



INTERSTATE COMMISSION FOR JUVENILES

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other new Compact state are either authorized or required except as to those states in which the 1955 ICJ has not been repealed and remains in effect. Those new Compact states which have not repealed the 1955 Compact are: Indiana, Hawaii, Illinois, Maine, Minnesota, North Carolina, Oklahoma, West Virginia, and Wisconsin.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Thus, with the exception of the above referenced ‘pre-existing’ supervision cases or states which have not repealed the 1955 Compact, a state which seeks to transfer supervision of a juvenile to or from Georgia can do so only if terms and conditions are negotiated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While each state which has repealed the 1955 Compact, and which believes it to be in its best interest to do so, has the discretion to determine how to deal with transfers of juveniles to and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).