus, unlike standard contract disputes where principles such as the parole evidence rule may restrict the influence of outside evidence in interpreting a contract provision, resorting to extrinsic evidence such as the history of negotiations is entirely appropriate in a compact dispute. *See, Oklahoma v. New Mexico*, 501 U.S. 221 (1991). The use of extrinsic evidence to interpret and enforce a compact arises from the dual nature of such agreements as both statutory and contractual in nature.

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. The most that can be stated is that 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. *See, United States v. Guest*, 383 U.S. 745 (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 (1964) (Douglas, J., concurring). *See also*, *Saenz v. Roe*, 526 U.S. 489 (1999) (the right to interstate travel is firmly embedded in the Supreme Court's jurisprudence); *Kolender v. Lawson*, 461 U.S. 352 (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 (D.C. Cir. 1999) *quoting Bellotti*, *supra*, 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, *see Ramos v. Town of Vernon*, 353 F.3d 171 (2d Cir. 2003), or by the state's interest in protecting them given their presumed vulnerability.

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). *See, United States v. Allen*, 574 F.2d 435 (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. Article IV, § 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 § 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. *See, e.g., In Interest of W.*, 377 So.2d 22 (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 (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. *See,* Interstate Compact on Juveniles, Art. I (1955). The 1955 ICJ has 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. 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. The Revised ICJ continues these goals.

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 20,000. 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 on 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 on 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 46 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 March 2012, the Revised ICJ has been adopted in the following 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
Hawaii	HAW. REV. STAT. § SB 109	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 March 2012, the following jurisdictions have not adopted the Revised ICJ:

Georgia
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, § 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 § 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, *see,* Article XIII(b)(2), the compact is more appropriately described as a regulatory compact creating a commission with broad rulemaking and enforcement powers. *See generally*, Articles VI & VII. 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." *See,* 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. *Cf.*, *New Hampshire v. Maine*, 426 U.S. 363 (1976). *See also*, *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 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. 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. *See, e.g., United States v. Juvenile Male*, 864 F. 2d 641 (9th Cir. 1988). *See also*, 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 (2010). 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. *U.S. 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. *See,* Federal Juvenile Delinquency Act of 1938, Pub.L. No. 75-666, 52 Stat. 764 (1938). *Cf. United States v. Allen*, 574 F.2d 435 (8th Cir. 1978). Additionally, although the Extradition Clause, Article IV, § 2 of the Constitution, 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. *See, Roberts v. Reilly*, 116 U.S. 80 (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).

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 ambiguity on this issue and the trend towards trying many juvenile delinquents as adults (thus the nature of an act and its context leaves open the possibility that it 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 arguably governs in an area within Congress's legislative authority (interstate crime control) and implicates multistate regulation of cross border activity. 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. *See,* Art. V, Powers & Duties of the Interstate Commission.

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 this compact.

- "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.

Other definitions in the Revised ICJ include: (a) By-laws; (b) Compacting State; (c) Commissioner; (d) Interstate Commission; (e) Non-compacting State; and (f) State.

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,* Rule 1-101.

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*. Non-compact states are allowed to send observers but may not participate as voting members of the Commission.

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 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. *See,* Art. IV § 2. See *In re Dependency of D. F.-M., 236 P.3d 961 (WA 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 on 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," 1981 Act, Uniform Law Annotated, Vol. 15, p. 1 (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 § 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 § 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 offender compliance. Offender 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 (CT 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. Pennsylvania Bd. of Probation and Parole*, 513 F.3d 95 (3rd 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 (Art. XI § B(1)(a); Rule 8-103);
- Imposing alternative dispute resolution, including mediation or arbitration (Art. XI § B(1)(b); Rule 8-102);
- Imposing financial penalties on a non-compliant state (Art. XI § B(1)(c); Rule 8-103);
- Suspending a non-compliant state (Art. XI § B(1)(d));
- Termination from the Compact (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. (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. *See,* Art. XI § C (prevailing party shall be awarded all costs associated with the enforcement action, including reasonable attorneys' fees). *See also*, Rule 8-104 (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,* 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. *See,* Art. VII § A(2). *See also*, *In re O.M.*, 565 A.2d 573 (D.C. Circuit 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 on 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. *See,* 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 (2nd 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 § 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 also 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. 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. 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 § 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. *See, In re Charles G.*, 115 Cal. App. 4th 608 (3d. Dist. 2004); *In re R.D.R.*, 876 A.2d 1009 (Pa. Super. 2005). See Kirton v. Fields, 997 So.2d 349 (FL 2008) (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. *See, Hunt v. Wayne Circuit Judges*, 105 N.W. 531 (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. *But see, In re J.P.*, 511 A.2d 210 (Pa. 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 juvenile justice system. *See, State 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 placement is (a) in the best interests of the child, and (b) suitable. A failure to make such findings may constitute reversible error. *See, In re Welfare of Z.S.T.*, No. A09-324 (Minn. App. Dec. 22, 2009). In recent years, "public safety" considerations have been given greater weight in determining the appropriate disposition. *See, In re Ronald C.*, No. A128756 (Cal. App. 1st Dist., 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. State*, 988 A.2d 1011 (Md., 2010) (one purpose of the juvenile corrections act is public and community safety). Thus, while a receiving state cannot deny a placement simply because of the age of the offender 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." 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 or not 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 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, State v. Cook*, 64 P.3d 58 (Wash. 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 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, Matter of Appeal in Coconino County Juvenile Action No. J-10359*, 754 P.2d 1356 (Ariz. App. 1987) (in cases

[2] The Revised 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*, Rule 1-101.

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, as discussed in Chapter 4, 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, Ex parte Jetter*, 495 S.W. 2d 925 (Tex. Crim. App. 1973). However, the Uniform Criminal Extradition Act would not apply to the return of a runaway to their parent or legal guardian. *See, A Juvenile*, 484 N.E.2d 995 (Mass. 1985).

3.3 Eligibility

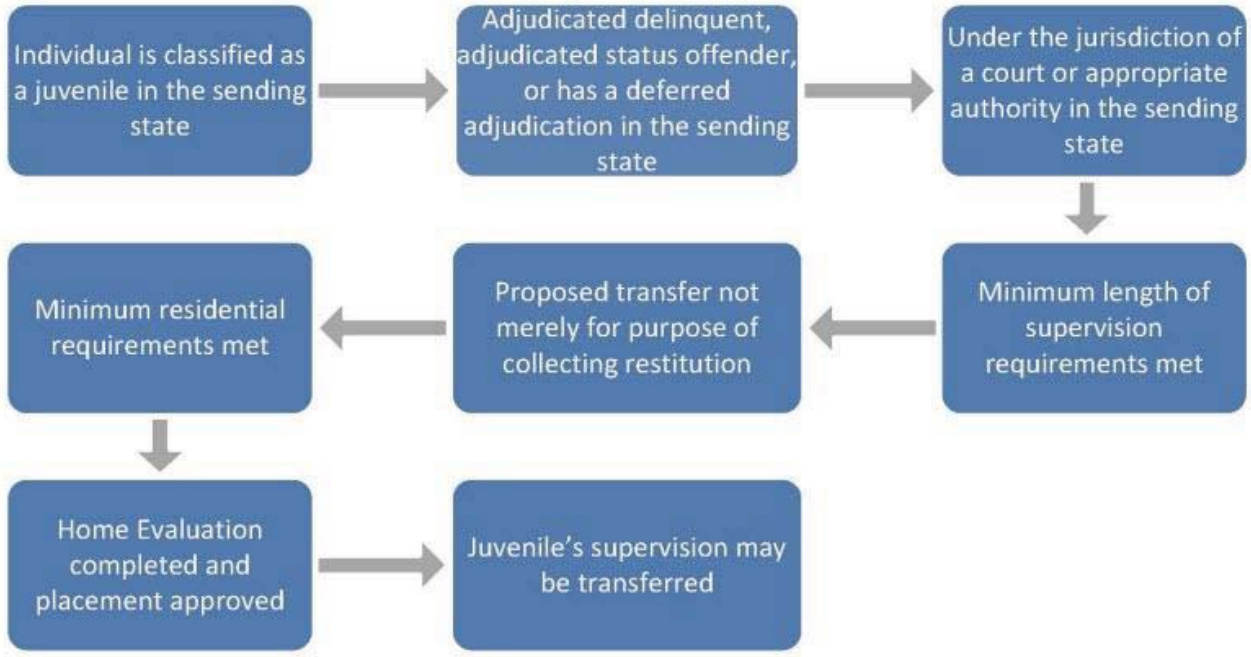
3.3.1 General Considerations

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. *See, E.P. v. District Court of Garfield Cty.*, (696 P.2d 254 (Colo. 1985). Rule 4-101(2)(a) 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 parent, legal guardian, relative, non-relative or independently, excluding residential facilities; or is a full time student at a secondary school, accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment. *See*, Rule 4-101(2)(a).

Juveniles, who have been accepted as full-time students at a 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. *See,* Rule 4-101A. Such juveniles are eligible, subject to the acceptability of the placement plan. Nothing in the

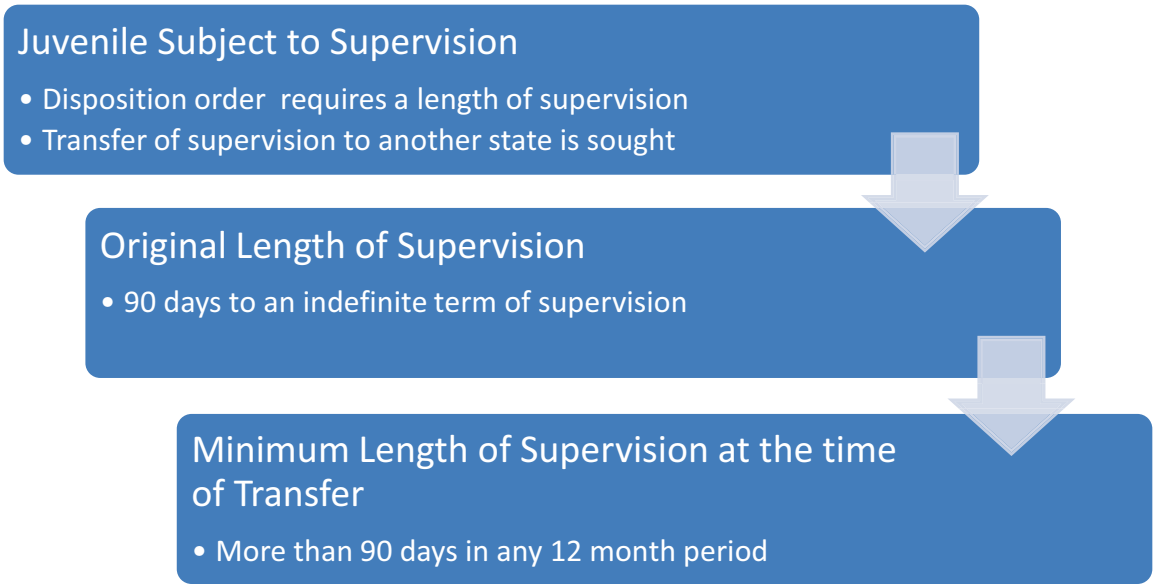
rules mandates that students enjoy special consideration regarding the suitability of the placement.



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, 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. *See,* Rule 4-101(2)(d); 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. *See,* Rule 4-101(2)(e); and
- The transfer is not solely for the purposes of collecting restitution. *See,* Rule 4-104(8).



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's 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 offender notwithstanding any difference with the laws of the receiving state. *See,* Rule 4-106.

3.3.3 Restrictions on Eligibility to Transfer

The expansive definition of juvenile, however, is subject to several limitations. First, Rule 4-102(1) reads "Each ICJ Office shall develop policies/procedures on how to handle ICJ matters within their 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 placement of a juvenile is suitable. The receiving state may reject a proposed transfer if: (a) the proposed placement 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. *See,* Rule 5-101(4). The term "unsuitable placement" could include any number of situations in which the receiving state could deny placement, including one in which the placement 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 in danger. 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. *Cf.,* Interstate Commission for Juveniles, Rule 1-101. *See also, State v. Williams*, No. C5-96-1174 (Minn. App. Sept. 3, 1996) (offender shows commitment to rehabilitation by staying in substantial compliance with the terms and conditions of probation).

A complicating factor with placement, 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. Rule 5-101(4) allows the receiving state to deny supervision "when the home evaluation reveals that the proposed placement 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 placement of a youth with a person entitled to legal custody, Rule 5-101(4) effectively allows an "override" of the receiving state's authority to deny a placement when there is no custodial parent or guardian in the sending state and a custodial parent or guardian resides in the receiving state. In this circumstance, the receiving state has no discretion to deny the placement, even if there are concerns about the placement.

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 placement is in the best interests of the juvenile delinquent, it cannot effectuate that disposition outside the terms of the Revised ICJ. *See,* Revised ICJ Article VII § A 2. (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). 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.*, Model Juvenile Court Act § 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 offender at the time the act was committed, assuming the offender is not declared an adult for purposes of prosecution and trial. State law establishes the age for purposes of delinquency. *See, In Re: J. L. S.*, No. 93 MDA 2007 (Pa. Sup. Ct. 2007)

Under the Federal Juvenile Delinquency Act of 1938 (FJDA) (18 U.S.C. §§ 5032-5042), "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, *see* 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. *See,* 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 placement 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 placement in a case involving an older sex offender whose proposed placement might put him or her in close proximity to other children or a school. The receiving state could not deny the placement simply because the juvenile is an older sex offender. In the first instance, issues of public safety may work against a placement. 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. *See,* Rule 5-101(3).

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

3.3.5 Status Offender

As with juvenile delinquents, the acceptance or rejection of the transfer of supervision or the placement 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 placement 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.,* Cal. Welf. & Inst. Code § 601(b) (2010). *See also, In re H.E.B.*, 695 S.E.2d 332 (Ga. App., 2010) (a "status offender" is as 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. *See,* Rule 1-101. In other words, an act which is only an offense because of the perpetrator's status as a child.") 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 parent, guardian, or other custodian 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.

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

3.3.6 Runaways

The Revised ICJ governs the return of runaway juveniles. A runaway is defined as "child under the juvenile jurisdictional age limit established by the state, who has run away from his/her place of residence, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody." *See,* Rule 1-101. The Revised ICJ applies to runaways exclusively in the context of returning them to the state where the parent or legal guardian reside. Thus, where the Revised ICJ applies to juvenile delinquents and status offenders in both the placement 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 parents or legal guardians have legal custody and the latter being the state to which the runaway has fled.

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, Interest of C.J.W.*, 377 So.2d 22 (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." *See, State ex rel. White v. Todt*, 475 S.E.2d 426, 434 Fn. 8 (W.Va., 1996). *See also, In Re M.D.*, 298 S.E.2d 243, (W.Va. 1982) (court should determine whether return is in the best interest of the runaway); *Application of Pierce*, 601 P.2d 1179 (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 the Interest of C.P.*, 533 A.2d 1001 (Pa. 1987), 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. Other courts have followed a similar rationale, finding that issues related to the "best interest" of the child are reserved to the requisitioning state. *See, Matter of Teague*, 371 S.E.2d 510 (N.C. App. 1988) (when a judge finds the requisition in order the juvenile shall be delivered to the demanding state). Which interpretation is accurate remains an open question.

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 parent, guardian, person, or 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. *See, People v. Lucas*, 992 P.2d 619 (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. *See, Menapace v. State*, 768 P.2d 8 (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. *See, In re Bracewell*, 126 Ohio App.3d 133, 136-37 (Ohio 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.") 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 heighten responsibility to meet dispositional directives. *See, In re S.S.*, 800 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.)

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. 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 court decision at any point after the filing of a juvenile delinquency or status complaint that withholds or defers formal judgment and stipulates terms and/or conditions of supervision and are eligible for transfer." *See,* Rule 1-101. 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

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. *See*, Rule 4-104. 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 is generally not applicable in cases involving the concurrent jurisdiction of both the Revised ICJ and the Interstate Compact on Placement of Children (ICPC). Therefore, juveniles who are neglected or dependent are subject to the ICPC, and would generally have supervision transferred pursuant to that compact and not the Revised ICJ. A juvenile who is not eligible for transfer under Revised ICJ is not subject to the rules. *See,* Rule 4-101(3).

3.5.1 Authority to Accept/Deny Referrals

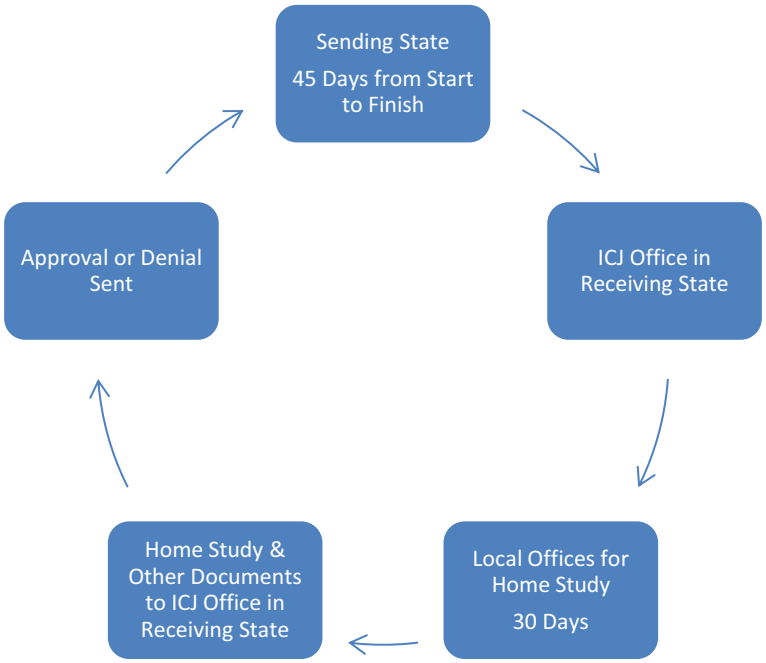
Generally, a receiving state can reject a referral if it finds that the proposed placement is unsuitable. As noted earlier, the age of the juvenile and the nature of the underlying offense *cannot be the sole* reason for denying the transfer of supervision, assuming all other eligibility requirements have been met. There is one exception to this general rule. Rule 5-101(4) states that supervision may be denied except "when a juvenile has no custodial parent or legal guardian remaining in the sending state and the juvenile does have a custodial parent or legal guardian residing in the receiving state." Consequently, once the parental or 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 (Minn. App., Dec. 22, 2009) (court did not err in refusing to transfer juvenile to another state where it was unsure whether a parent or guardian permanently resided in the receiving state).

Under Rule 5-101, "Only the receiving state's ICJ Administrator or designee shall authorize 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, Rule 5-101 effectively prohibits any authority, other than the ICJ Administrator or designee, from accepting or denying supervision of a juvenile. Local authorities, judges or other personnel have no authority to accept or deny a placement outside the prior authorization or denial of a state's ICJ administrator.

3.5.2 Sending and Receiving Referrals

Rule 4-102 governs the sending and receiving of referrals. Each ICJ Office shall forward all its cases within (5) five business days of receipt. In addition, 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. This rule establishes several procedural requirements designed to ensure expeditious consideration of referrals. 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 within thirty (30) calendar days after receipt of referral; and
- Within forty-five (45) calendar days of receipt of the referral, make reasonable efforts to forward to the sending state the home evaluation along with the final approval or disapproval of the request for cooperative supervision.



For a discussion of expedited transfers, *see* discussion *infra* Chapter 3 § 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 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. The ICJ Office in the sending shall forward all the aforementioned documents in duplicate or via electronic transfer.

3.5.2.2 Juvenile Probationers

In cases involving juvenile probation, the ICJ Office in the sending state must forward a referral to the receiving state **within five (5) days of receiving the referral from the court or juvenile probation authority**. The ICJ Office must transmit the following forms in duplicate:

- 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 duplicate 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 Leaving the Sending State) shall be forwarded prior to placement if the juvenile is not already residing in the receiving state.

3.5.3 Summary of Timelines

Offender	**Initial Referral (Sending State)**	**Local Referral & Home Study (Receiving State)**	**Approve/Deny (Receiving State)**
Parolee	5 days within receiving referral and 45 days prior to anticipated arrival in receiving state	30 days after receipt by receiving state ICJ Office	45 days after receipt of referral from sending state
Probationer	5 days within receiving referral	30 days after receipt by receiving state ICJ Office	45 days after receipt of referral from sending state

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. 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,* Rule 4-102(1). 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. *See,* Rule 5-101(5).

Once supervision is transferred, the receiving state may not treat transferred juveniles any differently than it would treat its own juvenile. 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. *See, In re Crockett*, 159 Cal.App.4th 751 (Cal. App. 1 Dist., 2008). Also Palmer v. Commonwealth, 632 S.E.2d 611, 615 (Va. 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 statdards 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. *See,* Rule 4-104(1) & (3).

Both the sending and receiving states have authority to enforce the terms of supervision, which may include the imposition of detention time in the receiving state. *See,* Rule 4-104(2). 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,* Rule 4-104(6). *Cf., In re B.W.*, 313 S.W.3d 818 (Tex., 2010) (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 retains a juvenile under the Revised ICJ, the type of incarceration and laws governing age of majority are determined by the laws of the receiving state. *See,* Rule 4-104(6).

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,* Rule 4-104(7). J.A.B. v. State, 25 So.3d 554 (FL 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. Rule 4-102(3)(a) also provides guidance when it is necessary to place a juvenile out of state prior to the acceptance of supervision. The sending state determines if the circumstances of the juvenile's immediate placement justify the use of a travel permit, including consideration of the appropriateness of the placement. 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. Consequently, the Revised ICJ has put into place special rules governing travel. Rule 5-102 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 and who have committed or which the adjudicated offenses or case circumstances include any of the following:

a. Sex-related offenses;
b. Violent offenses that have resulted in personal injury or death;
c. Offenses committed with a weapon;
d. Juveniles who are state committed;
e. Juveniles testing placement and who are subject to the terms of the Compact;
f. Juveniles returning to the state from which they were transferred for the purposes of visitation;
g. Juveniles transferring to a subsequent state(s) with the approval of the initial sending state;
h. Transferred juveniles in which 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.

Authorization for out-of-state travel is approved by the supervising person. An exception would be when the sending state has notified the receiving state that travel must be approved by the sending state's appropriate authority. The authorized Travel Permit should be provided and received prior to the juvenile's movement. *See,* Rule 5-102(4).

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,* Rule 5-102(5).

For more discussion regarding victim notification requirements, *see* discussion *infra* Chapter 3 § 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 or who may be required to register as a sex offender in the sending or receiving state." *See,* Rule 1-101. 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 offender under the same standards it applies to in-state sex offenders. *See, In re Crockett*, 159 Cal.App.4th 751 (Cal. App. 1 Dist., 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. *See,* Rule 4-103(1).
- When it is necessary to place a juvenile sex offender out of state with a custodial parent or legal guardian prior to the acceptance of supervision, under the provision of Rule 5-101(4), the sending state shall determine if the circumstances of the juvenile's immediate placement justify the use of a travel permit, including consideration of the appropriateness of the placement. 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 in duplicate:
    - 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 Leaving the Sending State);
    - Order of adjudication and disposition;
    - Conditions of probation (NOTE: Parole conditions shall be forwarded to the receiving state upon the juvenile's release from an institution);
    - Petition and/or arrest report;
    - Risk assessment report;
    - Safety plan specific assessment (if available);
    - Legal and Social History information pertaining to the delinquent behavior;
    - Victim Information, i.e., sex, age, relationship to the offender;
    - The sending state's current or recommended supervision and treatment plan; and
    - All other pertinent materials.

  See, Rule 4-103(3).
- In conducting home evaluations for juvenile sex offenders, the receiving state shall ensure compliance with local policies or laws to issuing reporting instructions. *See,* Rule 4-103(4).
- If the proposed placement is unsuitable, the receiving state may deny acceptance. *See,* Rule 5-101(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. *See,* Rule 4-103(5) & (6).

3.7 Victim Notification

Under Rule 4-107, 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 in the initial packet using the Victim Notification Form. The Victim Notification Form shall include the specific information regarding what will be required and the timeframes for which it must be received.

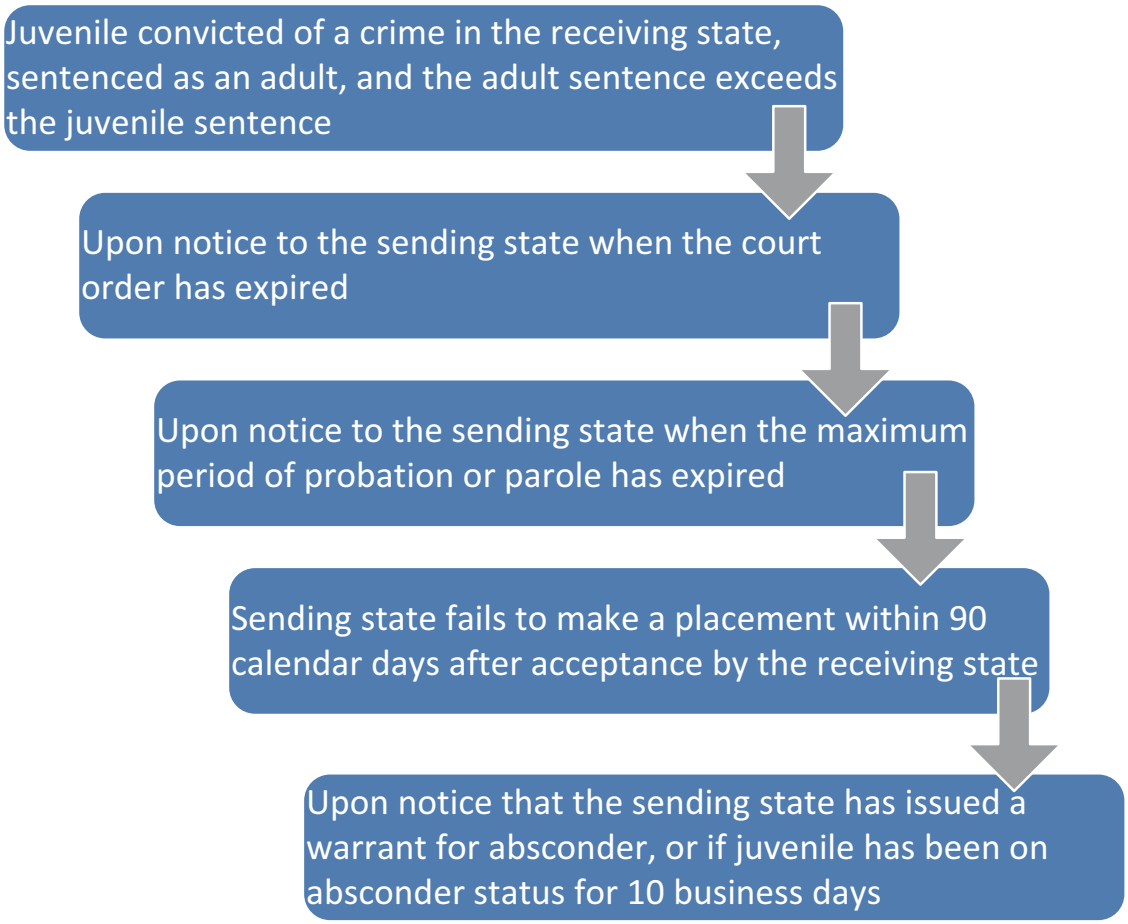
Throughout the duration of the supervision period, the supervising person through the receiving state's ICJ Office shall to the extent possible provide the sending state with the requested information to ensure the sending state can remain compliant with the laws and policies of the sending state. It is the responsibility of the sending state to update the receiving state of any changes to victim notification requirements. *See*, Rule 4-107.

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. *See,* Rule 4-106(1)(a).
- Upon notice to the sending state, when the court order that formed the basis of supervision expires. *See,* Rule 4-106(1)(b).
- Upon notice to the sending state, when the period of parole or probation expires. *See,* Rule 4-106(1)(b).
- When a sending state fails to make a placement within ninety (90) days after acceptance by the receiving state unless a request for extension has been made and an appropriate explanation provided. *See,* Rule 4-106(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. *See*, Rule 4-106 (4)



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. *See,* Rule 4-106(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 effect 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 (1935); *Burns v. United States*, 287 U.S. 216 (1932). *See also, United States ex rel. Harris v. Ragen*, 177 F.2d 303 (7th Cir. 1949). Many state courts have similarly found that probation or parole is a "revocable privilege," an act of discretion. *See, Wray v. State*, 472 So. 2d 1119 (Ala. 1985); People v. Reyes, 968 P.2d 445 (Calif. 1998); *People v. Ickler*, 877 P.2d 863 (Colo. 1994); *Carradine v. United States*, 420 A.2d 1385 (D.C. 1980); *Haiflich v. State*, 285 So. 2d 57 (Fla. Ct. App. 1973); *State v. Edelblute*, 424 P.2d 739 (Idaho 1967); *People v. Johns*, 795 N.E.2d 433 (Ill. Ct. App. 2003); *Johnson v. State*, 659 N.E.2d 194 (Ind. Ct. App. 1995); *State v. Billings*, 39 P.3d 682 (Kan. Ct. App. 2002); *State v. Malone*, 403 So. 2d 1234 (La. 1981); *Wink v. State*, 563 A.2d 414 (Md. 1989); *People v. Moon*, 337 N.W.2d 293 (Mich. Ct. App.1983); *Smith v. State*, 580 So.2d 1221 (Miss. 1991); *State v. Brantley*, 353 S.W.2d 793 (Mo. 1962); *State v. Mendoza*, 579 P.2d 1255 (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. *See, e.g., People v. Main*, 152 Cal. App. 3d 686 (Cal. Ct. App. 1984). An offender has no constitutional right to conditional release or early release. *See, 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. South Carolina Dept. of Probation, Parole & Pardon Services*, 576 S.E.2d 146, 149 (2002). See also In re S.H., 2011 WL 2152061, Cal. App. 1st Dist., 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. *See, Woodward v. Murdock*, 24 N.E. 1047 (Ind. 1890); *Commonwealth ex rel. Meredith v. Hall*, 126 S.W.2d 1056 (Ky. 1939); *Guy v. Utecht*, 12 NW2d 753 (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. *See, Gulley v. Apple*, 210 S.W.2d 514 (Ark 1948); *Ex parte Tenner*, 128 P.2d 338 (Calif. 1942); *State ex rel. Rowe v. Connors*, 61 S.W.2d 471 (Tenn. 1933); *Ex parte Calloway*, 238 S.W.2d 765 (Tex. 1951); *Re Paquette*, 27 A.2d 129 (Vt. 1942); *Pierce v. Smith*, 195 P.2d 112 (Wash. 1948), *cert denied* 335 U.S. 834. 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. *See, State ex rel. Bush v. Whittier*, 32 N.W.2d 856 (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 (Ill. Ct. App. 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 (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 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). *See also, People ex rel. Silbert v. Cohen*, 29 N.Y.2d 12 (1971).

It is not a violation of the Fourteenth Amendment equal protection when the procedures prescribed under a uniform interstate compact are applied. *See, People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458 (N.Y. 1952). Similarly, in *Ex parte Tenner*, 128 P2d 338 (Cal. 1942), 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. In *People v. Mikula*, 192 N.E. 546 (Ill. 1934), 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. 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. The court concluded that there was no deprivation of advantage to anyone because of the statutory distinction between resident and nonresident convicts. *Cf., Williams v. Wisconsin*, 336 F.3d 576 (7th Cir. 2003) (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 (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. . . *Id. at 848* (citations omitted)]. 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 Michigan Dept. of Corrections*, 188 N.W.2d 552 (Mich. 1971), 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. 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. 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. 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. 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.

As discussed in § 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 (Ala. Crim. App. 2005) ("J.M.W. also argues that because he is a juvenile the Interstate Compact on 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). *Id.* at Footnote 9.; *See also, Ex parte Jetter,* 495 S.W.2d 925, 925-26 (Tex.Crim.App.1973) and *Ex parte Watson,* Tex. Cr. App., 455 S.W.2d 300 (1970) ("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 (Ala. Crim. App. 2001).

Article IV, § 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.*, 154 Misc. 2d 94 (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 on 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."). *See also, In re Teague*, 91 N.C. App. 242 (N.C. Ct. App. 1988) ("North Carolina Interstate Compact on 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 Interest of C.P.*, 516 Pa. 541 (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 ICJ Article I. Additionally, pursuant to Rule 6-103(13):

> 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 Rule 6-104(1):

> If it is determined necessary to return a juvenile, whose placement has failed, to the sending state and the ICJ Application for Compact Services and Waiver Form (ICJ Form IA/VI) has the appropriate signatures, no further court procedures will be required for the juvenile's return.

In addition, under Rule 4-102(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. *See, Evans v. Thurmer*, 278 Fed. Appx. 679, 2008 WL 2149840 (7th Cir. 2008), *O'Neal v. Coleman*, 2006 U.S. Dist. LEXIS 40702 (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 Rule 4-102(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, *e.g.,* they are a lawful agent of the state enforcing a properly issued warrant. *See,* Rule 6-103 (13); also *Ogden v. Klundt*, 550 P.2d 36, 39 (Wash. Ct. App. 1976).

Although neither Article I of the Revised ICJ, Rules 4-102(3), nor 6-104(1) 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. *See, Gulley v. Apple*, 210 S.W.2d 514 (Ark. 1948); *Woods v. State*, 87 So.2d 633 (Ala. 1956); *Ex parte Tenner*, 128 P.2d 338 (Cal. 1942); *Louisiana v. Aronson*, 252 A.2d 733 (N.J. Super. Ct. App. Div. 1969); *People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458 (N.Y.1952); *Pierce v. Smith*, 195 P.2d 112 (Wash. 1948), *cert. denied,* 335 U.S. 834. 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. *See, People v. Bynul*, 524 N.Y.S.2d 321 (N.Y. Crim. Ct.1987).

Habeas corpus is generally unavailable to offenders being held pending return to the sending state under an interstate compact. *See, Stone v. Robinson*, 69 So. 2d 206 (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 (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 (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 (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, e.g., 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. *See, In re Klock*, 133 Cal App 3d 726 (Cal. Ct. App. 1982); *People v. Bynul*, 524 N.Y.S.2d 321 (N.Y. Crim. Ct. 1987). *See also, Todd v. Florida Parole and Probation Commission*, 410 So.2d 584 (Fla. 1st DCA 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, 2007 WL 2340795 (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 Rule 4-102 (3) and 6-104(1) 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 Violation Reports

A receiving state is obligated to furnish written progress reports to authorities in the sending state on a quarterly basis as required by Rule 4-104(3). Additional reports are required in cases where there are concerns regarding the juvenile or there has been a change in placement. Based upon these reports and other factors, if it is determined to be necessary to return a juvenile whose placement has failed to the sending state and the ICJ Application for Compact Services and Waiver Form (ICJ Form IA/VI) has the appropriate signatures, no further court procedure is required for the juvenile's return. *See*, Rule 6-104(1).

4.4 Retaking/Rendition

As previously noted, Article I of the Revised ICJ and Rule 6-103(13), and Rule 6-104(1) and (2) 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,* Rule 6-104 (4) and Rule 4-101, also *In re Welfare of Z.S.T.*, not reported in N.W.2d, 2009 WL 4910319 (Minn.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,* Rule 6-104(4).

In cases where the ICJ placement has failed, as determined under the provisions of Rule 6-104(1) (See discussion at Section 4.5.5 *infra*.), 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. Under the Compact and pursuant to Rule 6-104(1) where there has been a waiver of formal extradition proceedings, officers need only establish their authority and the identity of the juvenile. *See,* Rule 6-104(1), (2) & (5). 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,* Rule 6-104. 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 (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 Authority 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*, 861 N.E.2d 25 (Ind. App. 2007); *Scott v. Virginia*, 676 S.E.2d 343, 348 (Va. App. 2009). *See also,* TX OAG No. DM-147, 8-4-92.

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,* Rule 4-104, also *In re Crockett*, 159 Cal. App. 4th 751 (Cal. App. 1st Dist. 2008) which considered 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 **640 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,* Compact, Art. VII, Sec.A.2., also *In re Pierce*, 184 Mont. 82 (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, 107 S. Ct. 2279, 2283, 96 L.Ed.2d 105 (1987) (citation omitted). 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" *See, West Virginia ex rel. Dyer v. Sims,* 341 U.S. 22, 28, 71 S. Ct. 557-560, 95 L. Ed. 713 (1951); also *In re O.M.*, 565 A.2d 573 (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 Runaways to Parent or Legal Guardian

First, pursuant to Rule 6-101(1)(a), a runaway may be released to a parent or legal guardian 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 parent or legal guardian without applying the procedures set out in Rule 6-102. 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.). However, if the parent or legal guardian is unable or unwilling to pick up the juvenile within that timeframe, 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,* Rule 6-101(2).

Challenges to detention of runaways under this section, and the predecessor compact, have not been successful. *See, In re Doe*, 102 HI 75 (HI 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.) *See,* 42 U.S.C. §5633(a)(11)(A)(iii); *see also*, Notice of Clarification of OJJDP Policy on Secure Detention of Runaways, May 20, 2010, available at http://www.juvenilecompact.org/Legal.aspx. See L.A. v. Superior Court ex rel. County of San Diego, 209 Cal. App. 4th 976, 147 Cal. Rptr. 3d 431 (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").

When a holding state has reason to suspect abuse or neglect by a parent or 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,* Rule 6-101(3) & (4).

If a runaway who alleges abuse or neglect agrees to a voluntary return, the ICJ Form III must indicate who will assume responsibility for the juvenile if the juvenile will not be returning to a parent or legal guardian. *See,* Rule 6-101(5).

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 a parent or legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with Rule 6-103. *See,* Rule 6-101(6).

4.5.3 Voluntary Return of Out-of-State Juveniles

Second, an out-of-state juvenile may be voluntarily returned under 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 with the consent of the holding state or after charges are resolved when pending charges exist in the holding state. *See,* Rule 6-107. 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,* Rule 6-102(1) - (3). If in agreement, the juvenile signs the approved ICJ Form III, consenting to the return, which is required to be filed with the compact office in the holding state. The holding state shall forward a copy of the consent to the compact office in the home/demanding state. Juveniles are required to be returned by the home/demanding state within five (5) business days of receiving ICJ Form III, 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,* Rule 6-102(4) - (7). As previously noted, if a runaway who alleges abuse or neglect agrees to a voluntary return, the ICJ Form III must indicate who will assume responsibility for the juvenile if the juvenile will not be returning to a parent or legal guardian. *See,* Rule 6-101(5).

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 ICJ Form III, provided the waiver is signed by the juvenile and the judge.

In addition to being responsible for the juvenile's return within five business days on notice that the ICJ Form III has been signed, the home/demanding state is responsible for the costs of transportation and for making transportation arrangements. *See,* Rule 6-105. Further, to reinforce Rule 6-102 (4) – (7), Rule 6-106 (1) – (2) 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 on 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,* Rule 6-103. The obligation of member states to honor requisitions under the Revised ICJ is recognized in cases such as *State v. Cook*, 115 WA. App. 829 (Wash. Ct. App. 2003) 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 on Juveniles, to honor Texas' rendition request and return the juvenile to Texas, despite the defendant's claim that he was no longer a juvenile. ("The Uniform Interstate Compact on 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. "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 FN 4 . . . "[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." *See also, In re State*, 97 S.W.3d 744 (Tex. App. El Paso 2003) (demanding state's requisition under Interstate Compact on 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 effect 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 Rule 6-102, or to request that a court take into custody a juvenile that is allegedly located in their jurisdiction. Once in detention, such a 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 parent, legal guardian, or custodial agency must petition the court of jurisdiction in the home/demanding state for a requisition pursuant the requirements of Rule 6-103(3)(a) - (d). As discussed in § 4.5.3, *supra*, 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 a parent or legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with Rule 6-103. *See,* Rule 6-101(6).

In the event that the parent or legal guardian in the home/demanding state is unable or refuses to initiate the requisition process, the home/demanding state is required to do so. *See,* Rule 6-103(4). In *J.T. v. State (In re: J.T.)*, 1998 OK Civ. App. 8 (Okla. Civ. App. 1997) 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. ("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 on Juveniles is constitutionally infirm for not requiring such a finding.") *See also, In re State of Texas*, 97 S.W.3d 744 (Tex. App. El Paso 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."); and *In re Stacy B.*, 190 Misc. 2d 713 (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 Rule 6-103(7) 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, which has been raised in such hearings, is whether the juvenile is in fact an absconder, which under the predecessor compact was not defined. In *B.M. v. Dobuler*, 979 So. 2d 308 (Fla. Dist. Ct. App. 3d Dist. 2008) the Court in interpreting the term "absconder" observed:

> "The Interstate Compact on 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)"

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,* Rule 1-101.

Upon determination that the requisition is in order, the court shall order the juvenile's return to the home/demanding state. If the requisition is denied, 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. Duly accredited officers of a compacting state, upon establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this compact, without interference. *See,* Rule 6-103(10) - (13); *also,* Rule 6-106(3).

In addition to being responsible for the juvenile's return within five 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,* Rule 6-105. Juveniles are to be returned only with the consent of the holding state or after charges are resolved when pending charges exist in the holding state. *See,* Rule 6-107.

4.5.5 Return of Juveniles After Failed Placements

The fourth circumstance under which a juvenile may be returned under the compact arises when an ICJ placement has failed. Neither the compact nor the Revised ICJ Rules expressly provide how the determination of a 'failed placement' will be made, nor whether the sending state, the receiving state, or both of them are responsible for making such determination. However, it is clear that under Rule 4-104(1) a receiving state can apply any standard which is applied to its own juveniles in the evaluation of a particular placement, and under the provisions of 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 Rule 5-101, has the authority to deny the initial application for compact supervision when a home evaluation reveals that a proposed placement 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 Rule 6-104, 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 placement has failed to the sending state, and the ICJ Application for Compact Services and Waiver Form (ICJ Form IA/VI) 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 placement, in a safe manner, pursuant to Rules 6-106 and 6-111. *See*, Rule 6-104(3). With limited exceptions, the decision to retake a delinquent juvenile rests solely in the discretion of the sending state. *See,* Rule 6-104(4). 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,* Rule 6-104(4).

As provided in Rule 6-104(2), 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 Authority 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 ICJ Article I. 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,* Revised ICJ 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.

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. *See, Escoe v. Zerbst*, 295 U.S. 490 (1935); *Burns v. United States*, 287 U.S. 216 (1932); *United States ex rel. Harris v. Ragen*, 177 F.2d 303 (7th Cir. 1949); *Wray v. State*, 472 So. 2d 1119 (Ala. 1985); *People v. Reyes*, 968 P.2d 445 (Calif. 1998); *People v. Ickler*, 877 P.2d 863 (Colo. 1994); *Carradine v. United States*, 420 A.2d 1385 (D.C. 1980); *Haiflich v. State*, 285 So. 2d 57 (Fla. Ct. App. 1973); *State v. Edelblute*, 424 P.2d 739 (Idaho 1967); *People v. Johns*, 795 N.E.2d 433 (Ill. Ct. App. 2003); *Johnson v. State*, 659 N.E.2d 194 (Ind. Ct. App. 1995); *State v. Billings*, 39 P.3d 682 (Kan. Ct. App. 2002); *State v. Malone*, 403 So. 2d 1234 (La. 1981); *Wink v. State*, 563 A.2d 414 (Md. 1989); *People v. Moon*, 337 N.W.2d 293 (Mich. Ct. App.1983); *Smith v. State*, 580 So.2d 1221 (Miss. 1991); *State v. Brantley*, 353 S.W.2d 793 (Mo. 1962); *State v. Mendoza*, 579 P.2d 1255 (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. *See, Woodward v. Murdock*, 24 N.E. 1047 (Ind. 1890); *Commonwealth ex rel. Meredith v. Hall*, 126 S.W.2d 1056 (Ky. 1939); *Guy v. Utecht*, 12 NW2d 753 (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 placements 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 (1972) (parolee entitled to revocation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (probationer entitled to revocation hearing); *Carchman v. Nash*, 473 U.S. 716 (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, supra*. 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, People ex rel. Silbert v. Cohen*, 29 NYS 2d 12 (1971).

Although a juvenile is not be 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*, 387 U.S. 1 (1967): "[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." *Kent,* 383 U.S. at 562; *see also, McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), also 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."); in accord, In Re Roneikas, 920 A2d 496 (Md. App. 2007).

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*, 377 Pa. Super. 46 (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.*, 245 Conn. 93 (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 Revised 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,* Rule 6-103(10). 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*, *supra* at 788; s*ee generally, In re Gault*, 387 U.S. 1; *see also, Silbert v. Cohen*, 29 NYS2d 12 (1971); *People ex rel Arthur F. v. Hill*, 29 NYS2d 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, supra.* 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. *See, State v. Ellefson*, 334 N.W.2d 56 (SD 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 (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,* Rule 6-104(4), *also Paull v. Park County*, 218 P.3d 1198 (S. Ct. Mt. 2009). The failure of a juvenile placement 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,* Rule 6-104(4).

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. Pennsylvania Board of Probation and Parole*, 958 A.2d 582 (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, *e.g.*, 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). *See also, 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); *also, In Interest of Davis, supra*. 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,* Rules 6-103(13), 6-104(4), & (5). The *Gagnon* and *Morrissey* decisions do not require a probable cause type hearing in all circumstances of retaking.

For example, in *Ogden v. Klundt*, 550 P.2d 36, 39 (Wash. Ct. App. 1976), 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. 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. Rule 6-108(2) 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/bail" provision of Rule 6-108(2) has the same standing as if the rule was a statutory law promulgated by that state's legislature. *See,* Revised ICJ Article IV.

The "no bond/bail" provision in Rule 6-108(2) 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 Authority 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*, 334 N.W.2d 746 (Iowa 1981), 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. The trial court's decision to admit the offender to bail notwithstanding a prohibition against such action was reversed. In *Ex parte Womack*, 455 S.W.2d 288 (Tex. Crim. App. 1970), the court found no error in denying bail to an offender subject to retaking as the Compact made no provision for bail. And in *Ogden v. Klundt*, 550 P.2d 36, 39 (Wash. Ct. App. 1976), 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).

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).

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 bail when the home/demanding state enters a warrant into NCIC as a "no bond/bail 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 Development Ctr.*, No. 09-3753 (3rd Cir. Sept. 13, 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., Alabama Dept. of Corrections v. Merritt*, No. 2081084 (Ala. Ct. App., June 18, 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 (Texas Supreme Ct. 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). *See also, 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*, No. 03-08-00475-CV (Tex. App. Aug. 20, 2010). If a state chooses by legislation to waive its immunity, a court strictly construes the waiver in favor of the state. *Board of Educ. of Baltimore County 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 Nebraska*, 280 Neb. 492 (Neb. Aug. 27, 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. WMATA,* 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). In accord, *Proctor v. WMATA*, 990 A.2nd 1048 (Md. 2010).

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.

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.

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*, 517 F.3d 1070 (9th Cir 2008), the court rejected the immunity claims by a private contractor hired to administer a pre-trial diversion program. 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 11 th 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 Authority of Louisiana*, __F. Supp.2d__, (2011 WL 4703053 (W.D. La, 2011), also *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 (D.C. Kan. Oct. 12, 2007). 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. Washington 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. Pennsylvania Board of Probation 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, 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. Mississippi Department of Corrections*, 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. Mississippi Department of Corrections et al.*, 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. Mississippi Department of Corrections*, 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*, No. 09CIV7841 (S.D.N.Y. Sept. 13, 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*, No. 1:09-CV-970 (W.D. Mich. Sept. 9, 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. Banc 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*, No. A10A1792 (Ga. Ct. App. Sept. 23, 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*, No. ED94414 (Mo. Ct. App., Sept. 21, 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.*, Rule 4-102 (Sending and Receiving Referrals); Rule 4-104(2) (mandating the quarterly filing of reports); Rule 5-102 (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, Rule 5-101 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 sending state official issue travel instructions once the decision to accept a placement is made. *Compare* Rule 5-101(4) with Rule 5-101(6).

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 (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 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 (1980).

* 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.

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 County*, 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. Georgia State Bd. of Pardons & Paroles*, 851 F.2d 1307, 1310 (11th Cir. 1988); *Clark v. State of 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 Probation*, 690 P.2d 38 (Ariz. 1984). The placement of juveniles by a probation counselor is an administrative function and the court's mere knowledge of a placement 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 County/Kansas City, Kan.*, 432 F.3d 1163, 1165 (10th Cir. 2005). 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 (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 County 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 foreseeability of 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. Philadelphia*, 2004 U.S. App. LEXIS 4631 (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 Services*, *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*, 2000 U.S. Dist. LEXIS 9026 (D.C. 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 Institute of Washington, 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 Corrections 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 Systems*, 2004 Alas. LEXIS 54 (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 County Adult Probation 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 P2d 352 (Ca. 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 (*Id*. 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 & Community 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. 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. South Carolina 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. C.A. 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 County*, 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*, No. S-11352, No. 6082 (Alaska, December 15, 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 (WD 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. App. Div. 1 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.

- *Department of Corrections 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 & Correction*, 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 County*, 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. 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 non-compliance; (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 non-voting 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 by-laws 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.

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
Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III
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 National Institute of Corrections and the Office of Juvenile Justice and Delinquency Prevention shall be ex-officio members of the Commission.

Article IV
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 V
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 VI
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 VII
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 VIII
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 IX
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 X
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 XI
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 XII
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

ICJ RULES

INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Published by:
Interstate Commission for Juveniles
836 Euclid Avenue
Suite 322
Lexington, KY 40502
Phone: (859) 721-1061 / Fax: (859) 721-1059
www.juvenilecompact.org
Email: icjadmin@juvenilecompact.org
Effective: April 1, 2013

Table of Contents

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; [e.g., child in need of supervision (CINS), (CHINS), person in need of supervision (PINS), deprived child, undisciplined child, etc.], and who are eligible for services under the provisions of the ICJ.

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.

Aftercare (temporary community placement): a condition in which a juvenile who has been committed in the sending state who is residing and being supervised in the community (for purposes of ICJ, see state committed).

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.

Custody: the status created by legal authorities for placement of a juvenile in a staff-secured or locked facility approved for the detention of juveniles.

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 court decision at any point after the filing of a juvenile delinquency or status complaint that withholds or defers formal judgment and stipulates terms and/or conditions of supervision and are eligible for transfer.

Demanding State: the state having jurisdiction over a juvenile seeking the return of the juvenile either with or without pending 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.

Detainer: a document issued or made by a legally empowered officer of a court or other appropriate authority authorizing the proper agency to keep in its custody a person named therein.

Detention Order: an order entered by a court to detain a specified juvenile pending further orders or action by the court.

Emancipation: the legal status in which a minor has achieved independence from parents or legal guardians as determined by the laws of the home state.

Escapee: a juvenile who has made an unauthorized flight from a facility or agency's custody to which he has been committed by the court.

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

Good Faith Effort: reasonable communication and cooperation of the home state with the holding state regarding the return of runaways, absconders, and escapees.

Guardian ad litem: a person appointed by a court to look after the best interest of the juvenile.

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 having physical custody of a juvenile and where the juvenile is located.

Home Evaluation/Investigation: a legal and social evaluation and subsequent report of findings to determine if placement in a proposed and specified resource home/place is in the best interest of the juvenile and the community.

Home State: the state where the parent(s), guardian(s), person, or agency having legal custody of the juvenile is residing or undertakes to reside.

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.

Juvenile: a person defined as a juvenile in any member state or by the rules of the Interstate Commission, including accused juvenile delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders, non-offenders, non-adjudicated juveniles, and non-delinquent juveniles.

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

Legal Custodian: the agency and/or person(s) who has been ordered or given authority by the appropriate court to render care, custody, and/or treatment to a juvenile.

Legal Guardian: a person legally responsible for the care and management of the person, or the estate, or both, of a child during minority or for the purpose and duration expressed in the order of guardianship.

Legal 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.

Non-Adjudicated Juveniles: all juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of supervision and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles.

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

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.

Peace Officer: sheriffs, deputies, constables, marshals, police officers, and other officers whose duty is to enforce and preserve public safety.

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.

Pick-Up Order: an order authorizing law enforcement officials to apprehend a specified person.

Private Provider: any person or organization contracted by the sending or receiving state to provide supervision and/or services to juveniles.

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 90 consecutive days in any 12 month period.

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

Residence: the home or regular place of abode as recognized by a state's law that is established by a parent, guardian, person, or agency having legal custody of a juvenile.

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

Runaway: a child under the juvenile jurisdictional age limit established by the state, who has run away from his/her place of residence, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody.

Rule: a written statement by the 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, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

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.

Status Offense: conduct which is illegal for juveniles but not illegal for adults, including but not limited to incorrigibility, curfew violations, running away, disobeying parents, or truancy.

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 the juvenile to temporarily 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

Section 200 Dues Formula and Data Collection

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 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, 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.

2. Runaways, escapees, absconders and accused delinquents:
   a. The total number of runaways, escapees, absconders and accused delinquents located in and located out of the reporting state processed during the reporting period.
   b. The total number of Requisitions (Form I and Form II) sent from and received by the reporting state during the reporting period.
   c. The total number of juveniles who were not returned per Requisition (Form I and Form II) by or to the reporting state during the reporting period.
   d. The reason(s) the juvenile was not returned per Requisition (Form I and II) by or to the reporting state during the reporting period.

3. Airport Supervision:
   a. The total number of airport supervision requests met during the reporting period.

4. Parole Supervision:
   a. The total number of incoming parole cases received from other states for investigation and/or supervision during the reporting period and the number which were sex offender related.
   b. The total number of outgoing parole cases sent from the reporting state for investigation and/or supervision during the reporting period and the number which were sex offender related.
   c. The total number of incoming parole cases terminated during the reporting period.
   d. The total number of outgoing parole cases terminated during the reporting period.
   e. The number of incoming / outgoing failed placements for violations and the number of incoming / outgoing returned.
   f. The number of incoming / outgoing failed placements for reasons other than violations and the number of incoming / outgoing returned.

5. Probation Supervision:
   a. The total number of incoming probation cases received from other states for investigation and/or supervision during the reporting period and the number which were sex offender related.
   b. The total number of outgoing probation cases sent from the reporting state for investigation and/or supervision during the reporting period and the number which were sex offender related.
   c. The total number of incoming probation cases terminated during the reporting period.
   d. The total number of outgoing probation cases terminated during the reporting period.
   e. The number of incoming / outgoing failed placements for violations and the number of incoming / outgoing returned.

f. The number of incoming / outgoing failed placements for reasons other than violations and the number of incoming / outgoing returned.

6. Institutionalization:
   a. The total number of juveniles from their state who are institutionalized in a public facility in other states during the reporting period.
   b. The total number of juveniles from other states who are institutionalized in a public facility in their state during the reporting period.

7. Out-of-State Confinement:
   a. The total number of juveniles from the reporting state confined in other states during the reporting period.
   b. The total number of juveniles from other states confined in the reporting state during the reporting period.

8. This Rule will not expire until the Electronic Information System approved by the Commission is fully implemented and functional.

History: Adopted September 15, 2010, effective January 1, 2011; amended October 26, 2011, effective March 1, 2012

Section 300 Forms

RULE 3-101: Forms

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

- Form I (Requisition for Runaway Juvenile)
- Form II (Requisition for Escapee or Absconder/Accused Delinquent)
- Form III (Consent for Voluntary Return of Out of State Juvenile)
- Form IV (Parole or Probation Investigation Request)
- Form V (Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State)
- Form IA/VI (Application for Compact Services/Memorandum of Understanding and Waiver)
- Form VII (Out of State Travel Permit and Agreement to Return)
- Form VIII (Home Evaluation)
- Form IX (Quarterly Progress or Violation Report)
- Form X (Case Closure Notification Form)
- Form XI (Absconder From Supervision Violation Report)

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

RULE 3-102: Optional Forms

Use of the following forms is optional:

- Petition for Hearing on Requisition for Runaway Juvenile
- Order Setting Hearing for the Requisition for a Runaway Juvenile
- Petition for Requisition to Return a Runaway Juvenile (Form A)
- Petition for Hearing on Requisition for Escapee, Absconder, or Accused Delinquent
- Order Setting Hearing for Requisition for Escapee, Absconder, or Accused Delinquent
- Juvenile Rights Form for Consent for Voluntary Return of Out of State Juvenile
- Victim Notification Supplement Form

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

RULE 3-103: Form Modifications or Revisions [Rescinded; See history]

1. Forms approved and adopted by the Interstate Commission for Juveniles may not be changed, altered or otherwise modified and no other forms may be substituted for approved forms.

2. Form revisions shall:

    a. Be adopted by majority vote of the members of the Commission; and

    b. Be submitted in the same manner as outlined in Rule 7-101 for the adoption of Rules and Amendments.

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

Section 400 Transfer of Supervision

RULE 4-101: Processing Referrals

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 the transfer of supervision of a juvenile eligible for transfer except as provided by the Compact and these rules. A sending state shall request transfer of a juvenile, who is eligible for transfer of supervision to a receiving state under the compact. 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. 1. Will reside with a parent, legal guardian, relative, non-relative or independently, excluding residential facilities; or
       2. Is a full time student at a secondary school, or accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment.

3. All cases being transferred to another state are pursuant to the ICJ except cases involving concurrent jurisdiction under the Interstate Compact on Placement of Children, known as ICPC. 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

RULE 4-101A: Transfer of Students

1. Juveniles as defined in Rule 1-101, eligible for transfer as defined by Rule 4-101, who have been accepted as full-time students at a secondary school, or accredited university/college, or state licensed specialized training program and can provide proof of enrollment, shall be considered for supervision by the receiving state.

2. Supervision shall be provided the juvenile according to Rule 4-104.

3. If the juvenile's placement fails, procedures to return the juvenile shall be made by the sending state according to Rule 6-104.

History: Adopted September 15, 2010, effective January 1, 2011

RULE 4-102: Sending and Receiving Referrals

Each ICJ Office shall forward all its cases within five (5) business days of receipt. Each ICJ Office shall adhere to the following screening process when sending and receiving referrals. Supervision shall not be provided without written approval from the receiving state's ICJ Office. The sending state shall maintain responsibility until supervision is accepted by the receiving state.

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

2. Each ICJ Office shall ensure all requests and coordination for ICJ supervision are between ICJ Offices.

3. The ICJ Office in the sending state shall comply with the rules listed below:

    a. State Committed (Parole) Cases – The ICJ Office in the sending state shall ensure the following referral documents are complete and forwarded to the receiving state forty five (45) calendar days prior to the juvenile's anticipated arrival: Form IV, Form IA/VI and Order of Commitment. The ICJ Office in the sending state should 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 shall be forwarded prior to placement in the receiving state.

    When it is necessary to place a State Committed (parole) juvenile out of state prior to the acceptance of supervision, under the provision of Rule 5-101(4), the sending state shall determine if the circumstances of the juvenile's immediate placement justify the use of a travel permit, including consideration of the appropriateness of the placement. If approved by the sending state, it shall provide the receiving state with the approved travel permit along with a written explanation as to why ICJ procedures for submitting the referral could not be followed.

    The sending state ICJ Office shall provide the complete ICJ referral to the receiving state ICJ office within ten (10) business days of the travel permit being issued. The receiving state shall make the decision whether or not it will expedite the ICJ referral.

    b. Probation Cases – The ICJ Office in the sending state shall ensure the following referral documents are complete and forwarded to the receiving state within five (5) business days of receipt: Form IV, Form IA/VI, Order of Adjudication and Disposition, Conditions of Probation and Petition and/or Arrest Report(s). The ICJ Office in the sending state should also provide copies (if available) of Legal and Social History, and any other pertinent information deemed to be of benefit to the receiving state. Form V shall be forwarded prior to placement if the juvenile is not already residing in the receiving state.

4. The sending state shall be responsive and timely in forwarding additional documentation at the request of the receiving state.

5. The receiving state's ICJ Office shall request its local offices complete a home evaluation within thirty (30) calendar days after receipt of referral.

6. The receiving state's ICJ Office 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

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(2) is applicable.

2. When it is necessary to place a juvenile sex offender out of state with a custodial parent or legal guardian prior to the acceptance of supervision, under the provision of Rule 5-101(4), the sending state shall determine if the circumstances of the juvenile's immediate placement justify the use of a travel permit, including consideration of the appropriateness of the placement. If approved by the sending state's ICJ Office, the following procedures shall be initiated:

    a. Upon notification, the sending state shall provide the receiving state with an approved travel permit along with a written explanation as to why ICJ procedures for submitting the referral could not be followed.

    b. The sending state shall transmit a complete ICJ referral to the receiving state within ten (10) business days of the travel permit being issued. The receiving state shall make the decision whether it will expedite the ICJ referral or process the referral according to Rule 4-102.

    c. Within five (5) business days of receipt of the travel permit, 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 in the receiving state. The receiving state shall have the authority to supervise juveniles pursuant to reporting instructions from the receiving state.

3. When transferring a juvenile sex offender, documentation should be provided to the receiving state: Form IA/VI, Form IV, Form V, Order of Adjudication and Disposition, Conditions of Probation, Petition and/or Arrest Report, Risk Assessment, Safety Plan Specific Assessments (if available), Legal and Social History information pertaining to the criminal behavior, Victim Information, i.e., sex, age, relationship to the offender, sending state's current or recommended Supervision and Treatment Plan, and all other pertinent materials. NOTE: Parole conditions shall be forwarded to the receiving state upon the juvenile's release from an institution.

4. In conducting home evaluations for juvenile sex offenders, the receiving state shall ensure compliance with local policies or laws to issuing reporting instructions. If the proposed residence is unsuitable, the receiving state may deny acceptance referred to in Rule 5-101(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

RULE 4-104: Supervision/Services Requirements

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

2. 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.

3. 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 placement.

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

5. 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.

6. 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 incarceration shall be determined by the laws regarding the age of majority in the receiving state.

7. 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.

8. Supervision for the sole purpose of collecting restitution is not a justifiable reason to open a case.

References

ICJ Advisory Opinion

1-2010 A supervising state is permitted to impose graduated sanctions upon any juvenile transferred under the compact if such standards are also applied to its own delinquent juveniles.

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

RULE 4-105: 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. An e-mail copy of the correspondence must be sent to the ICJ Administrator's Office in both states.

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

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

RULE 4-106: 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 sending state shall complete placement within 90 calendar days. If the placement is not made in the receiving state 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 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 release 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 report or notification to close based on the receiving state's recommendation or, if the request to close has been denied, provide a written explanation, within sixty (60) calendar days as to why the juvenile cannot be released 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. Files of closed cases shall be maintained in the ICJ Office for one (1) year after closure before they can be destroyed.

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

RULE 4-107: 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 Form. The Victim Notification Form shall include the specific information regarding what will be required and the timeframes for which it must be received.

3. Throughout the duration of the supervision period, the supervising person through the receiving state's ICJ office 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 December 2, 2009, effective March 1, 2010; amended January 5, 2011, effective February 4, 2011; amended October 26, 2011, effective March 1, 2012

Section 500 Supervision in Receiving State

RULE 5-101: Authority to Accept/Deny Supervision

1. Only the receiving state's ICJ Administrator or designee shall authorize or deny supervision of a juvenile by that state after considering a recommendation by the investigating officer.

2. The receiving state's ICJ Administrator's or authorized agent's signature is required on or with the home evaluation form that approved or denied 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 placement 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 custodial parent or legal guardian remaining in the sending state and the juvenile does have a custodial parent or 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 a legal custodian remains in the sending state and the placement in the receiving state fails, the sending state's ICJ Office shall facilitate transportation arrangements for the return of the juvenile(s) within five (5) business days in accordance with these rules.

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

RULE 5-102: Travel Permits

1. Travel permits shall be mandatory for juveniles traveling out-of-state for a period in excess of twenty-four (24) consecutive hours and who have committed or which the adjudicated offenses or case circumstances include any of the following:

    a. Sex-related offenses;
    b. Violent offenses that have resulted in personal injury or death;
    c. Offenses committed with a weapon;
    d. Juveniles who are state committed;
    e. Juveniles testing placement and who are subject to the terms of the Compact;
    f. Juveniles returning to the state from which they were transferred for the purposes of visitation;
    g. Juveniles transferring to a subsequent state(s) with the approval of the initial sending state;
    h. Transferred juveniles in which the victim notification laws, policies and practices of the sending and/or receiving state require such notification;

2. A travel permit may be used as a notification of juveniles traveling to an out-of-state private residential treatment facility who are under the terms or conditions of probation or parole.

3. The permit shall not exceed ninety (90) calendar days. If for the purposes of testing a placement, a referral packet 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 ensure the juvenile has been instructed 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. Authorization for out-of-state travel shall be approved at the discretion of the supervising person. An exception would be when the sending state has notified the receiving state that travel must be approved by the sending state's appropriate authority. The sending state's ICJ Office shall forward the Travel Permit via electronic communication, as appropriate, to the state in which the visit or transfer of supervision will occur. The authorized Travel Permit should be provided and received prior to the juvenile's movement. The receiving state upon receipt of the Travel Permit shall process and/or disseminate appropriate information in accordance with established law, policy, practice or procedure in the receiving state.

5. If a travel permit 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 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

Section 600 Return of Juveniles

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 Runaways to Parent or Legal Guardian

1. All remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities. To this end, the following rules shall apply:

    a. Juvenile authorities may release a runaway to their parent/legal guardian within the first 24-hours (excluding weekends and holidays) of detainment without applying Rule 6-102, except in cases where abuse or neglect is suspected by holding authorities.

    b. If the juvenile remains in custody beyond 24 hours, the holding state's ICJ Office shall be contacted.

2. Runaways who are endangering themselves or others held beyond 24 hours shall be held in secure facilities until returned by the home/demanding state.

3. When a holding state has reason to suspect abuse or neglect by a parent/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.

4. 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.

5. Voluntary Return of runaways who allege abuse or neglect:
   The Form III must indicate who will be assuming responsibility for the juvenile if the juvenile will not be returning to a parent or legal guardian.

6. Non-Voluntary Return of runaways who allege abuse or neglect:
   If the appropriate authorities in the home/demanding state determine that the juvenile will not be returning to a parent or legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with Rule 6-103.

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

RULE 6-102: Voluntary Return of Out-of-State Juveniles

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

1. The holding state's ICJ Office shall be advised of juvenile detainment. The holding state's ICJ Office shall contact the home/demanding state's ICJ Office advising them of case specifics.

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

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

4. If in agreement with the voluntary return, the juvenile shall sign the approved ICJ Form III in the presence (physical or electronic) of a judge. The ICJ Form III shall be signed by a judge.

5. 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 ICJ Form III, provided the waiver is signed by the juvenile and the judge.

6. 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 Compact office shall in turn, forward a copy of the consent to the Compact administrator, or designee, of the home/demanding state.

7. 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.

8. Juveniles are to be returned by the home/demanding state in a safe manner and within five (5) business days of receiving a completed Form III 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; amended January 5, 2011, effective February 4, 2011; amended October 17, 2012, effective April 1, 2013

RULE 6-103: Non-Voluntary Return of Out-of-State Juveniles

Requisitions must be entered electronically in the electronic data system. The following requisition process shall apply 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:

1. The appropriate authority in the home/demanding state shall prepare a written requisition within sixty (60) calendar days of notification: (a) of refusal of the juvenile to voluntarily return as prescribed in Rule 6-102, or (b) to request that a court takes into custody a juvenile that is allegedly located in their jurisdiction.

2. Juveniles held in detention, pending non-voluntary return to the demanding state, may be held for a maximum of ninety (90) calendar days. The home/demanding state's 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 non-delinquent runaway, the parent/legal guardian or custodial agency must petition the court of jurisdiction in the home/demanding state for a requisition.

    a. The petitioner may use Form A, Petition for Requisition to Return Runaway Juvenile, or other petition. The petition must 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 if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his/her own welfare or the welfare of others and is not an emancipated minor.

    b. The petition shall be verified by affidavit.

    c. 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.

    d. Other affidavits and other documents may be submitted with such petition.

4. The home/demanding state's appropriate authority shall initiate the requisition process upon notification by the holding state's ICJ Office that a non-delinquent juvenile in custody refuses to voluntarily return and the parent or legal guardian in the home/demanding state is unable or refuses to initiate the requisition process.

5. The judge in the home/demanding state shall determine if:

    a. The petitioner is entitled to legal custody of the juvenile;

    b. The juvenile ran away without consent;

c. Thee juvenile is an emancipated minor; and

d. It is in the best interest of the juvenile to compel his/her return to the state.

6. 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.

7. When the juvenile is an absconder, escapee or accused of being delinquent, the appropriate authority shall present to the appropriate court Form II, Requisition for Escapee or Absconder or Accused Delinquent, where the juvenile is alleged to be located. The requisition shall be verified by affidavit and shall be accompanied by copies of supporting documents that show entitlement to the juvenile. Examples may include:

   a. Judgment

   b. Order of Adjudication

   c. Order of Commitment

   d. Petition Alleging Delinquency

   e. Other affidavits and documents may be submitted with such requisition.

8. Upon receipt of the requisition, 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. The holding state may request and shall be entitled to receive originals or duly certified copies of any legal documents.

9. If not already detained, the court shall order the juvenile be held pending a hearing on the requisition.

10. A hearing in the state where the juvenile is located shall occur within thirty (30) calendar days of receipt of the requisition. This time period may be extended with the approval of both ICJ Offices. 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 if the requisition is in order.

    a. If the requisition is found to be in order by the court, the judge shall order the juvenile's return to the home/demanding state.

    b. If the requisition is denied, the judge shall issue written findings detailing the reason(s) for denial.

11. 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.

12. Requisitioned juveniles shall be accompanied in their return to the home/demanding state unless both ICJ Offices determine otherwise. 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 with approval from both ICJ Offices.

13. 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 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

RULE 6-104: Return of Juveniles Whose ICJ Placement Has Failed

1. If it is determined necessary to return a juvenile, whose placement has failed, to the Sending State and the ICJ Application for Compact Services and Memorandum of Understanding and Waiver Form (ICJ Form IA/VI) has the appropriate signatures, no further court procedures will be required for the juvenile's return.

2. Upon notifying the sending state's ICJ Office, a duly accredited officer of a sending state may enter a receiving state and apprehend and retake any such juvenile on probation or parole. If this is not practical, a warrant may be issued and the supervising state shall honor that warrant in full.

3. Upon notice of a juvenile's failed placement for purposes of his/her return, the sending state shall return the juvenile in a safe manner, pursuant to ICJ Rules 6-106 and 6-111, and within five (5) business days. This time period may be extended with the approval of both ICJ Offices.

4. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive and not reviewable within the receiving state. 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 returned without the consent of the receiving state until discharged from prosecution, or other form of proceeding, imprisonment, detention, or supervision.

5. The officer of the sending state shall be permitted to transport delinquent juveniles being returned through any and all states party to this Compact, without interference.

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

RULE 6-104A: 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 place of residence;
    b. Contacting the last known school or place of employment, 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 October 17, 2012, effective April 1, 2013

RULE 6-105: Financial Responsibility

The home/demanding 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 (signed Consent to Return Voluntarily, signed Memorandum of Understanding and Waiver, or requisition honored). This time period may be extended with the approval of both ICJ Offices.

History: Adopted December 3, 2009, effective March 1, 2010; amended January 5, 2011, effective February 4, 2011

RULE 6-106: Public Safety

1. The home/demanding 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 states' assessments of the juvenile.

2. If the home/demanding 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.

3. Pursuant to ICJ Rule 6-103(12), requisitioned juveniles are to be accompanied in their return to the home/demanding state unless both ICJ Offices determine otherwise.

History: Adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011; amended January 5, 2011, effective February 4, 2011

RULE 6-107: Charges Pending in Holding/Receiving State

Juveniles shall be returned only with the consent of the holding/receiving states or after charges are resolved when pending charges exist in the holding/receiving states.

History: Adopted December 3, 2009, effective March 1, 2010

RULE 6-108: Warrants

1. All warrants under ICJ jurisdiction shall be entered into the National Crime Information Center (NCIC) by the appropriate local law enforcement agency or other authorized agency in the issuing state. Holding states shall honor all lawful warrants as entered by other states and within the next business day notify the ICJ office in the home/demanding state that the juvenile has been placed in custody pursuant to the warrant. Within two (2) business days of notification, the home/demanding state shall inform the holding state whether the home/demanding state intends to have the juvenile returned.

2. When the home/demanding state enters a warrant into NCIC as a "no bond/bail warrant" but the holding state's statutes allow for bond/bail on juvenile warrants, the holding state shall not release the juvenile in custodial detention on bond/bail. However, a juvenile subject to detention shall be afforded an opportunity for a hearing pursuant to ICJ Rule 6-109.

History: Adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011

RULE 6-109: Custodial Detention

1. The home/demanding state's ICJ Office shall effect the return of its juveniles within five (5) business days after confirmed notification from the holding state's ICJ Office that due process rights have been met. This time period may be extended with the approval of both ICJ Offices.

2. The holding state shall not be reimbursed for detaining juveniles under the provisions of the ICJ unless the home/demanding state fails to effect the return of its juveniles within the time period set forth in paragraph one (1) of this rule.

3. Within ten (10) business days after the failure of a home/demanding state to return the juvenile, 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 custodial detention to a parent or legal guardian or their designee if the holding state's court determines that further detention is not appropriate, or the holding state has failed to provide such a hearing within the time provided in this rule.

History: Adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011

RULE 6-110: Transportation

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

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

3. Holding 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 states shall confiscate all questionable personal belongings and return those belongings to the parents or legal guardians by approved carrier, COD or at the expense of the demanding 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 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.

History: Adopted December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011

RULE 6-111: Airport Supervision

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

2. Juveniles shall be supervised from arrival until departure.

3. Home/demanding states shall give the states providing airport supervision a minimum of 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 December 3, 2009, effective March 1, 2010; amended January 5, 2011, effective February 4, 2011; amended October 26, 2011, effective March 1, 2012

RULE 6-112: Provision of Emergency Services [Rescinded; See history]

In the event of an emergency situation (e.g. weather, delayed flight, missed flight, etc.) 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 housing for the juvenile until the transport is rearranged and/or completed.

History: Adopted December 3, 2009, effective March 1, 2010; On October 26, 2011, the Commission approved merging Rule 6-112 into 6-111 and ordered to rescind this rule, effective March 1, 2012.

Section 700 Adoption and Amendment of Rules

RULE 7-101: 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.

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 Web site 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. 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 days after the effective date of the rule. An emergency rule or amendment is one that must 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;

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

    d. Protect human health and the environment.

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 web site 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 December 3, 2009, effective March 1, 2010; amended September 15, 2010, effective January 1, 2011

Section 800 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 8-101: 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 8-101, Section 1., compacting states shall pursue informal dispute resolution processes prior to resorting to formal dispute resolution alternatives.

   a. 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 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.

   b. 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

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 December 3, 2009, effective March 1, 2010

RULE 8-102: Formal Resolution of Disputes and Controversies

1. Alternative dispute resolution
   Any controversy or dispute between or among parties that arises from or relates to this Compact that is not resolved under Rule 8.101 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 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 December 3, 2009, effective March 1, 2010

RULE 8-103: 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 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 suspension.

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 December 3, 2009, effective March 1, 2010

RULE 8-104: 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 December 3, 2009, effective March 1, 2010

RULE 8-105: Dissolution and Withdrawal

1. Dissolution

   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.

   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

   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.

   The effective date of withdrawal is the effective date of the repeal.

   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.

   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.

   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 December 3, 2009, effective March 1, 2010

Section 900 Transition Rule

RULE 9-101: Transition Rule [Expired]

For a period of twelve (12) months from the adjournment of the 2nd Annual Meeting of the Interstate Commission for Juveniles, the following transition rules will remain in effect with respect to those jurisdictions which have not yet enacted the new Interstate Compact for Juveniles. Non-signatory states who present ICJ with legislation and a bill number relative to enacting the Compact will receive an extension from December 3, 2010 to June 30, 2011.

1. Transactions between signatory states to the new Compact will be governed by the rules adopted by the Interstate Commission for Juveniles;

2. Transactions between non-signatory states to the new Compact will be governed by the rules of the Association of Juvenile Compact Administrators which were in effect as of December 2008;

3. Transactions between signatory and non-signatory states will be governed by the rules of the home/demanding state;

4. All duties and obligations regarding investigations, transfers, supervision, travel, and return of non-delinquent runaways, absconders, escapees and juveniles charged with delinquency shall continue until the juvenile is returned or discharged by the sending/home/demanding state;

5. Conflicts or disputes between signatory and non-signatory states may be meditated by a neutral representative selected by the Interstate Commission for Juveniles and a representative selected by the Association of Juvenile Compact Administrators from its non-signatory states.

History: Adopted December 2, 2009, effective March 1, 2010; amended September 15, 2010, effective September 15, 2010; Expired on June 30, 2011

Interstate Commission for Juveniles	Advisory Opinion Number 1-2009	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Chief Legal Counsel: Richard L. Masters**		**Dated:** **06-24-09**
Description: **ICJ Appropriate Appointing Authority**		

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 Statutes:

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 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 case 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:

Interstate Commission for Juveniles	Advisory Opinion Number 2-2009	Page Number: 2
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**		

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:	Dated:
Idaho	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*

ICJ Advisory Opinion
Issued by:
Chief Legal Counsel: Richard L Masters

State Requesting Opinion:	Dated:
Idaho	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	

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***

ICJ Advisory Opinion

Issued by:
Chief Legal Counsel: Richard L Masters

State Requesting Opinion:	Dated:
Idaho	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

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:	Dated:
Pennsylvania	January 25, 2010
Description: Receiving state's ability to sanction juveniles under ICJ Rule 4-104.1	

Background & History:

Pursuant to Commission Rule 8-101 (3), 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 this Rule or any other ICJ Rule address the receiving state's ability to sanction juveniles?

Applicable Rules:

Rule 4-104 (1) in relevant part provides:

1. "Each receiving state will assume the duties of visitation and supervision over any delinquent juvenile, including juvenile sex offenders who it has accepted for cooperative supervision and in exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own juveniles released on probation or parole."

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

State Requesting Opinion:	Dated:
Pennsylvania	January 25, 2010
Description: Receiving state's ability to sanction juveniles under ICJ Rule 4-104.1	

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 Interstate Compact for Juveniles (ICJ), Rule 4-104.1 requires that a receiving state's supervision of a juvenile will be "governed by the same standards of visitation and supervision that prevails for its own delinquent 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 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).

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 4-104.1, to impose 'graduated sanctions' upon any juvenile transferred under the compact if such standards are also applied to its own delinquent juveniles.

Interstate Commission for Juveniles	Opinion Number 02-2010	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

Description:	**Dated:**
Which rules apply according to effective date	January 2009

Background:

Pursuant to the provisions of the Interstate Compact for Juveniles (ICJ), the administrative rules of the previous compact which ICJ replaces were adopted as interim rules for the administration of the new compact for a period of twelve (12) months after the first meeting of the Interstate Commission for Juveniles. These "transition" rules remained in effect until superseded by the new rules promulgated by the Commission in December 2009, and which the Commission determined would become effective March 1, 2010.

Issue:

Since the new rules promulgated by the Commission do not become effective until March 1, 2010, which Rules apply if a referral is received prior to that date, but the placement occurs after March 1, 2010.

Analysis and Conclusions:

Generally, there is a presumption against retroactive application of a statute or regulation unless the legislative body which enacts the provision has indicated a clear intent to do so. AT & T Corp. v. Hulteen, 129 S. Ct. 1962, 1965 (2009); See also *Landgraf v. USI Film Products,* 511 U.S. 244, 272-273, (1994). Since the ICJ statute, adopted by all of the signatory states, expressly provides that "The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder." (See Article VI, F.). Thus, the "transition" rules as described above were replaced by the new rules promulgated by the Commission at its 2nd annual meeting in December 2009 at which time the Commission determined that these new rules would not take effect until March 1, 2010. Clearly, the intent of the Interstate Commission for Juveniles was to apply the newly promulgated rules 'prospectively' beginning on that date.

Therefore, consistent with the foregoing presumption against retroactive application of the newly promulgated ICJ rules, the "transition" rules will continue to govern juvenile interstate transfers until March 1, 2010. Referrals, or applications for transfer, received prior to March 1, 2010 should be processed using the interim or "transition" rules. If the placement or any subsequent actions regarding the case in question occur after March 1, 2010, the new rules would govern those actions.

Interstate Commission for Juveniles	Opinion Number 03-2010*	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

Description:	**Dated:**
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	March 31, 2010

Background:

Pursuant to Commission Rule 8-101.3, a request has been made by the ICJ Compliance Committee for an interpretation of Rule 5-101.5 to address the following issues:

Case Scenario:
In accordance with Rule 4-104.6 and 5-101.4, a juvenile sex offender is denied acceptance by the receiving state. However, the sending state 'overrides' the denial and sends the juvenile sex offender anyway according to Rule 5-101.5 which states in part: ". . . the sending state shall submit a Court order or written justification of an authorized official containing the reason(s) for the decision to proceed with the placement ***before supervision will be accepted in the receiving state.***" (emphasis added)

This part of the rule appears to require that the receiving state must accept the juvenile offender upon receipt of the written justification, negating Rules 4-104.6 and 5-101.4 and giving the sending state the ultimate authority despite the laws of the receiving state.

Issues:

Does Rule 5-101.5 allow the sending state to 'override' the denial of acceptance of supervision of a juvenile under Rules 4-104.6 and 5-101.4? Does ICJ Rule 5-101.5 require that a decision to override the receiving state's denial of a transfer of supervision must be made by a judge or a parole authority and would the sending state incur potential civil legal liability? Does a judge or parole authority in another state have the jurisdiction/authority to force a receiving state to supervise a juvenile in violation of state or federal laws? Do the provisions of the Adam Walsh Act apply to such transfers of supervision?

Analysis and Conclusions:

The civil liability, if any, resulting from harm to a victim by a juvenile sex offender transferred to a receiving state based upon a decision to 'override' the denial of such a placement could be attributed to the State which made such a determination. Whether or not such liability would result would depend upon such factors as whether the determination of the sending state to 'override' the receiving state's denial was a judicial function such as a Court order (in which case judicial immunity would apply) and if not ordered by a Court, whether the action can be classified as 'discretionary' or 'mandatory'

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

Description:	**Dated:**
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	March 31, 2010

and whether the risk of harm to a potential victim resulting from such a decision was 'foreseeable.' *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 Department of Corrections; also Hertog v. City of Seattle, 979 P.2d 400 (WA, 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.**")* Thus, the 'better practice' would be for a Judge or Parole authority to make the required determination under Rule 5-101.5.

However, the text of the new rule (5-101.5) **does not expressly limit the decision to 'override' the receiving state's denial to a Judge or Parole authority.** The literal text is: *"If the judge or other appropriate authority in the sending state decides to proceed with the placement despite the concerns of the receiving state, the sending state shall submit a Court order or written justification of an authorized official containing the reason(s) for the decision to proceed with the placement before supervision will be accepted in the receiving state."* The term *"other appropriate authority"* would seem to allow a compact office to provide such a justification. It is also important to remember that any such Court order or decision by 'other appropriate authority' must be submitted by the sending state *"before supervision will be accepted in the receiving state"* under this rule.

As to the question of whether a judge or parole authority in another state has the jurisdiction/authority to force a receiving state to supervise a juvenile in violation of state or federal laws, ICJ Rule 5-101.4 provides that *"Supervision may be denied when the home evaluation reveals that the proposed placement 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."* The clear intent of this rule is to prevent a transfer of supervision under the compact when in violation of terms and conditions of supervision including transfers in violation of state or federal law. The rules must be read consistently with one another so that 5-101.5 allows a sending state to 'override' a receiving state's denial under 5-101.4 or 4-104.6 unless such an order would violate state or federal law, the opinion would not leave a basis for any other conclusion.

With respect to the sex offender registration requirements of the Adam Walsh Child Protection and Safety Act of 2006, 18 U.S.C. §3509(m) - §3142(c), federal law requires that certain juveniles register as sex offenders if they have been convicted as an adult or

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

Description:	**Dated:**
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	March 31, 2010

adjudicated delinquent in juvenile court, so long as the juvenile is 14 years of age or older and is convicted of an offense similar to or more serious than federal aggravated sexual assault. (See 18 U.S.C. §2241. In addition to offenses such as forcible rape, this statute covers any offense involving a sex act with a victim under the age of twelve (12). As long as the registration requirements are met in both the sending and receiving states under the compact, the provisions of Rule 5.101.5 do not appear to directly conflict with the above referenced provisions.[1]

[1] The Walsh Act organizes sex offenders into three tiers and mandates that Tier 3 offenders (the most serious tier) update their whereabouts every three months with lifetime registration requirements. Tier 2 offenders must update their whereabouts every six months with 25 years of registration, and Tier 1 offenders (which includes minors as young as 14 years of age) must update their whereabouts every year with 15 years of registration. Failure to register and update information is a felony under the law. It also creates a national sex offender registry and instructs each state and territory to apply identical criteria for posting offender data on the Internet (i.e., offender's name, address, date of birth, place of employment, photograph, etc.)

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:	**Dated:**
Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands.	July 22, 2010

Background:

Pursuant to Commission Rule 8-101.3, 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.*

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

Description:	**Dated:**
Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands.	July 22, 2010

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:	**Dated:**
Clarification for Juveniles who are undocumented immigrants.	Sept. 13, 2010

Background:

Pursuant to Commission Rule 8-101.3, 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 placement juvenile is a citizen or in the country legally?

2) If the juvenile is not a citizen or here legally, can a placement 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 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.

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

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Clarification for Juveniles who are undocumented immigrants.	Sept. 13, 2010

due to the inability of the immigrant to meet the criteria of the Compact in a given case. For example, under ICJ Rule 5-101, Sub-Section 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 5-101, Sub-Section 5 the receiving state could still raise the juvenile's status as an undocumented immigrant as a basis to deny the proposed transfer.

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.'

Interstate Commission for Juveniles	Opinion Number: 01-2011	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Health Insurance Portability and Accountability Act of 1996 (HIPAA) Exemptions for the Interstate Commission for Juveniles	Feb. 10, 2011

Background:

Pursuant to Commission Rule 8-101.3, 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**

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Health Insurance Portability and Accountability Act of 1996 (HIPAA) Exemptions for the Interstate Commission for Juveniles	Feb. 10, 2011

(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.

Interstate Commission for Juveniles	Opinion Number: 02-2011	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Determining which juveniles the new ICJ applies	May 26, 2011 **Amended:** January 26, 2012

Background:

Pursuant to Commission Rule 8-101(3), a request has been made by the State of Hawaii concerning whether states may place juveniles in private residential treatment facilities in another state under the provisions of ICJ or must these cases be 'referred' to the ICPC? Hawaii also asks whether states are permitted to place juveniles in public institutions for treatment in another state under the ICJ or must these cases be 'referred' to the ICPC.

Historically, the ICJ applied to the transfer or return of juveniles under court supervision for offenses which if committed by an adult would be classified as a crime or for offenses constituting a violation of other state laws, such as truancy cases, which are not classified as crimes but nonetheless result in referral to a court in the sending state. Additionally, the ICJ serves as the legal mechanism under which juveniles who have runaway from their state of residence may be returned. A different Compact, the Interstate Compact for the Placement of Children ('ICPC'), applies to the interstate placement of children across state lines to a parent, relative or for foster care or adoption and has typically been involved in placements of juveniles in residential treatment facilities, even where a juvenile has been adjudicated delinquent. In such cases, concurrent jurisdiction of both Compacts may arise.

Issues:

The issues which Hawaii asks to be addressed in this advisory opinion are as follows:

> Does the Interstate Compact for Juveniles ('ICJ') apply to the interstate transfer of supervision of delinquent juveniles, under juvenile jurisdiction in Hawaii, who are placed in a private residential treatment program? [1]
>
> Does the ICJ apply to the interstate transfer of supervision of delinquent juveniles, under juvenile jurisdiction in Hawaii, who are placed in public institutions?

[1] Based upon the amendment to ICJ Rule 4-101 §2(f)(1) effective March 1, 2012, juveniles placed in residential treatment facilities are not eligible for transfer or return of supervision under the terms of the compact. As a result, ICJ Advisory Opinion 02-2011 is superseded to the extent of any conflict with the ICJ Rule 4-101 §(2)(f)(1).

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Determining which juveniles the new ICJ applies	May 26, 2011 **Amended:** January 26, 2012

Applicable Statutes or Regulations

Article II, §H. of the ICJ defines a ***'juvenile'*** as "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;
(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 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 the transfer of supervision of a juvenile eligible for transfer except as provided by the Compact and these rules. . ."

ICJ Rule 4-101, §3 provides in relevant part:

"All cases being transferred to another state are pursuant to the ICJ except cases involving concurrent jurisdiction under the Interstate Compact on the Placement of Children, known as ICPC."

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Determining which juveniles the new ICJ applies	May 26, 2011 **Amended:** January 26, 2012

Analysis and Conclusion:

In the opinion request Hawaii states "This particular case is only a delinquency case, it does not have a concurrent dependency case." Hawaii has also correctly indicated that there is no ICJ statute or rule prohibiting the transfer of supervision of a 'juvenile' as defined by the ICJ based upon the type of facility into which such juvenile is placed. [1]

As referenced above, the ICJ specifically defines the meaning of juvenile for the purpose of determining those subject to the Compact and its administrative rules. The Hawaii case, out of which this inquiry arises, is specifically identified as a 'delinquency case' under Hawaii law. Article II, §H expressly states that both 'accused delinquents' and 'adjudicated delinquents' are included in the definition of 'juvenile' under the ICJ. Consistent with the Compact definition of the term 'juvenile,' ICJ Rule 4-101 concerning processing referrals of juveniles under the ICJ expressly provides in §1 that:

*"*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."*

Moreover, without exception, ICJ Rule 4-101, §2 requires that:

"No state shall permit the transfer of supervision of a juvenile eligible for transfer except as provided by the Compact and these rules. . ."

Based upon the foregoing definition contained in the Compact statute and the applicable ICJ Rules, it seems clear that the transfer of the supervision of a 'juvenile' under the juvenile jurisdiction of the State of Hawaii, as the sending state, if otherwise eligible for transfer, may properly be subject to transfer under the ICJ.

However, since ICJ Rule 4-101, §3, provides an exception in cases where there is ***concurrent jurisdiction*** with ICPC, in cases where the juvenile is placed in a residential treatment facility[1], even in the absence of a concurrent dependency case, the nexus with the purpose of the ICPC to ensure protection and adequate services would also be sufficient to 'trigger' the concurrent jurisdiction of ICPC, even though the jurisdiction and interest of the ICJ in adequate supervision of the delinquent juvenile and protection of the public would also apply per the above analysis.

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Determining which juveniles the new ICJ applies	May 26, 2011 **Amended:** January 26, 2012

No exception to the application of the ICJ is made in either the Compact definition of juvenile in Article II, §H, or the provisions of ICJ Rule 4-101, §1 or §2 based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility[1]. However, the interest of the sending and receiving states to ensure protection and adequate care is a sufficient basis to activate the concurrent jurisdiction provision under §3, particularly when the placement involves a private residential facility. [1]

While the ICJ Commission has the discretion to further clarify the manner in which the concurrent jurisdiction of ICJ is exercised through the promulgation of additional rules or rule amendments it has not yet chosen to do so. The pending Memorandum of Understanding ("MOU") being negotiated by and between the respective governing bodies of both the ICJ and the ICPC may also lead to further clarification of the nature and extent of the involvement of each Compact with respect to such cases.

Until further clarification through the ICJ Rules, the intent of the above referenced Compact and rule provisions seems clear from the plain meaning of the language used to make the Compact applicable to delinquent "juveniles who are under the 'juvenile jurisdiction in the sending state."' 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). While placement into a private residential facility[1] may also trigger the concurrent jurisdiction of the ICPC, this should not defeat the legitimate interests of the ICJ in public safety and rehabilitation, which when deemed necessary may also include the imposition of reporting to probation or parole officers, progress reports and other appropriate means of supervision of such juveniles.

Summary:

In summary**,** the ICJ applies to the interstate transfer of supervision of delinquent juveniles, who are under juvenile jurisdiction in Hawaii, whether placed in a public institution or a private residential treatment program[1]. There is no explicit exception to the application of the ICJ is made in either the Compact definition of juvenile in Article II, §H, or the provisions of ICJ Rule 4-101, §1 or §2 based upon whether the delinquent juvenile whose

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Determining which juveniles the new ICJ applies	May 26, 2011
	Amended:
	January 26, 2012

supervision is transferred is placed in a public or private treatment facility[1]. However, the interests of the sending and receiving states to ensure protection and adequate care for such juveniles is sufficient to activate the concurrent jurisdiction provision under §3 where the placement involves a private residential treatment facility[1]. Notwithstanding such joint jurisdiction, this should not defeat the legitimate interests of the ICJ in public safety and rehabilitation, which when deemed necessary may also include the imposition of requirements such as reporting to probation or parole officers, progress reports, and other appropriate means of supervision of such juveniles.

Interstate Commission for Juveniles	Opinion Number: 03-2011	Page Number: 1

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**

Background:

Pursuant to Commission Rule 8-101(3), 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, §H of the ICJ defines a ***'juvenile'*** as "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;
(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 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**

ICJ Rule 1-101 defines the term "Non-Adjudicated Juveniles" as follows:

"All juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of supervision and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles."

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 the transfer of supervision of a juvenile eligible for transfer 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.

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. The ICJ rules define "Non-Adjudicated Juveniles" to mean: "All juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of **supervision** and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles" (emphasis supplied).

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**

While the term 'supervision' is used in the text of the Compact and the ICJ rules, the term has not been defined. Therefore, recourse to the ordinary meaning of the word is necessary to properly interpret any such provisions using the term. Supervision is defined as *'the act of supervising*' or *'to supervise'* which means: ***"to oversee, direct, or manage; superintend."*** 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.

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 4-104 requires that a **"receiving state will assume the duties of visitation and supervision over any juvenile, including juvenile sex offenders, and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevails 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 Rule 4-104, §2 and the required progress reports under Rule 4-104, §3. Reporting instructions would be required as called for under Rule 5-101, §6. Any fees incurred for treatment could be imposed on the sending state as authorized under Rule 4-104, §5 and home evaluations are required to be conduced in compliance with Rule 4-104, §7 and collection of restitution, fines and other costs would be treated as permitted or required under Rule 4.104, §8 and the transfer of the offender to a subsequent receiving state and any requested return to the sending state would be subject to the provisions of Rules 4.110 and 4.111 respectively. The closing of such a case would be governed by Rule 4-106 and if necessary the juvenile could be 'retaken' by pursuant to the requirements of Rules 6-101 or Rule 6-103 if necessary.

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**

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, 5, and 6 of the ICJ rules.

Eighth District Juvenile Court
FOR DUCHESNE COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of	Minutes, Findings, and Order
[redacted]	[redacted]
A person under the age of 18 years	

Before [redacted] on November 17, 2010

This case came before the Court for a hearing on the following:
[redacted]

1 - HARMFUL MATERIALS, OFFENDR <16 (Class B Misdemeanor) - Arraignment / Pretrial
2 - HARMFUL MATERIALS, OFFENDR <16 (Class B Misdemeanor) - Arraignment / Pretrial
3 - RAPE OF A CHILD UNDER 14 (First Degree Felony) - Arraignment / Pretrial
4 - SODOMY UPON CHILD-VICT.UNDR 14 (First Degree Felony) - Arraignment / Pretrial

MINUTES:
Present:

All parties entitled to legal notification were legally served with notice or waived such notification.
An oral report and recommendation was given to the Court by [redacted]
The Court addresses and accepts comments from all parties present.
Petition(s) is/are read.
All rights are explained including the right to trial, the right to have the state meet its burden of proof beyond a reasonable doubt, the right to confront the state's witnesses, the right to have witnesses compelled to appear, and the right to remain silent.

FINDINGS:
Based upon the minor's admission to allegation(s) 3 - RAPE OF A CHILD UNDER 14 the Court finds the allegation(s) to be true, further, the admission should be held in abeyance and the minor comes within the provisions of the Juvenile Court Act.
Based upon the admission to allegation(s) 1 - HARMFUL MATERIALS, OFFENDR <16, the Court finds the allegation(s) to be true and correct and [redacted] comes within the provisions of the Utah Juvenile Court Act.

Continued on next page

[redacted]

The court finds that the admission was knowingly and voluntarily made. [redacted] has a reasonable understanding of the nature and elements of the crime.
Based upon the motion from [redacted]; the Court finds allegation(s) 2 - HARMFUL MATERIALS, OFFENDR <16 and 4 - SODOMY UPON CHILD-VICT.UNDR 14, should be dismissed.

ORDERS:

For allegation 001

[redacted] is to pay a fine in the amount of $250.00 which includes applicable surcharge fees. This is due on or before date specified below. Amount is payable in payments.

[redacted] is to pay restitution. This amount shall be determined within 60 days. After that time the victim will need to seek restitution by other means.

[redacted] is committed to detention for 30 days. This order is hereby suspended upon compliance of the courts orders.

For allegation 003

The plea to allegation(s) 3 - RAPE OF A CHILD UNDER 14 is held in abeyance for a period of 2 years, subject to the terms and conditions set forth below. Upon the violation of any condition, the admission(s) may be entered upon the record and the juvenile sentenced accordingly. Any order to show cause based on a failure to comply may be served by mail at the last address provided to the Court. Upon compliance, the incident will be dismissed. The minor understands and waives his or her right to be sentenced within 30 days of the entry of this plea. The conditions of this agreement are that the Minor shall: not violate any laws or court orders and shall immediately inform the probation department or clerk of any violations; pay all ordered costs (or work all hours) in a timely manner; keep the Court informed of changes in mailing address. Subject to bi-monthly reviews.

The parents shall provide for and said minor shall complete a psychological evaluation and sexual assessment by a qualified Network of Juvenile's Offending Sexually (N.O.J.O.S.) Evaluator. If a psychiatric evaluation is recommended, the parents shall provide for and said minor shall complete a psychiatric evaluation by a qualified psychiatrist or medical doctor. The evaluators shall submit written reports and recommendations to the court by January 14, 2011. The parents shall provide for and said minor shall attend and satisfactorily complete such counseling and services as recommended by the evaluations with monthly written reports

Continued on next page

[redacted]

submitted to the probation department until released from counseling or other services. A written report regarding counseling shall be submitted to the court forty-eight (48) hours prior to the next court review hearing.
Said minor is restrained from babysitting.

Said minor is restrained from having any contact or association with any child younger than himself/herself without proper and approved adult supervision.

Said minor is restrained from having any direct or indirect contact or communication with the victim.

[redacted] is to pay restitution. This amount shall be determined within 60 days. After that time the victim will need to seek restitution by other means.

[redacted] is to pay a Plea In Abeyance fee in the amount of $100.00 which includes applicable surcharge fees. This is due on or before date specified below. Amount is payable in payments.

[redacted] is ordered to provide a DNA saliva specimen to a designated employee of this court within 120 days. [redacted] is ordered to pay a fee of $100.00 for obtaining and processing a DNA sample. Fee is to be paid on or before date specified below. Amount is payable in payments.

This matter is set for further dispostion on March 2, 2011 at 11:00 a.m. in Duchesne befor[redacted]

Allegation(s) 2 - HARMFUL MATERIALS, OFFENDR <16 and 4 - SODOMY UPON CHILD-VICT.UNDR 14 is/are dismissed by plea negotiation.

The matter will be further reviewed on June 1, 2011 at 11:00 am in Duchesne.

[redacted] is to pay a total of $450.00. This is due on or before April 28, 2011. Amount is payable in monthly payments of $100.00, with the first payment due on December 30, 2010.

Failure to comply with the above order may result in your being found in contempt of court, the loss of your driver license, and/or forfeiture of any or all of your Utah State Income Tax Refund.
Copy of this court order is your personal notice to appear for the above hearing. You will not receive further notice.

Continued on next page

[redacted]

You may have the right to appeal this matter to the Utah State Court of Appeals. Appeals must be filed within 30 days from the date of this order.

BY THE COURT

Digitally signed by
[redacted]
and filed on 11-17-2010

[redacted] Judge

Recorded by D. Shepard
11:53:15

[redacted]

Interstate Commission for Juveniles	Opinion Number: 04-2011	Page Number: 1

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 placement.	October 24, 2011

Background:

Pursuant to Commission Rule 8-101(3), 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 placement 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 placement 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:

Rule 1-101: Non-Adjudicated Juveniles:
"all juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of supervision and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles."

Rule 1-101: Warrant:
"an order authorizing any law enforcement or peace officer to apprehend and detain a specified juvenile."

Rule 6-104(2): Return of Juveniles Whose ICJ Placement Has Failed:
"Upon notifying the sending state's ICJ Office, a duly accredited officer of a sending state may enter a receiving state and apprehend and retake any such juvenile on probation or parole. If this is not practical, a warrant may be issued and the supervising state shall honor that warrant in full."

Analysis and Conclusions:

Rule 6-104 governs the return of a juvenile to the sending state when an ICJ placement 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

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 placement.	October 24, 2011

not specifically mention secure detention, Section 2 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 placement 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 placement 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 6-104, 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 placement 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.

Interstate Commission for Juveniles	Opinion Number: 01-2012	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Whether Health Insurance Portability and Accountability Act (HIPAA) exemption applies to transfers and returns of juveniles between non-member states.	January 26,2012

Background:

Pursuant to Commission Rule 8-101(3), 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.

Issues:

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.

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 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.

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Whether Health Insurance Portability and Accountability Act (HIPAA) exemption applies to transfers and returns of juveniles between non-member states.	January 26,2012

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 only the State of Georgia and the Commonwealth of Puerto Rico have not passed the new Compact and the 'transition period' specified under the new compact has now expired. Until Georgia and Puerto Rico adopt the new compact, no transfers of supervision or return of juveniles is authorized or required except, in the case of Georgia, as to those states in which the 1955 ICJ has not been repealed and remains in effect. Those new compact states which have not repealed the 1955 compact are: Indiana, Hawaii, Illinois, Maine, Minnesota, North Carolina, Oklahoma, West Virginia, and Wisconsin. The Commonwealth of Puerto Rico has not enacted either the 1955 compact or the new compact.

As a consequence, it is likely that because Georgia and Puerto Rico are not members of the new compact, transfers of supervision and return of juveniles to and from those jurisdictions would be

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Whether Health Insurance Portability and Accountability Act (HIPAA) exemption applies to transfers and returns of juveniles between non-member states.	January 26,2012

determined by an administrative agency or court not to be covered by the above referenced HIPAA law enforcement exemption because neither state is 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 provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") would not apply to transfers and returns of juveniles involving the State of Georgia or the Commonwealth of Puerto Rico except in the case of Georgia in which the transfers or returns are by and between that state and one of the nine (9) other states referenced above which have not repealed the 1955 compact.

Interstate Commission for Juveniles	Opinion Number: 02-2012	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Detention and supervision fees associated with new charges	April 10, 2012

Background:

Pursuant to Commission Rule 8-101(3), 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, (F) 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;"

Rule 1-101 "Supervision" means:

"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."

Rule 4-104 (4) 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 Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Detention and supervision fees associated with new charges	April 10, 2012

Rule 6-109 (2) provides:

"The holding state shall not be reimbursed for detaining juveniles under the provisions of the ICJ unless the home/demanding state fails to effect the return of its juveniles within the time period set forth in paragraph one (1) of this rule."

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 4-104 (4) 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

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Detention and supervision fees associated with new charges	April 10, 2012

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 4-104 (4) 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 effect 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 4-104 (4) 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 the provisions of ICJ 6-109 (2) allow a holding state to be reimbursed for detention if the home/demanding state "fails to effect the return of its juvenile" within five (5) business days after confirmed notice that due process rights have been met. However, it is clear that this rule cannot be applied while pending charges exist in the holding state. In fact ICJ Rule 6-107 prohibits the return of such juveniles until pending charges are resolved, unless the holding state consents to the return.***

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 4-104 (4) 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

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Detention and supervision fees associated with new charges	April 10, 2012

moot. Although ICJ Rule 4-104 (4) 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. ***Further, the provisions of ICJ 6-109 (2) allow a holding state to be reimbursed for detention if the home/demanding state "fails to effect the return of its juvenile" within five (5) business days after confirmed notice that due process rights have been met. However, it is clear that this rule cannot be applied while pending charges exist in the holding state. In fact ICJ Rule 6-107 prohibits the return of such juveniles until pending charges are resolved, unless the holding state consents to the return.***

Interstate Commission for Juveniles	Opinion Number: 03-2012	Page Number: 1

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**

Background:

Pursuant to Commission Rule 8-101(3), 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:

Rule 1-101 provides as follows:

"Juvenile: a person defined as a juvenile in any member state or by the rules of the Interstate Commission, including accused juvenile delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders, non-offenders, non-adjudicated juveniles, and non-delinquent juveniles."

Rule 4-104-6 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 incarceration 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, Rule 4-104-6 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, Rule 4-104-6, also requires that in the event a receiving state court is

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**

required to *"detain any juvenile under the ICJ, the type of incarceration shall be determined by the laws regarding the age of majority in the receiving state."*

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), Rule 4-104-6 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 Rule 4-104-6, if detained and returned pursuant to the ICJ, such youth may be treated as "juveniles."

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 4-104-6, 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), Rule 4-104-6 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 may be treated as a "juvenile."

Interstate Commission for Juveniles	Opinion Number: 04-2012	Page Number: 1

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	**Dated:**
Issuing a travel permit for a juvenile subject to a delinquency petition but is not yet adjudicated.	July 26, 2012 **Amended:** April 1, 2103

Background:

Pursuant to Commission Rule 8-101(3), the state of Wisconsin has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

Is a travel permit required to be issued, pursuant to ICJ Rule 5-102 for transfer of a juvenile sex offender from Wisconsin to Minnesota who is the subject of a delinquency petition, but who has not been adjudicated? [1]

Once the juvenile is adjudicated delinquent, can the juvenile be allowed to return to Minnesota with his family while Wisconsin makes its request for transfer of supervision of the youth to Minnesota?

Applicable Compact Provisions and Rules:

Rule 1-101 provides as follows:

"Juvenile: a person defined as a juvenile in any member state or by the rules of the Interstate Commission, including accused juvenile delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders, non-offenders, non-adjudicated juveniles, and non-delinquent juveniles."

Rule 4-103(1) provides:

"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

[1] Based upon the amendment to ICJ Rule 5-102 effective April 1, 2013, travel permits are required for juveniles who travel out-of-state for more than 24 consecutive hours and who have committed or the adjudicated offense or case circumstances include sex-related offenses, violent offenses resulting in personal injury or death, offenses committed with a weapon, state committed juveniles, juveniles testing placement, juveniles returning to the sending state, or juveniles transferring to a subsequent state. As a result, ICJ Advisory Opinion 04-2012 is superseded to the extent of any conflict with the ICJ Rule 5-102.

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Issuing a travel permit for a juvenile subject to a delinquency petition but is not yet adjudicated.	July 26, 2012 **Amended:** April 1, 2103

approved, or reporting instructions have been issued by the receiving state unless Rule 4-103(2) is applicable.

Rule 5-102(2) provides in relevant part as follows:

"The purpose of this section is for the protection of the public. Travel permits shall be mandatory in following instances:

"2. Travel Permits shall be issued for visits that exceed forty-eight (48) hours. Travel Permits shall contain instructions requiring the juvenile, who is subject to the terms of the ICJ, to return to the sending state.

Analysis and Conclusions:

In its request for an advisory opinion the State of Wisconsin describes the following situation:

"In Wisconsin, one of our counties is in the process of adjudicating a Minnesota youth delinquent for a sex offense. The youth has never lived in Wisconsin and has no ties to our state; Wisconsin just happens to be the place where he allegedly committed his sex offense. My issues:

The youth and his family have been traveling between Minnesota and Wisconsin during the delinquency proceedings. No travel permit has been issued for any of these interstate trips because he has not been adjudicated yet, so he's not under the Compact. Is this correct?

Once the youth is adjudicated delinquent, everyone is expecting that he will return to Minnesota with his family, and Wisconsin will begin the process to request courtesy supervision of the youth by Minnesota. Are we running afoul of ICJ Rule 4-103(1) by allowing him to return to the state where he lives before that state has done a home investigation and accepted courtesy supervision?"

The term 'juvenile' is defined in the compact and the ICJ Rules and explicitly includes "**accused juvenile delinquents**," as well as **adjudicated delinquents**. Since Wisconsin is "in the process of adjudicating a Minnesota youth delinquent for a sex offense," it is crystal clear, based upon the definition of 'juvenile,' that even prior to being adjudicated delinquent as a sex offender, such a youth is "subject to the terms of the ICJ" as contemplated by both the Compact and ICJ Rule 1-101. Moreover, ICJ Rule 5-102(2) requires, with regard to a **"juvenile who is subject to**

ICJ Advisory Opinion
Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L. Masters

Description:	Dated:
Issuing a travel permit for a juvenile subject to a delinquency petition but is not yet adjudicated.	July 26, 2012 **Amended:** April 1, 2103

the terms of the ICJ," that a travel permit **"shall be issued for visits that exceed forty-eight (48) hours."** The purpose clause of Rule 5-102 emphasizes that this section **"is for the protection of the public"** and that **"Travel permits shall be mandatory in the following instances. . ."**

Accordingly, the foregoing rules do not permit a juvenile such as the juvenile in question, who is an "accused juvenile delinquent" to travel from one state to the other for visits exceeding forty-eight hours without a travel permit.

It is equally clear that Rule 4-103(1) prohibits the transfer of a juvenile to the receiving state "**until the sending state's request for supervision has been approved, or reporting instructions have been issued by the receiving state** unless Rule 4-103(2) is applicable." Based upon the definition of 'juvenile,' as provided in both the ICJ and ICJ Rule 1-101 as well as the requirements of Rule 4-103(1), once the youth in question has been adjudicated delinquent as a sex offender, in the absence of either an approval of a transfer request or reporting instructions, allowing such a juvenile to return to Minnesota violates both the Compact and the foregoing ICJ Rules.

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).

Summary:

Accordingly, as to the first question, Rule 5-102(2) does not permit a juvenile who is an "accused juvenile delinquent" to travel from one state to the other for visits exceeding forty-eight hours without a travel permit.

Secondly, based upon the definition of 'juvenile' as provided in both the ICJ and ICJ Rule 1-101, as well as the requirements of Rule 4-103 (1), once the juvenile in question has been adjudicated delinquent as a sex offender, in the absence of either an approval of a transfer request or reporting instructions, allowing such juvenile to return to Minnesota violates both the Compact and the foregoing ICJ Rules.

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

Background:

Pursuant to Commission Rule 8-101(3), the State of Hawaii and the West Region of ICJ has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

Effective March 1, 2012, ICJ Rule 4-101(2)(f) 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.

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

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

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:

Rule 1-101 provides as follows:

"Juvenile: a person defined as a juvenile in any member state or by the rules of the Interstate Commission, including accused juvenile delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders, non-offenders, non-adjudicated juveniles, and non-delinquent juveniles."

ICJ Rule 4-101 (2) (f) (1) provides in relevant part as follow:
"A juvenile shall be eligible for transfer under the ICJ if the following conditions are met:

f. 1. Will reside with a parent, legal guardian, relative, non-relative or independently, excluding residential facilities;

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 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in 'residential facilities.' This rule amendment was made by the Interstate Commission in the wake of Advisory Opinion 2-2011 which pointed out that under neither the provisions of the Compact nor the previous language of this rule, was there

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

an exception to the application of the ICJ "based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility."

However, at the following Annual Meeting of the Commission, this specific subsection was amended as stated above with the intent to clarify that delinquent juveniles placed in residential treatment facilities are excluded. 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.

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 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)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in 'residential facilities.' This rule amendment was made by the Interstate Commission in the wake of Advisory Opinion 2-2011 which pointed out that under neither the provisions of the Compact nor the previous language of this rule, was there an exception to the application of the ICJ "based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility."

However, at the following Annual Meeting of the Commission this specific subsection was amended as stated above with the intent to clarify that delinquent juveniles placed in residential treatment facilities are excluded. Thus, the minor referred to in Case #2 is not now eligible for transfer through ICJ because of the referral to the residential treatment program in California.

The Interstate Commission for Juveniles and the Association of Administrators of the Interstate Compact for the Placement of Children have entered into a Memorandum of Understanding for the purpose of 'clarifying issues and resolving confusion' in the handling of cases under both Compacts. While it is unclear whether the problems being encountered in the cases described above can be resolved under the MOU, they certainly appear to raise questions about the **"best**

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

plan of action regarding public safety and what is in the best interest and safety of the child or juvenile" and whether it may be necessary **"to modify rules, regulations, procedures or forms"** in order to address these cases which are among the stated purposes of the MOU.

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.

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

LEGAL MEMORANDUM

TO: **Executive Committee**
Interstate Commission for Juveniles

FROM: **Richard L. Masters**
General Counsel, Interstate Commission for Juveniles

RE: **Expiration of ICJ Transition Rules – Guidance on Subsequent Transfers of Juveniles To and From Non-Member States**

DATE: **October 18, 2011**

Expiration of transition period

As of this date, fifty-one (51) jurisdictions have adopted the new Compact, including all of the 'continental' states, except Georgia. In addition, the District of Columbia and the U.S. Virgin Islands have also enacted the Compact and are members in good standing. Since the 'transition period' specified under the new Compact has now expired, until adoption of the new Compact by the State of Georgia, no transfers of juveniles to or from the State of Georgia and any other new Compact state are either authorized or required except as to those states in which the 1955 ICJ has not been repealed and remains in effect. Those new Compact states which have not repealed the 1955 Compact are: Indiana, Hawaii, Illinois, Maine, Minnesota, North Carolina, Oklahoma, West Virginia, and Wisconsin.

However, it is important to note, notwithstanding the repeal of the 1955 Compact by every other state, that under Article XIV of the 1955 Compact, the duties and obligations required under the old Compact, with respect to cooperative supervision of juveniles, "***shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged***."

Thus, with the exception of the above referenced 'pre-existing' supervision cases or states which have not repealed the 1955 Compact, a state which seeks to transfer supervision of a juvenile to or from Georgia can do so only if terms and conditions are negotiated individually by and between Georgia and each such state. The revised ICJ statute specifically recognizes this inevitable consequence in Article VI, Section F which declares that after the transition period has expired the transfer rules which were shared by both the old and new compacts "**shall be null and void**."

Guiding principles under the current Compact

While each state which has repealed the 1955 Compact, and which believes it to be in its best interest to do so, has the discretion to determine how to deal with transfers of juveniles to and from the State of Georgia, neither the Commission nor the national office can or should endorse an alternative agreement to the Compact.

However, as provided under the terms of the Compact statute, the Interstate Commission for Juveniles and the national office has a duty to act as an information resource as to the status of state relations with Georgia arising out of the obligations imposed under Article VII, A. of the Compact to, ***"monitor the administration and operations of the interstate movement of juveniles . . . being administered in non-Compacting states which may significantly affect the Compacting states."***

In addition, the provisions of the Compact also impose a duty on the Commission to act as a 'referee' to identify potential conflicts between the Compact and any agreements made by and between Georgia and the Compacting states, and to attempt to resolve such conflicts as required by Article VII, B. which requires the Commission, upon request, to resolve any disputes or other Compact issues ***"which may arise . . . between Compacting and non-Compacting states."***

Alternatives available to states

Other than the nine (9) states which haven't repealed the 1955 Compact, the alternatives available to states with respect to transfer of juvenile supervision cases to and from Georgia can be grouped in the following categories:

A. A state may decide not to enter into an agreement, by which any transfers of supervision are processed to or from Georgia. In the absence of any agreement, the legal status of such states appears to be as follows:

    1. No statutory responsibility exists for supervision of any juvenile coming from Georgia.

    2. No statutory obligation exists to process transfer of supervision of any juvenile to Georgia.

B. A state may consider negotiating a separate agreement in the absence of a compact, but should consider the various legal questions which arise concerning such an agreement or MOU including the following:

    1. Does the proposed agreement conflict with the Compact? While other state laws not inconsistent with the provisions of the new Compact may be enforced, as provided in Art. XIII, Section A.2. of the Compact statute: "**All Compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict;**"

2. What legal authority exists to bind the State to any agreement involving on-going responsibility and potential liability on the part of state agencies such as the Department of Juvenile Justice rather than through the Governor or the Legislature?[1]

3. In the absence of an Interstate Compact, authorized by the Legislature, what constitutional authority allows the transfer of supervision jurisdiction from a sending state to a receiving state or empowers a sending or receiving state Court to enforce court orders concerning the terms and conditions of supervision or for the conduct of probable cause proceedings or other proceedings necessary to retake a juvenile whose placement has failed or who has absconded?[2]

4. What rules will apply to the supervision of a juvenile subject to such an agreement? The 1955 Compact? The new Compact? Other rules specified in the agreement or MOU?

5. What liability protection exists for state officials under an MOU as opposed to an Interstate Compact which legislatively authorizes the applicability of sovereign immunity or other protection from liability?[3]

6. What incentive, if any, does such an agreement or MOU provide for Georgia to join the new Compact?

C. A state may decide to 'Wait and See'

Hopefully many of the above issues will be further clarified during the Commission's 2011 Annual Business Meeting in which a panel of state Compact representatives and the Legal Director for the Georgia Department of Juvenile Justice will take part in a special panel discussion regarding Georgia Compact issues.

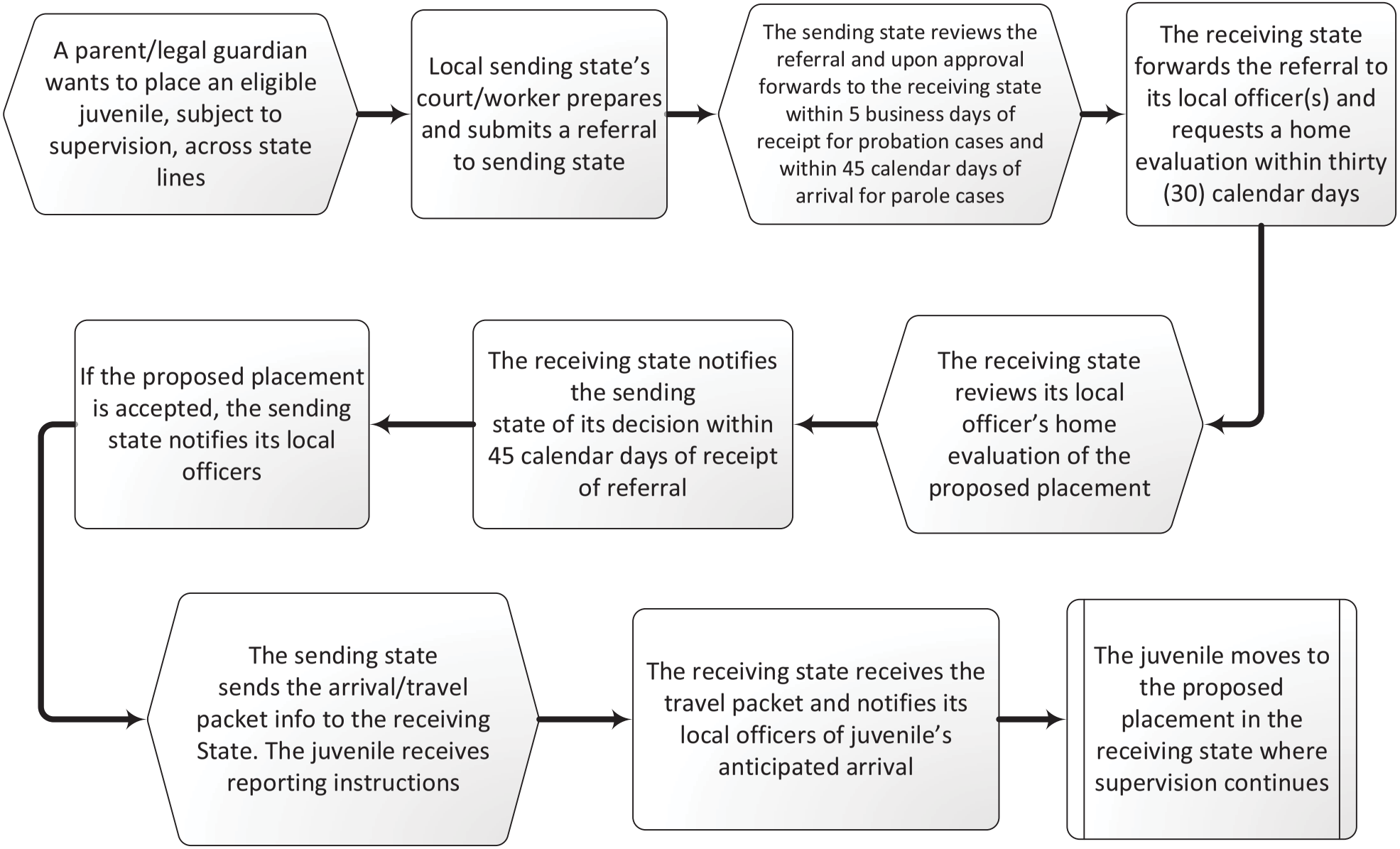
---

[1] As contracts, compacts constitute solemn 'treaties' between the member states acting as quasi-sovereigns within a federal union. See *Rhode Island v. Massachusetts, 37 U.S. 657, 725 (1838) (compacts operate with the same effect as treaties between sovereign powers).*

[2] Compacts are not administrative agreements between states executed by executive branch agencies. See *General Expressways, Inc. v. Iowa Reciprocity Board, 163 N.W.2d 413, 419 (Iowa 1968)*

[3] The placement of juveniles by a probation officer is an administrative function and the court's mere knowledge of a placement is in and of itself insufficient to convert an administrative act into a judicial act entitled to judicial immunity. See *Faile v. S.C. Dept. of Juv. Justice, 566 S.E.2d 536 (S.C. 2002); 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." See A.L. v. Commonwealth, 521 N.E.2d 1017 (Mass. 1988).*

Overview of the Transfer of Supervision



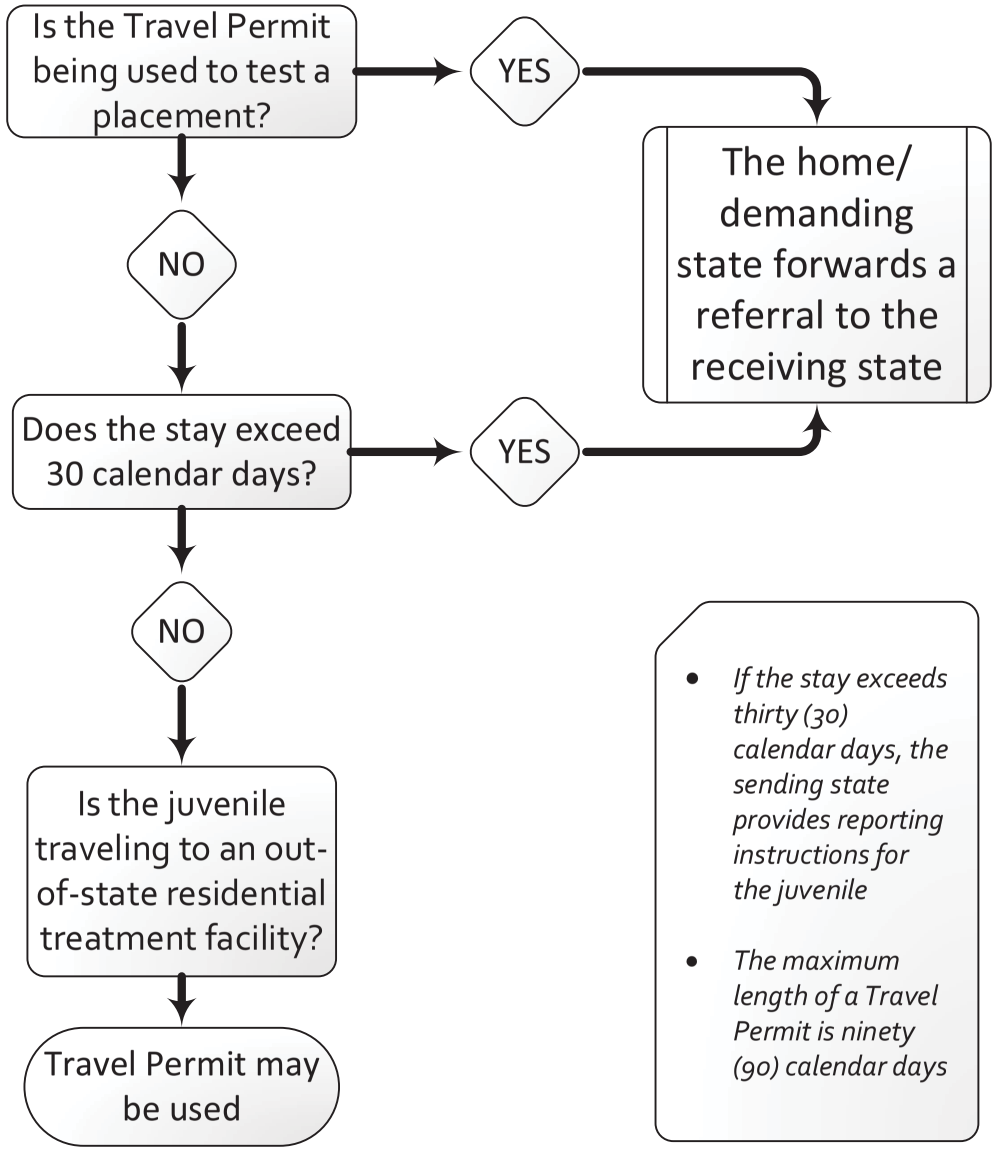
Travel Permit Overview

Mandatory

Mandatory for out-of-state travel exceeding 24 hours **and** if the juvenile has committed, been adjudicated, or case circumstances include:

- Sex-related offenses
- Violent offenses resulting in injury/death
- Offenses committed with a weapon
- Juveniles committed to state custody
- Juveniles, subject to ICJ, who are testing placement
- Juveniles returning to the sending state
- Juveniles transferring to a subsequent state(s)
- Juveniles in which victim notification laws, policies, and practices require notification

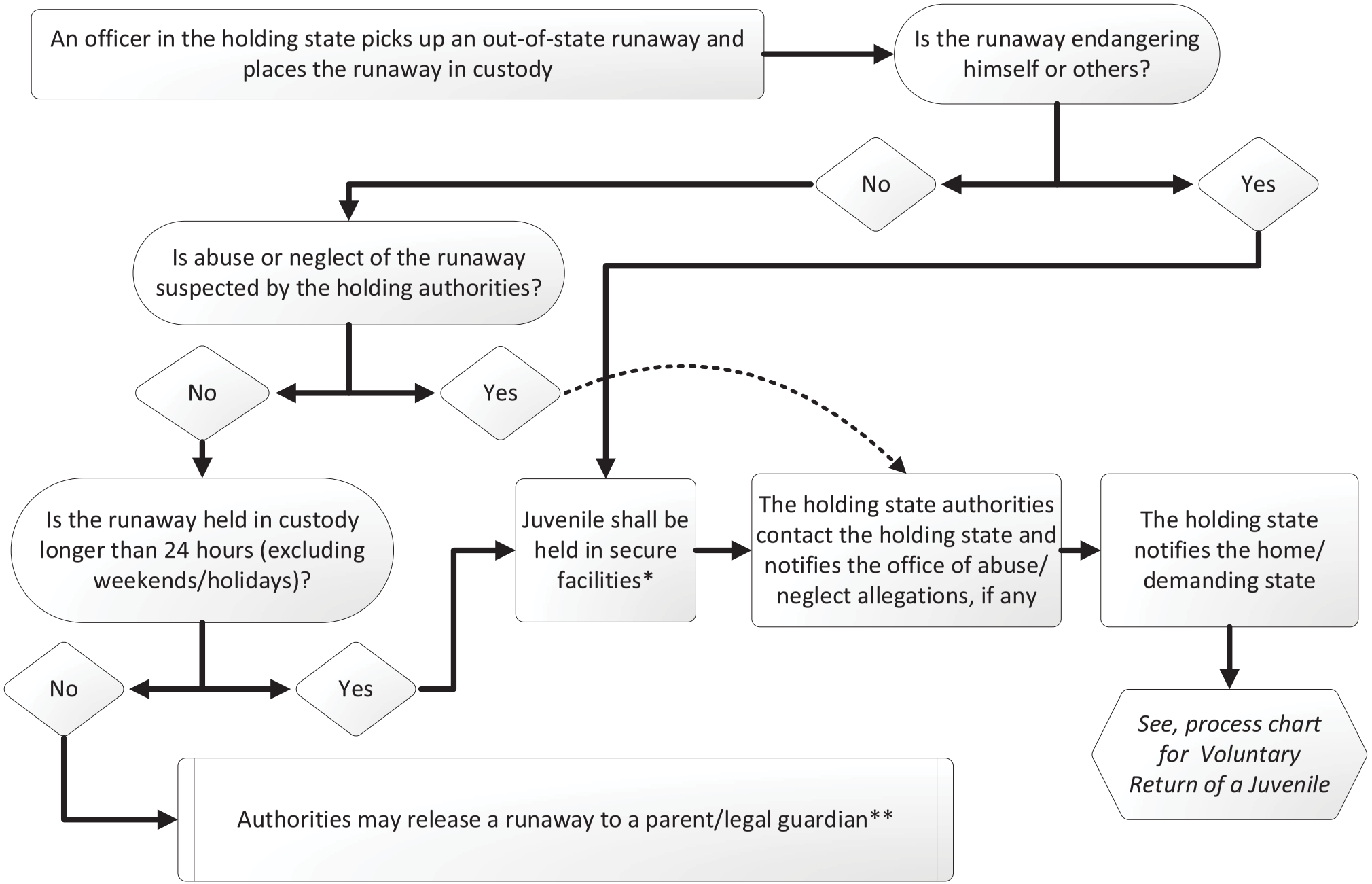
Discretionary



- *If the stay exceeds thirty (30) calendar days, the sending state provides reporting instructions for the juvenile*
- *The maximum length of a Travel Permit is ninety (90) calendar days*

Authorization for out-of-state travel shall be approved at the discretion of the supervising person. *See,* Rule 5-102(4)
The sending state is responsible for victim notification. *See,* Rule 5-102(5)

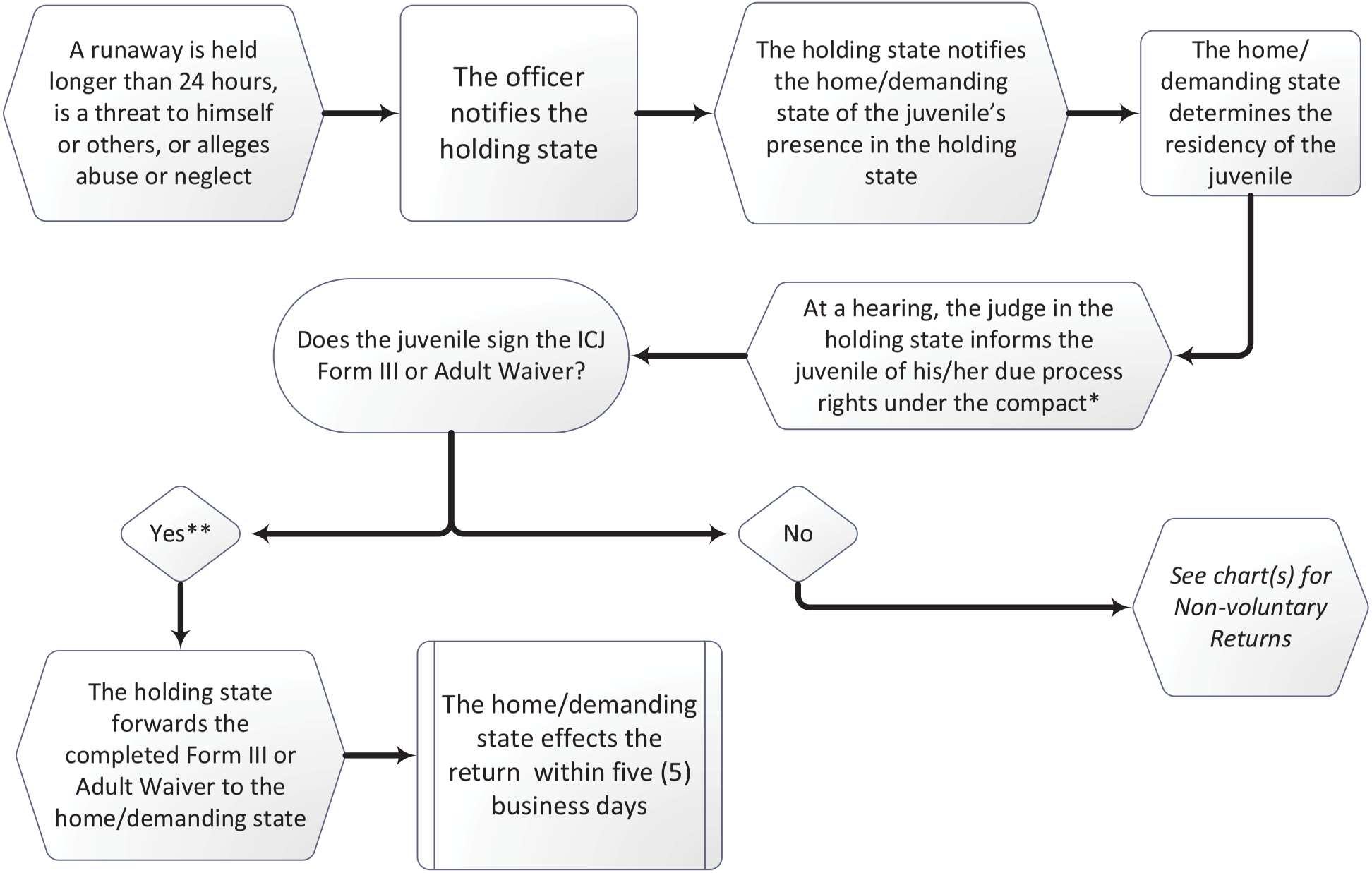
Release of a Runaway to a Parent or Legal Guardian



**See*, Notice of Clarification of OJJDP Policy on Secure Detention of Runaways

***Juvenile authorities may release a runaway to their parent/legal guardian within the first 24 hours without applying Rule 6-102.

Voluntary Return of a Juvenile



*The court may elect to appoint counsel or a guardian ad litem to represent the juvenile.

**The Form III must indicate who will be assuming responsibility for the juvenile if the juvenile will not be returning to a parent or legal guardian. *See*, Rule 6-101.

Non-Voluntary Return of a Non-Delinquent Juvenile

1. Juvenile 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

→ Is the juvenile considered delinquent?

- Yes → *See the chart for the non-voluntary return of an escapee, absconder, or accused delinquent*
- No → Parent/legal guardian/custodial agency petitions court in home/demanding state for requisition

→ The judge in the home/ demanding state determines if:
- The petitioner is entitled to legal custody;
- The juvenile ran away without consent;
- The juvenile is an emancipated minor;
- It is in the best interest of the juvenile to return

→ When the judge in the home/ demanding state determines that the juvenile should return, the requisition is sent

→ The holding state forwards the requisition to the appropriate court

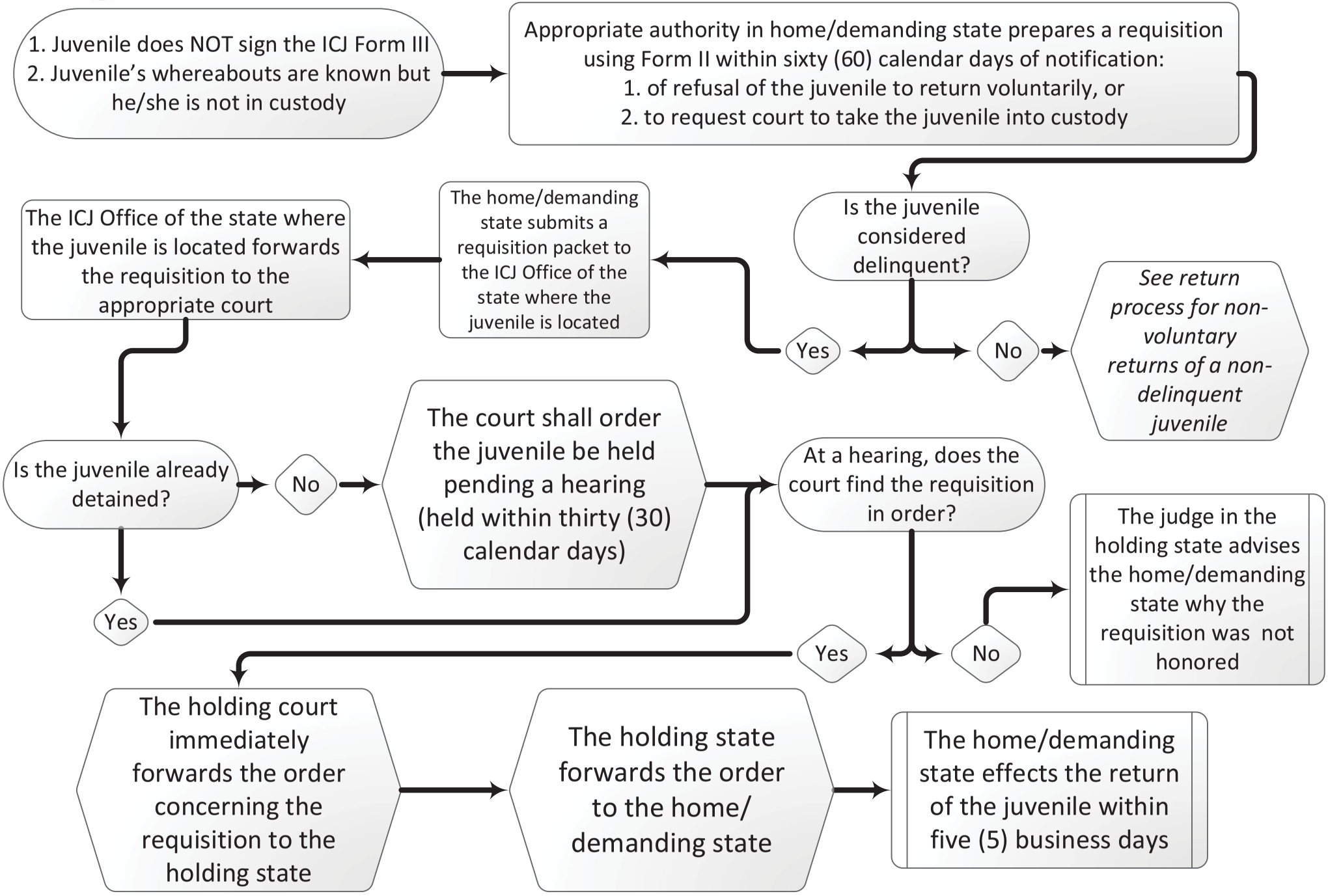
→ If the requisition is honored at the hearing, the holding court forwards the requisition order to the holding state

→ The holding state forwards the order to the home/ demanding state

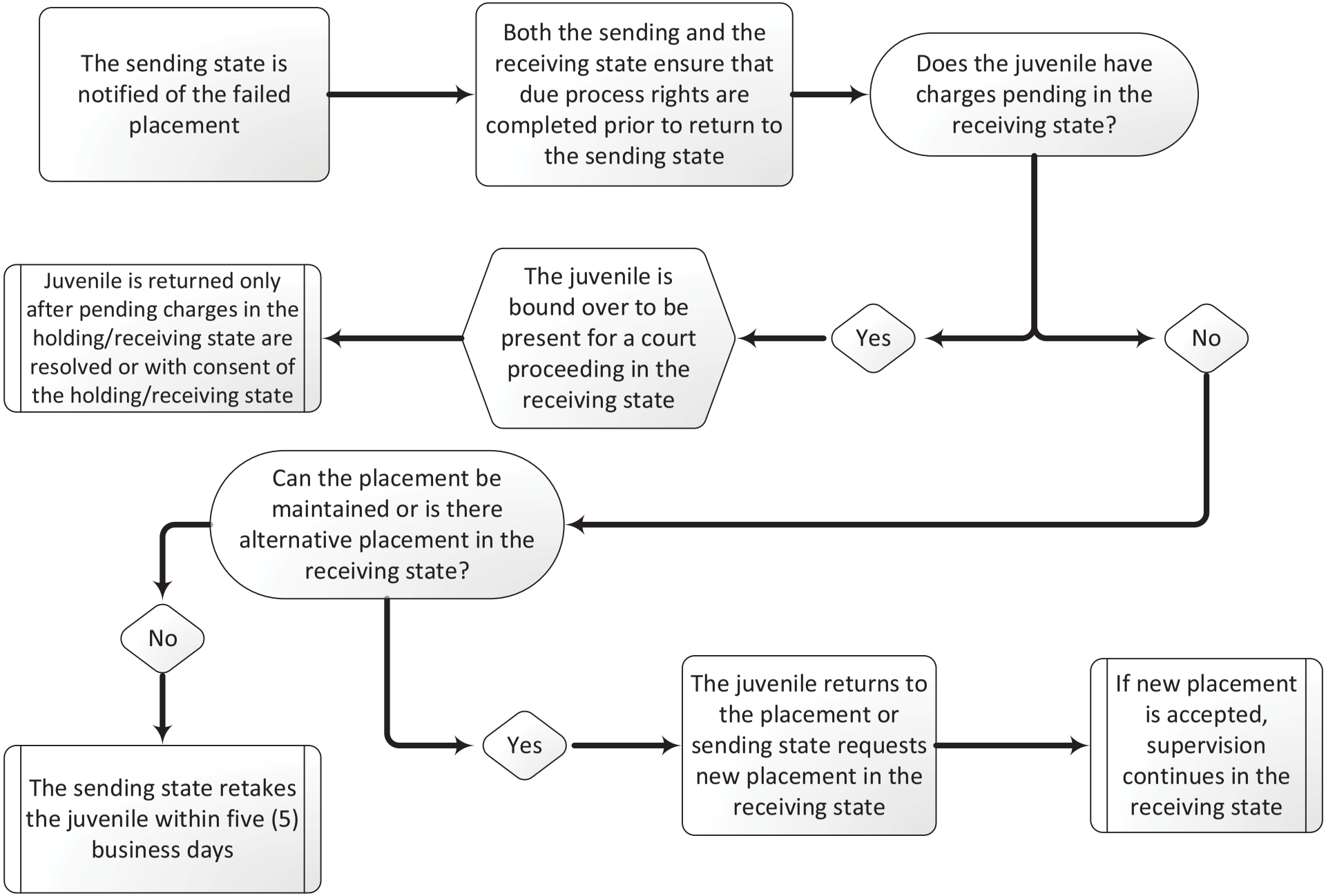
→ The home/ demanding state effects the return within five (5) business days

*When a juvenile alleges abuse or neglect, if the appropriate authorities in the home/demanding state determine that the juvenile will not be returning to a parent or legal guardian, the requisition process shall be initiated by the home/demanding state's appropriate authority and/or court of jurisdiction in accordance with Rule 6-103. *See*, Rule 6-101.

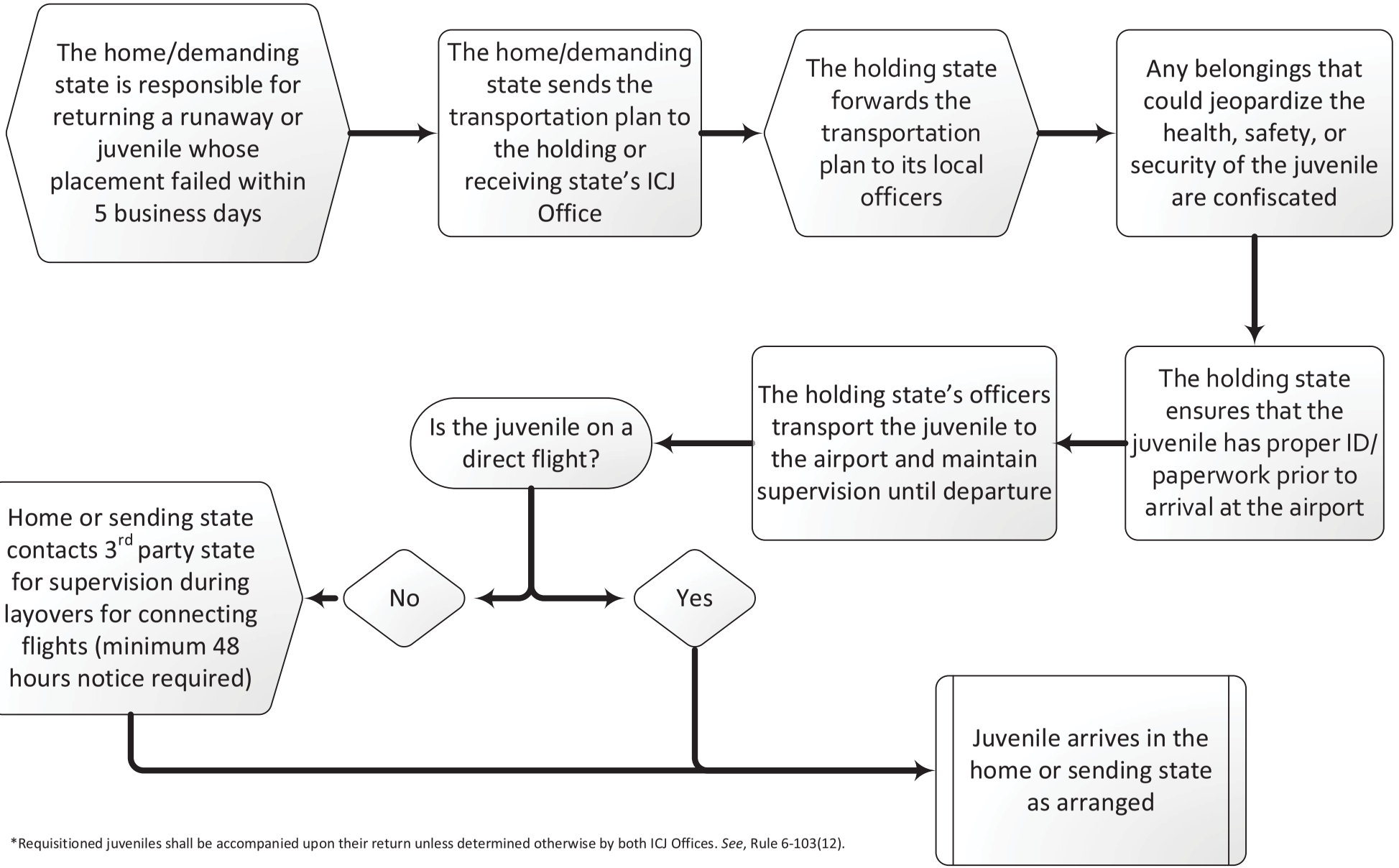
Non-Voluntary Return of an Escapee, Absconder, or Accused Delinquent



Return of a Juvenile Due to a Failed Placement



Transportation Overview for Returning a Juvenile to the Home or Sending State



*Requisitioned juveniles shall be accompanied upon their return unless determined otherwise by both ICJ Offices. *See*, Rule 6-103(12).