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<p align="center"><b>ICJ Advisory Opinion</b>  <b>Issued by:</b>  <b>Executive Director: MaryLee Underwood</b>  <b>Chief Legal Counsel: Richard L. Masters</b></p>			
<p><b>Description:</b> Is a sending state required to transfer supervision of a juvenile adjudicated there for an offense but who resides with a parent in the receiving state in a case where the parent may be homeless? If so, can enforcement action be taken if the sending state refuses to implement the transfer under the ICJ?</p>	<p align="right"><b>Dated:</b> January 25, 2018</p> <p align="right"><b>Revised:</b> March 1, 2020<sup>1</sup></p>		

### **Background:**

Pursuant to ICJ Rule 9-101(3), the state of Vermont has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the issues described below.

### **Issues:**

1. Is Vermont (sending state) required to transfer supervision to New Hampshire (receiving state) where the juvenile was adjudicated for an offense committed in Vermont and also attends school in Vermont, but resides with a parent in New Hampshire?
2. When there is no parent or legal guardian residing in the sending state, can a sending state refuse to transfer supervision based on information that the parent is homeless or at risk of homelessness?
3. Can enforcement action be taken against a sending state if a court refuses to implement provisions of the ICJ?

### **Applicable Compact Provisions and Rules:**

Article I of the Compact, in relevant parts, states:

“It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: . . . (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance. . .”

Article IV of the Compact, in relevant parts, states:


“The Commission shall have the following powers and duties: . . .

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

...

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8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions

...

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

Articles VII (B) (3) states:

“The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.”

Article XI (B) (1), in relevant part, states:

“If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

- a. Remedial training and technical assistance as directed by the Interstate Commission;
- b. Alternative Dispute Resolution;
- c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
- d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. . . ”


Article XIII (B) (1) states:

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

Rule 101, in relevant parts, states:

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

Rule 4-101 (1) states:

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

Rule 4-101 (2), in relevant parts, states:

“No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules...”

Rule 4-104 (4) states:

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


Rule 9-103 (3) states:

If the Commission determines that any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Commission may impose any or all of the following sanctions.

- 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. . .”

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### **Analysis and Conclusions:**

Regarding the question of whether Vermont is required to transfer supervision in cases such as that described above, the answer is unequivocally “yes.” The Interstate Compact for Juveniles (ICJ) is a Congressionally-authorized, legally-binding interstate compact which is both statutory and contractual and was developed specifically to regulate the interstate movement of delinquent and status offense juveniles.

ICJ Rule 4-101(2) provides: “No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules.” ICJ Rule 101 defines “relocate” to mean “when a juvenile remains in another state for more than ninety (90) consecutive days in any twelve (12) month period.” Thus, if the juvenile in question continues to reside in New Hampshire and probation is ordered by the Vermont court, the Compact and the ICJ Rules are clearly applicable and require that supervision must be transferred.


With respect to the second question, while ICJ Rule 4-104 addresses home evaluations conducted in all ICJ cases to assess **whether a proposed residence is suitable**, the applicable rule also recognizes that parents have constitutionally protected interests in child rearing. It provides that, notwithstanding a finding that the proposed residence is unsuitable, supervision must be transferred if there is no legal guardian in the sending state. (*emphasis added*).

ICJ Rule 4-104(4) provides: “**Supervision may be denied when the home evaluation reveals that the proposed residence is unsuitable** or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state, *except when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state*” (*emphasis added*).

Thus, under the provisions of the ICJ and its authorized rules, the State of Vermont, as the “sending state,” is not permitted to refuse to transfer supervision under the ICJ, even though available information suggests that the parent is homeless or at risk of homelessness, because there is no parent or legal guardian residing in the sending state.

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The legal authority requiring states to enforce the provisions of the ICJ and authorized rules is well settled. As a congressionally approved interstate compact, the provisions of the ICJ and its duly authorized rules enjoy the status of federal law. *See Cuyler v. Adams*, 449 U.S. 433, 440 (1981); *Carchman v. Nash*, 473 U.S. 716, 719 (1985) (“The agreement is a congressionally sanctioned interstate compact within the Compact Clause and thus is a federal law subject to federal constructions.” (Citation omitted)); *see also Alabama v. Bozeman*, 533 U.S. 146 (2001) and *Reed v. Farley*, 512 U.S. 339 (1994); *also; M.F. v. N.Y. Exec. Dep’t, Div. of Parole*, 640 F.3d 491(2d Cir. 2011); *Doe v. Pennsylvania Board of Probation & Parole*, 513 F.3rd 95, 103 (3rd Cir. 2008). The duly promulgated rules are equally binding upon the parties to the compact.

By entering the ICJ, the member states contractually agree on certain principles and rules. All state officials and courts are required to effectuate the terms of the compact and ensure compliance with the rules. *In Re Stacy B.*, 190 Misc.2d 713, 741 N.Y.S.2d 644 (N.Y. Fam.Ct. 2002) (“The clear import of the language of the Compact is that the state signatories to the compact have agreed as a matter of policy to abide by the orders of member states . . . and to cooperate in the implementation of the return of runaway juveniles to such states.”) Thus, the supervision of youth engaged in interstate travel that does not meet ICJ requirements is a violation of the Compact.

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

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Sec. 10, Cl.1) or the compact clause (Art. I, Sec. 10, Cl.1) of the U.S. Constitution, pursuant to which these rules are transformed into federal law and enforceable under the Supremacy Clause. See *Cuyler*, supra., p. 440; *Carchman*, supra., p. 719).


Should a compact member state refuse to enforce the provisions of the Compact or its authorized rules, remedies for breach of the Compact can include granting injunctive relief or awarding damages. See e.g., *South Dakota v. North Carolina*, 192 U.S. 286, 320-21 (1904); *Texas v. New Mexico*, 482 U.S. at 130 (“The Court has recognized the propriety of money judgments against a State in an original action, and specifically in a case involving a compact. In proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a State.”). The Eleventh Amendment provides no protection to states in suits brought by other states. *Kansas v. Colorado*, 533 U.S. 1, 7 (2001) (in proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a state). In its most recent pronouncement on the subject, the U.S. Supreme Court unequivocally held that obligations imposed by a duly authorized interstate commission are enforceable on the states. Moreover, such commissions may be empowered to determine when a state has breached its obligations and may, if so authorized by the compact, impose sanctions on a non-complying state. See *Alabama v. North Carolina*, 560 U.S.360 (2010).

In addition, the Court, in *Alabama v. North Carolina*, supra. made clear that an interstate compact commission composed of the member states may be a party to an action to enforce the compact if such claims are wholly derivative of the claims that could be asserted by the party states. *Id.* Moreover, the Court held that when construing the provisions of a compact, in giving full effect to the intent of the parties, it may consult sources that might differ from those normally reviewed when an ordinary federal statute is at issue, including traditional canons of construction and the *Restatement (Second) of Contracts*. *Id.* at 2308-12.

In light of the above authority, and the fact that the explicit language of the ICJ requires that “the courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent” makes it incumbent upon judges and other state officials to understand the requirements of the ICJ and its

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rules as well as the consequences of non-compliance. Under Article I of the Compact, among the purposes of the Commission is to “monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance.” Article IV of the Compact provides that among the powers and duties of the Commission is “to enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to, the use of judicial process.” Article XIII (B) provides that “all lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission are binding upon the compacting states.”

Moreover, Article IV also provides that the Interstate Commission has the power and duty “to establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions. . .” and “to perform such functions as may be necessary or appropriate to achieve the purposes of this compact.” Articles VII and XI of the Compact authorize the interstate commission, in the reasonable exercise of its’ discretion, to enforce the compact through various means set out in Article XI (B) which include required remedial training and technical assistance, imposition of fines, fees and costs, suspension or termination from the compact, and judicial enforcement in U.S. District Court against any compacting state in default of the compact or compact rules with the prevailing party being entitled to recover all costs of such litigation including reasonable attorney’s fees.

Under the above referenced compact provisions and pursuant to the delegated statutory authority of the compact, the Commission has also promulgated Rule 9-103 (3) under which the Interstate Commission is empowered with the authority and charged with the duty to determine whether “. . . any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, the bylaws or any duly promulgated rules . . .” and in the event such a determination is made the Commission is empowered to “impose any or all” of the sanctions set forth in that rule and for which authority is expressly provided in the above referenced provisions of the compact.

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### **Summary:**

Vermont (sending state) is required to transfer supervision to New Hampshire (receiving state) when the juvenile was adjudicated for an offense committed in Vermont and also attends school in Vermont but resides with a parent in New Hampshire. When there is no parent or legal guardian residing in the sending state, the sending state cannot refuse to transfer supervision based on information that the parent is homeless or at risk of homelessness. In the event of non-compliance enforcement action is statutorily authorized if a court of the sending state refuses to implement provisions of the ICJ.

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