	Interstate Commission for Juveniles	Opinion Number: 03-2018	Page Number: 1
<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Rule 7-104 requires a home/demanding state to return a juvenile being held on a warrant even if the warrant has been withdrawn and whether state confidentiality laws prohibit entry of warrants issued for juveniles subject to the Compact into NCIC	<p align="right"> Dated: Sept. 10, 2018 Revised: March 1, 2022¹ </p>		

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 issues:

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state's obligation under ICJ Rule 7-104 to return a juvenile being held on a warrant, even if the warrant has been withdrawn; and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 and not eligible for bond.
2. Holding states shall honor all lawful warrants as entered by other states. When a juvenile is placed in custody pursuant to a warrant issued by a juvenile court, the holding state shall, no later than the next business day, notify the ICJ Office in the home/demanding/sending state. 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 act upon and return the juvenile, or notify in writing the intent to withdraw the warrant. If mandated under other applicable rules, such as those pertaining to runaways or failed supervision, the absence of a warrant does not negate the home/demanding/sending state's responsibility to return the juvenile.

¹ This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2022.

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4. When a juvenile is in custody pursuant to a warrant issued by a juvenile court, the holding state shall not release the juvenile in custody on bond.

5. If the warrant is issued by an adult court, the juvenile shall be extradited pursuant to the Uniform Criminal Extradition Act (UCEA) or similar extradition law of the home/demanding state, unless the issuing authority in the home/demanding state determines that the juvenile should be returned pursuant to the ICJ. Regardless of other procedures used for the extradition/return, a Form III Consent for Voluntary Return of Out of State Juvenile may be used if approved by the issuing authority in the home/demanding state.


Analysis and Conclusions:

Due to revisions to ICJ Rule 7-104, effective on March 1, 2020, the first question has been addressed by the Commission. Pursuant to Section 3 of the amended rule, the duty to return arises only where mandated under other ICJ rules.

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.

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

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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 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

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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:

In summary, a duty to return appears to arise under ICJ Rule 7-104(3) only if mandated by other ICJ rules.

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 entered into the National Crime Information Center (NCIC) with a nationwide pickup radius and not eligible for bond.”

However, there may be situations in which a return is not possible. 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.

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