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<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: Mary Lee Underwood Chief Legal Counsel: Richard L. Masters </p>			
Description: Whether ICJ Rule 7-104 requires a home/demanding state to return a juvenile being held on a warrant even if the warrant has been withdrawn and whether state confidentiality laws prohibit entry of warrants issued for juveniles subject to the Compact into NCIC		Dated: Sept. 10, 2018	

Background:

Pursuant to Commission Rule 9-101(3), the ICJ Executive Committee has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:


The Executive Committee has requested an advisory opinion concerning:

- 1) a sending/home/demanding state’s obligation under ICJ Rule 7-104 to return a juvenile being held on a warrant, even if the warrant has been withdrawn; and
- 2) whether state confidentiality laws prohibit entry of warrants issued for juveniles subject to the Compact into NCIC.

Applicable Law and Rules:

ICJ Rule 7-104 provides:

1. All warrants issued for juveniles subject to the Compact shall be entered into the National Crime Information Center (NCIC) with a nationwide pickup radius with no bond amount set.
2. Holding states shall honor all lawful warrants as entered by other states and shall, no later than the next business day, notify the ICJ Office in the home/demanding/sending state that the juvenile has been placed in custody pursuant to the warrant. Upon notification, the home/demanding/sending state shall issue a detainer or provide a copy of the warrant to the holding state.
3. Within two (2) business days of notification, the home/demanding/sending state shall inform the holding state whether the home/demanding/sending state intends to withdraw the warrant. Withdrawal of the warrant does not negate the home/demanding/sending state’s responsibility to return the juvenile under other applicable rules.
4. The holding state shall not release the juvenile in custody on bond.

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Analysis and Conclusions:

The above language of ICJ Rule 7-104 establishes a mandatory obligation placed upon the home/demanding/sending state to return a juvenile being held on a warrant, even if the warrant has been withdrawn. As the U.S. Supreme Court has made clear, “Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The above language of ICJ Rule 7-104 is “plain and unambiguous.” It states: “Withdrawal of the warrant does not negate the home/demanding/sending state’s responsibility to return the juvenile under other applicable rules.”

However, since the rules of statutory construction require the provisions of the ICJ statute and rules to be read in harmony with each other, there may be situations in which such a return is not possible. For example, a return may not be possible when no parent or legal guardian remains in the home/demanding/sending state. In such cases, documentation should be provided by home/demanding/sending state in writing as to the reason why it is not possible to affect a return. The written explanation should note specific provisions of the Compact, its authorized rules, and/or controlling circumstances, such as that no parent or legal guardian remains in the state. Given the clear mandate of the Rule 7-104(3), the use of this procedure should be limited to only those cases where return is not possible. Subsequent action by the Commission to clarify requirements for such cases would also be warranted.

Article XIII B.1. of the Compact, which has been enacted by all 52 member-jurisdictions, provides that ICJ Rules have the force and effect of statutory law and are binding on the compacting states. Article VII A. 2. further provides that the courts and executive agencies of each compacting state shall enforce the Compact and take all actions necessary and appropriate to effectuate the Compact’s purposes and intent.


With respect to the issue of whether confidentiality laws prohibit the issuance of warrants for juveniles subject to the ICJ into NCIC, the answer is “no”. The ICJ is an interstate compact to which congressional consent has been given, under both the Compact Clause (Art. I, Section 3.) and the Contract Clause (Art. I, Sec. 1) of the U.S. Constitution. Therefore, the provisions of the ICJ and its administrative rules supersede any conflicting state laws, including state confidentiality requirements.

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By entering into this compact, the member states contractually agree on certain principles and rules and all state officials and courts are required to effectuate the terms of the compact and ensure compliance with the rules. *In Re Stacy B.*, 190 Misc.2d 713, 741 N.Y.S.2d 644 (N.Y. Fam.Ct. 2002) (“The clear import of the language of the Compact is that the state signatories to the compact have agreed as a matter of policy to abide by the orders of member states . . . and to cooperate in the implementation of the return of runaway juveniles to such states.”) Once entered, the terms of the compact as well as any rules and regulations authorized by the compact supersede substantive state laws that may be in conflict. *See West Virginia ex rel. Dyer, supra* at 29. This applies to prior law (*See Hinderlider, infra*, 304 U.S. at 106) and subsequent statutes of the signatory states. *See Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 92 (1823). It is well settled that as a congressionally approved interstate compact, the provisions of the ICJ and its duly authorized rules enjoy the status of federal law. *See Cuyler v. Adams*, 449 U.S. 433, 440 (1981); *Carchman v. Nash*, 473 U.S. 716, 719 (1985) (“The agreement is a congressionally sanctioned interstate compact within the Compact Clause and thus is a federal law subject to federal constructions.” (Citation omitted)); *see also Alabama v. Bozeman*, 533 U.S. 146 (2001) and *Reed v. Farley*, 512 U.S. 339 (1994); and *Doe v. Pennsylvania Board of Probation & Parole*, 513 F.3d 95, 103 (3rd Cir. 2008).

The duly promulgated rules are equally binding upon the parties to the compact. One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commissions through the vehicle of an interstate compact. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951). It has been held that the states may validly agree, by interstate compact with other states, to delegate to interstate commissions, or agencies, legislative and administrative powers and duties. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938); *Scott v. Virginia*, 676 S.E.2d 343, 346 (Va. App. 2009); *Dutton v. Tawes*, 171 A.2d 688 (Md. 1961); *Application of Waterfront Commission of New York Harbor*, 120 A.2d 504, 509 (N.J. Super. 1956). Thus, rules of the compact are legally authorized and approved by the Commission and no state which is a party to the contractually binding provisions of the compact is permitted to unilaterally modify any of these requirements.

In *Dyer*, the Court also made clear that an interstate compact cannot be “... given final meaning by an organ of one of the contracting states.” Member states may not take unilateral actions, such as the adoption of conflicting legislation or the issuance of executive orders or court rules that violate the terms of a compact. *See Northeast Bancorp v. Bd. of Governors of Fed. Reserve*

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System, 472 U.S. 159, 175 (1985). See *Wash. Metro. Area Transit Auth. v. Once Parcel of Land*, 706 F.2d 1312, 1318 (4th Cir. 1983); *Kansas City Area Transp. Auth. v. Missouri*, 640 F.2d 173, 174 (8th Cir. 1981). See also *McComb v. Wambaugh*, 934 F. 2d 474, 479 (3rd Cir. 1991); *Seattle Master Builders Ass'n v. Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986); *Rao v. Port Authority of New York*, 122 F. Supp. 595 (S.D.N.Y. 1954), aff'd 222 F.2d 362 (2nd Cir. 1955); *Hellmuth & Associates, Inc. v. Washington Metropolitan Area Transit Authority*, 414 F. Supp. 408, (Md. 1976).


The legal standing of compacts as contracts and instruments of national law applicable to the member states annuls any state action in conflict with the compact's terms and conditions. Therefore, once adopted, the only means available to change the substance of a compact (and the obligations it imposes on a member state) are through withdrawal and renegotiation of its terms, or through an amendment to the compact (or in this case, the administrative rules) adopted by all member states in essentially the same form.

The contractual nature of the compact controls over any unilateral action by a state; no state being allowed to adopt any laws "impairing the obligation of contracts," including a contract adopted by state legislatures pursuant to the Compact Clause. See U.S. Const. art. I, § 10, cl. 1 ("No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts ..."); see also *West Virginia ex rel. Dyer, supra* at 33; *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 101 Colo. 73 (1937), rev'd 304 U.S. 92 (1938).

Summary:

ICJ Rule 7-104 is a mandatory obligation placed upon the home/demanding/sending state to return a juvenile being held on a warrant even if the warrant has been withdrawn. Failure to carry out this obligation constitutes a default under the compact subjecting the non-compliant state to appropriate enforcement action under the terms of the ICJ.

Moreover, because the ICJ is an interstate compact to which congressional consent has been given, under both the compact clause (Art. I, Section 3.) and the contract clause (Art. I, Sec. 1) of the U.S. Constitution, the provisions of the ICJ and its administrative rules supersede any conflicting state laws, including confidentiality requirements applicable to issuance of warrants for juveniles subject to the compact and the requirements of ICJ Rule 7-104 that "shall be

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