



# BENCH BOOK

for Judges and Court Personnel



**Version 11.0**

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## MISSION, RESULTS STATEMENT, & ACKNOWLEDGEMENTS

### Mission Statement

The Interstate Commission for Juveniles, the governing body of the Interstate Compact for Juveniles, through means of joint and cooperative action among the compacting states, preserves child welfare and promotes public safety interests of citizens, including victims of juvenile offenders. With a focus on racial justice, the Commission provides enhanced accountability, enforcement, visibility, and communication in the return of juveniles who have left their state of residence without permission and in the cooperative supervision of delinquent juveniles who travel or relocate across state lines.

### Results Statement

All ICJ youth and families are safe, supported, and treated equitably.

Given that cooperative action is at the heart of ICJ's mission, we deeply appreciate all who collaborated on this and previous version of the ICJ Bench Book for Judge and Court Personnel. We are fortunate that the nation's leading legal experts on interstate compact law dedicated their considerable knowledge and skills to this work. Many thanks to attorneys Richard L. (Rick) Masters, Michael L. Buenger, and Jeffrey Litwak. Thanks also to Nathan Hardymon, University of Kentucky, College of Law, Class of 2018, for his assistance.

We would also like to acknowledge the special contributions of ICJ Commissioners and Officers, especially 2023 Chair Nina Belli (OR), 2023 Vice Chair Julie Hawkins (MO), 2018 Chair Anne Connor (ID), and 2018 Vice Chair Natalie Dalton (VA). Finally, we greatly appreciate the efforts of former and current staff members: MaryLee Underwood, Jennifer Adkins, Emma Goode, Ashley Lippert, Morgan Wolford, and Monica Gary.



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# LATEST DEVELOPMENTS IN THE ICJ

## 2024

Since the last update of the *ICJ Bench Book for Judges and Court Personnel* in 2023, the body of law regarding the Interstate Compact for Juveniles has continued to evolve. This update reflects amendments to 8 rules and the adoption of one new rule. Additionally, the Commission updated six advisory opinions to reflect the [ICJ Rules](#) as amended, effective April 1, 2024.

Rule amendments include:

- ❖ Rule 1-101, “Relocate”
  - Definition rescinded.
  - Reverts to traditional sense of the word “to move from one place to another.”
- ❖ Rule 4-101, “Eligibility Requirements for the Transfer of Supervision”
  - In paragraph 2, the phrases "relocate to" and "relocating to" are replaced with "reside in" and "residing in" to clarify that transfers of supervision may be required for juveniles who are not moving to a new state, i.e. those adjudicated in a state that is not where they typically reside.
- ❖ Rule 4-103, “Transfer of Supervision Procedures for Juvenile Sex Offenders”
  - In paragraph 3, the phrase "or reside" is added to clarify that not all juveniles who are on ICJ supervision are moving to a new location.
  - The phrase "of the juvenile's immediate relocation" was also removed.
- ❖ Rule 4-104, “Authority to Accept/Deny Supervision”
  - Instead of focusing on when supervision may be denied, paragraph 4 now requires that supervision be accepted unless specific conditions are indicated. It states: "Supervision shall be accepted unless the home evaluation reveals that the proposed residence is unsuitable or that the juvenile is not in substantial compliance..."
  - A detailed justification is now required to describe why a residence is deemed "not safe and/or suitable."
  - The existing "mandatory acceptance" provision was moved to a paragraph 5 for clarity. It states: “Supervision shall be accepted 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.”
  - Paragraph 6 now specifies that reporting instructions must be provided on the Form V, Notification from Sending State of Parolee or Probationer Proceeding to the Receiving State.
  - The previous paragraph 6 is now paragraph 7.

- ❖ Rule 5-103, “Reporting Juvenile Non-Compliance and Retaking”
  - “Failed Supervision” is removed from the title.
  - Provisions related to failed supervision were removed from Rule 5-103 and are located in the new Rule 5-103A.
  
- ❖ Rule 7-106, “Transportation”
  - Amendments to paragraphs 3 & 4 address items with which a juvenile may be permitted to travel, giving states more discretion.
  - Any items deemed to jeopardize health, safety, or security are to be confiscated and returned via checked luggage or mail at the expense of the home/demanding/sending state.
  - The new paragraph 8 provides for emergency services, assistance, detention, and/or shelter for juveniles whose returns are disrupted due to extenuating circumstances.
  
- ❖ Rule 7-107, “Airport Supervision”
  - Amendments to paragraph 3 alters the wording from "shall give... notice" to "shall request" airport supervision.
  - The state where the intermediate airport is located (location of supervision/surveillance during a layover) can make exceptions to the 48-hour advance request requirement.
  
- ❖ Rule 8-101, “Travel Permits”
  - In paragraph 1(a), the phrase "or have deferred adjudications" is now included so that travel permits must be issued for juveniles with deferred adjudications, if the other conditions of the rule apply.
  - In paragraph 1(b), the word "relocating" was removed. Now, travel permits must be issued for all juveniles with a pending a request for transfer of supervision, including those returning to their home state (which is the receiving state for purposes of supervision).

New Rule:

- ❖ Rule 5-103A, “Failed Supervision Determined by Receiving State”
  - New rule clarifies criteria for the receiving state to determine that a juvenile's supervision has failed. These provisions do not apply if the juvenile is detained.
  - Establishes new procedures for reporting a failed supervision using a new Form IX, Failed Supervision Report.
  - Paragraph 3 includes a requirement for the sending state to respond to a Failed Supervision Report within 10 business days.
  - Sending state must respond by securing a new living arrangement or provide notice that they will retake juvenile within 10 business days of receiving report.

The Commission updated six advisory opinions to reflect the ICJ Rules effective April 1, 2024:

- ❖ Advisory Opinion 03-2011  
Pleas and Abeyance Cases for Non-Adjudicated Juveniles
- ❖ Advisory Opinion 04-2014  
ICJ Authority in Cases where Approval of Supervision May Result in Violation of Court Orders
- ❖ Advisory Opinion 02-2015  
Signatures on the Form VI
- ❖ Advisory Opinion 01-2016  
Pre-adjudication Home Evaluation Requests
- ❖ Advisory Opinion 02-2017  
Out-of-State Juvenile Sentenced to Incarceration
- ❖ Advisory Opinion 01-2018  
Transfer of Supervision where the Parent May be Homeless



## 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 controversies, particularly boundary disputes. The colonies and crown employed a process by which disputes were 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 modern "compact process" 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, § 10, cl. 3. This clause provides that "No state shall, without the consent of Congress... enter into any agreement or compact with another state, or with a foreign power[.]" While the literal meaning of the foregoing clause appears to require that the consent of Congress is necessary for every interstate compact, the U.S. Supreme Court has clarified that the Constitution bars states from entering into compacts without congressional consent only where the agreement affects the balance of power between the states and the federal government, or threatens the prerogatives of the national government. *E.g., Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, 472 U.S. 159, 176 (1985); *Cuyler v. Adams*, 449 U.S. 433, 451 (1981); *New Hampshire v. Maine*, 426 U.S. 363 (1976); *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893) (Supreme Court affirmed the principle that only those compacts affecting the "political balance" of the federal system require consent but also that such consent may be implied after the fact). 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); Felix

Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L.J. 685 (1925); MICHAEL L. BUENGER, JEFFREY B. LITWAK; RICHARD (RICK) L. MASTERS; & MICHAEL H. McCABE, *THE EVOLVING USE LAW AND USE OF INTERSTATE COMPACTS: A PRACTITIONER’S GUIDE* (2016).

# CHAPTER 1

## GENERAL LAW OF INTERSTATE COMPACTS: UNDERSTANDING & IMPLEMENTING INTERSTATE COMPACTS

### Overview

It is important for judges and individuals working with juveniles under the ICJ to have a sound understanding of the law of interstate compacts. The legal environment for compacts involves an amalgamation of compact texts and case law from federal and state courts throughout the country. Because there are relatively few court decisions establishing legal principles in any particular court, courts frequently consider other federal and state court decisions for their interpretation and application of a compact, and the texts of other compacts and case law involving other compacts for generally applicable principles of compact law. Section 1.10 at the end of this chapter contains suggested additional reading on interstate compacts and interstate compact law.

As noted in the introduction and explained in this chapter, interstate compacts are not mere agreements between the states subject to statutory and regulatory interpretations or selective application. First and foremost, they are statutory contracts that bind the member states, their agencies and officials, and their citizens to an agreed set of principles and understandings. They are not a series of recommended procedures or discretionary proposals that may be disregarded for convenience, and they are not uniform, model, or suggested state laws, or administrative agreements between agencies or executive officials. Understanding the unique standing of interstate compacts in the American legal system is important to applying their terms and conditions correctly and avoiding costly mistakes that may land a state in legal jeopardy *vis-à-vis* fulfilling its contractual obligations.

### 1.1 Who Must Comply with an Interstate Compact?

Interstate compacts are binding on the signatory states, as explained in Section 1.2 below. This means that once a state legislature adopts a compact, it binds all agencies, state officials, local authorities, and citizens to the terms of that compact. Since the very first compact case, the U.S. Supreme Court has consistently held that a compact is an enforceable agreement governing the subject matter of the compact. *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 89 (1823); *see also Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 106 (1938); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30-32 (1951); *Alabama v. North Carolina*, 560 U.S. 330, 334 (2010) (applying contract law principles to compact interpretation).

By enacting the ICJ the member states have entered into a binding compact that governs the movement of delinquent and status offense juveniles.<sup>1</sup> The ICJ is not discretionary; it binds the member states, state officials (including judges, court personnel, and probation and parole authorities) and citizens to the compact requirements determining the circumstances, procedures, and supervision applicable to interstate transfers. *See, e.g., In re Crockett*, 71 Cal. Rptr. 3d 632, 639 (Cal. Ct. App. 2008) (stating, “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 petitioner than it would on its own juvenile probationers.”); *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 111 (3d Cir. 2008) (stating, “Once New Jersey granted permission for Doe to return to Pennsylvania, Pennsylvania was required to assume supervision over Doe and to treat him as in-state offenders. The Commission has not done so and in treating Doe and other out-of-state parolees differently, it violates its own agreement failing to do precisely what it promised . . .”). The failure to comply with the 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. Tenn. Bd. of Prob. & Parole*, No. 04-526-KSF (E.D. Ky. June 13, 2005) (order granting permanent injunction) (“[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 . . .”). In short, the ICJ and its rules do not create a recommended process but rather create a binding process that must be followed in applicable cases.

## 1.2 Nature of Interstate Compacts

Historically, beginning with the Articles of Confederation, states used compacts to settle boundary disputes. In 1918, Oregon and Washington enacted the first compact to jointly manage and regulate an interstate resource (fishing on the Columbia River), and in 1921, New York and New Jersey enacted the first compact that created an interstate commission (now known as the Port Authority of New York and New Jersey). Today, there are more than 250 interstate compacts that directly regulate or recommend policy for a range of matters as diverse as water allocation and use, land use, natural resource management, environmental protection, transportation systems, regional economic development, professional licensing, crime control, and child welfare. The U.S. Supreme Court has long encouraged states to resolve their disputes through compacts rather than litigation. *E.g., Colorado v. Kansas*, 320 U.S. 383, 392 (1943); *Vermont v. New York*, 417 U.S. 270, 277–78 (1974). A seminal law review article observed, “The combined legislative powers of Congress and of the states permit a wide range of permutations and combinations of power necessary for governmental action.” Frankfurter & Landis, *supra*, at 688. Like the 1955 ICJ, the ICJ is part of a long history and recently accelerating use of interstate compacts that address multilateral state issues beyond state boundaries.

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<sup>1</sup> 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 age and status as a minor.



### 1.2.1 Interstate Compacts are Formal Agreements Between States

Understanding the legal nature of an interstate compact begins with this basic point: interstate compacts are *formal agreements between states* that are both (1) statutory law, and (2) contracts between states. 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 joint regulatory scheme). See BUENGER, ET AL., *supra*, at 42–48. The exception to this is 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. *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985).

An interstate compact and federal statutory and regulatory law are the only mechanisms to bindingly resolve interstate policy issues. Of those, an interstate compact is the only formal mechanisms by which individual states can reach beyond their borders and collectively regulate the conduct of multiple states and the citizens of those states. Compacts are one of the only exceptions to the general rule that a sitting state legislature cannot irrevocably bind future state legislatures. BUENGER, ET AL., *supra*, at 48. Compacts are aptly described as instruments that regulate matters that are sub-federal, supra-state in nature. BUENGER, ET AL., *supra*, at xxi.

Even the presence of an unusual application of an interstate compact does not make it invalid; the combined legislative powers of Congress and of the several states permit a wide range of permutations and combinations for governmental action. See *Seattle Master Builders v. Nw. Power Planning Council*, 786 F.2d 1359 (9th Cir. 1986). The subject matter of an interstate compact is not, therefore, 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. See *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 110 (3rd Cir. 2008) (“Here the Interstate Compact reflects the collective wisdom not only of the Pennsylvania General Assembly and the New Jersey Legislature, but also that of the other signatory states and the United States Congress as to how best to deal with the interstate movements of adult offenders.”) *Id.*

The binding nature of interstate compacts comes from their contractual character on the basis of which there is judicial recognition that compacts must supersede conflicting state laws in order to be effective under applicable constitutional law. These subjects are discussed below.

### 1.2.2 Compacts Are Not Uniform Laws Because of Their Contractual Nature

An interstate compact is not a “uniform law” as that term is typically construed and applied. Unlike interstate compacts, uniform laws are not contracts, a state adopting an interstate compact cannot pick and choose which provisions of an interstate compact to adopt, and a state cannot adapt the provisions of an interstate compact to address solely intra-state concerns. Also,

unlike uniform laws, once adopted, a state cannot unilaterally amend or repeal an interstate compact unless the language of the compact authorizes such an act, and even then, states may only amend or repeal the compact in accordance with the terms of the compact. *See, e.g., West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30-32 (1951). The terms and conditions of the states' agreement define the obligations of each member state and the effect a compact may have on individual state law. For example, in *Nebraska v. Central Interstate Low-Level Radioactive Waste Commission*, 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. 207 F.3d 1021, 1026 (8th Cir. 2000). Similarly, in *C.T. Hellmuth & Assocs., Inc. v. Wash. Metro. Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976), the court held that, "Further, when 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."

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. *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985). No state can act in conflict with the terms of the compact as the compact defines the members' multilateral obligations. *See, e.g., 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). Compacts stand as probably the only exception to the general rule that a sitting state legislature cannot irrevocably bind future state legislatures. *See* MICHAEL L. BUENGER, JEFFREY B. LITWAK, MICHAEL H. MCCABE & RICHARD L. MASTERS, *The Evolving Law and Use of Interstate Compacts* 35-43 (2016).

Therefore, compacts have standing as both binding state law *and* as a contract between the member states. A state law that contradicts or conflicts with a compact is unenforceable, absent some reserve 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 that a compact can trump a provision of a state's constitution. *See, e.g., Wash. Metro. Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312, 1319 (4<sup>th</sup> 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).

### 1.2.3 Compacts Are Not Administrative Agreements

Compacts differ from administrative agreements in two principal ways. First, states, as sovereigns, have inherent authority to enact compacts. *See Rhode Island v. Massachusetts*, 37 U.S.

(12 Pet.) 657, 725 (1838). Thus, states do not need any express authority to enact a compact. In contrast, states must authorize their agencies and executive officials to enact administrative agreements both intrastate and with entities in other states. All states have such express authority in their constitutions, in generally applicable statutes, or in statutes that expressly authorize administrative agreements for specific purposes. These authorities commonly refer to administrative agreements as interlocal, intergovernmental, intermunicipal, or interagency agreements.

The second way that compacts differ from administrative agreements is that state legislatures enact compacts, whereas the executive branch of state government enters into administrative agreements through the exercise of the authority of the governor. Administrative agreements enacted by the executive branches of state government may also bind the executive entities enacting them, but do not have the same force and effect to bind a state legislature as statutorily enacted compacts. *See, e.g., Gen. Expressways, Inc. v. Iowa Reciprocity Bd.*, 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.”).

### **1.3 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 extends to the creation of interstate commissions through an interstate compact. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994); *Dyer*, 341 U.S. at 30–31 (1951). Obligations imposed by an interstate commission pursuant to an interstate compact are enforceable on the member states. An interstate compact may also provide that its interstate commission is empowered to determine when a state has breached its obligations and sanctions on a non-complying state. *See, e.g., Alabama v. North Carolina*, 560 U.S. at 342–44 (2010) (Interstate commission had such power but was not the sole arbiter of disputes regarding a state’s compliance with the compact). Through enactment of the Interstate Compact for Juveniles, states have empowered the Interstate Commission for Juveniles to conduct rulemaking functions, oversight, enforcement, and dispute resolution. *See* INTERSTATE COMPACT FOR JUVENILES, [Arts.VI](#) & [VII](#) (2008)

### **1.4 Congressional Consent and the ICJ**

The Compact Clause of the U.S. Constitution states, “No State shall, without the consent of Congress, . . . enter into any agreement or compact with another State . . .” U.S. CONST. art. I, § 10, cl. 3. Although a strict reading of the Compact Clause appears to require congressional consent for every compact, the Supreme Court has determined that “any agreement or compact” does not mean every agreement or compact. Instead, the Compact Clause is triggered only by those agreements that would alter the balance of political power between the states and federal government, intrude on a power reserved to Congress, or alter the balance of political power between the compacting states and non-compacting states. *Virginia v. Tennessee*, 148 U.S. 503,

518 (1893) (“agreements which may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States . . . .”)

Though congressional consent is not required for all compacts, congressional consent for the ICJ was granted through the federal Crime Control Act of 1934 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.” 4 U.S.C. § 112(a) (2012). Congressional action taken in the 1950s also indicates congressional consent. In 1954, Congress was spurred to action to address concerns regarding “a vast army of wandering kids being shuttled from place to place.” The U.S. Senate Juvenile Delinquency Subcommittee launched an extensive investigation, which drew even more attention when findings became the subject of a *Parade Magazine* article, entitled “[Nobody’s Children: How America’s 300,000 Runaway Teenagers Get the Runaround.](#)” Ross, S. & Keister, E. (1954, September) *Nobody’s Children. Parade Magazine*, 8-13. This investigation conducted by U.S. Senate Juvenile Delinquency Subcommittee led to the development of the Interstate Compact on Juveniles in 1955, which was the predecessor to the current Interstate Compact for Juveniles.

No court has specifically determined that the federal Crime Control Act and/or US Senate Juvenile Delinquency Subcommittee action provide congressional consent for the ICJ. See discussion *infra* Section 1.4. Nonetheless, the states have long understood the important role in the interstate transfer of supervision of both adults and juveniles who have committed offenses which in the case are referred to as crimes if committed by adults or which are categorized as acts of delinquency if committed by a juvenile. Although it does not explicitly mention juveniles, both the adult and juvenile compacts agree that the Crime Control Act provides express consent for the for the Interstate Compact for Adult Offenders (“ICAOS”) and implied congressional consent in the case of the Interstate Compact for Juveniles.

The control of crime through the lawful transfer of supervision of a criminal offender on probation or parole, as well as the return of such offenders when they abscond, was a central purpose of the Interstate Compact on Probation and Parole (ICPP) and its successor compact the Interstate Compact for Adult Offender Supervision (ICAOS). Because the purpose of the ICPP and ICAOS are to control and prevent crimes through the transfer of supervision of offenders convicted of crimes and returning them to states from which they have absconded, the Extradition Clause of the U.S. Constitution is implicated in that both compacts are alternatives to extradition under the Constitution. See U.S. CONST. art. IV, § 2, cl. 2. Therefore, the invocation of the consent of Congress, granted by means of the Crime Control Act, is essential. This was the rationale of the District of Columbia Court of Appeals in the case of *In Re O.M.*, in which the Court considered the underlying purposes of the predecessor compact to the current ICJ and determined that “the Compact was created and adopted by the states precisely because the Extradition Clause of the Constitution did not operate [regarding supervision transfers] with respect to juveniles.” 565 A.2d 573, 582-583 (D.C. 1989). This rationale is the same as that cited in support of the determination for Congressional Consent granted to the Interstate Compact for Adult Offenders. See *Doe v. Pa. Bd.*

*of Prob. & Parole*, 513 F.3d 95, 99, 103 (3rd Cir. 2008); *M.F. v. N.Y. Exec. Dept. Div. of Parole*, 640 F.3d 491, 493 (2nd Cir. 2011); *Carchman v. Nash*, 473 U.S. 716, 719 (1985).

Consent can be implied 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*, 148 U.S. 503, 524-25 (1893)<sup>2</sup> As noted above, the states believed they were acting with congressional consent pursuant to the Crime Control Act, 4 U.S.C. § 112 (1934) and have specifically premised the enactment of the ICJ on the recognition that the federal act authorized such compacts and incorporated it by reference in the compact statute enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands. See INTERSTATE COMPACT FOR JUVENILES, [art. I](#) (2008).

Further, the process of drafting the ICJ and assisting states in the replacing the prior compact with the ICJ was supported and funded largely by a governmental grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP). See Press Release, Council of State Gov'ts, States Enact New Juvenile Compact (Mar. 24, 2003) (on file with author) ("The Council of State Governments and the federal Office of Juvenile Justice and Delinquency Prevention have led the effort to draft the new compact which will more effectively facilitate state autonomy and national cooperation in the supervision transfer process of juveniles."). In addition, the OJJDP has continued to publicize and support the work of the ICJ. Congress is not only aware of the ICJ but has solicited input from the ICJ administrators concerning the reauthorization of the Juvenile Justice and Delinquency Prevention Act and the inclusion of specific reference to the ICJ exemption concerning the detention of runaways on several occasions. See JJDP Deinstitutionalization of Status Offender Provision, 34 U.S.C. 11133 (a) 11 (A) (III). Moreover, while the ICJ has been in effect since 2008, no action has been taken by Congress which is inconsistent with the presumption of congressional consent as invoked in the compact statutes enacted by every state in the union.

Thus, it seems clear that congressional consent to the ICJ can be readily implied. It is also important to note that the presumption of congressional consent has never been legally challenged or judicially determined to be inapplicable. The control of crime through the orderly transfer of supervision, as an alternative to extradition of both adult offenders on parole and probation and their juvenile 'counterparts,' is the rationale articulated by the Court in *In Re O.M.*, 565 A.2d 573, 582-583 (1989), and is the same as that cited in support of the determination for congressional consent granted to the Interstate Compact for Adult Offenders. See *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 99, 103 (3rd Cir. 2008); *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491, 493 (2nd Cir. 2011); *Carchman v. Nash*, 473 U.S. 716, 719 (1985).

States' amendment of a compact with consent requires Congress' consent to the amendment. See, e.g., Joint resolution granting consent to amendments to the compact between

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<sup>2</sup>See also *Waterfront Comn. of New York Harbor v. Construction & Marine Equipment Co., Inc.*, 928 F. Supp. 1388, 1402 (W. Dist. NJ 1996) ("Actual consent may be express or implied, and may be given before or after the states enter into the agreement. See *Cuyler v. Adams*, 449 U.S. at 441 & n. 9, 101 S.Ct. at 708 & n. 9.

Missouri and Illinois, Pub. L. 112-71, 125 Stat. 775 (2011); *Int'l Union of Operating Eng'rs, Local 542 v. Del. River Joint Toll Bridge Comm'n*, 311 F.3d 273, 280 n.7 (3rd Cir. 2002) (suggesting that where a compact contains no provision for amendment, congressional consent to any modification would be necessary).

**PRACTICE NOTE:** [Article X., C](#) of the Revised ICJ authorizes the Interstate Commission for Juveniles to propose amendments to the Revised ICJ for the states to adopt, and all compacting states must enact the amendment before it becomes effective. Congressional consent to an amendment would not be necessary unless the amendment conflicts with a condition of Congress's consent under the Crime Control Act or any actions that support Congress's implied consent.

### 1.4.1 Implications of Congressional Consent

Congressional consent can significantly change the nature of an interstate compact. “[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause.” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Although most clearly articulated in *Cuyler v. Adams*, the rule that congressional consent transforms the states’ agreement into federal law has been recognized for some time. *Id.* at 438 n.7.

As federal law, disputes involving the application or interpretation of an interstate compact with congressional consent may be brought in federal court under 28 U.S.C. § 1331 (federal question jurisdiction), except where a compact specifically authorizes suit only in state court. Federal court jurisdiction is not exclusive; under the Supremacy Clause of the U.S. Constitution, state courts have the same obligation to give force and effect to the provisions of a congressionally approved compact, as do the federal courts. The U.S. Supreme Court retains the final word on the interpretation and application of congressionally approved compacts no matter whether the case arises in federal or state court. *Del. 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.”).

Because the ICJ regulates the supervision of juveniles on probation and parole pursuant to state adjudication of delinquency or return of absconders and runaways who are primarily under the jurisdiction of state courts, most of the case law in this regard is state rather than federal. This implicates the above referenced obligation, pursuant to the Supremacy Clause of the U.S. Constitution, of state courts to give force and effect to ICJ statutory provisions and rules as a congressionally approved compact. *See* U.S. CONST. art. VI, cl. 2.

Both State and Federal Courts must apply the Supremacy Clause in situations where there is a conflict between an interstate compact with consent and state law or state constitutions. *See, e.g., Hinderlider v. La Plata River & Cherry Ditch Co.*, 304 U.S. 92, 106 (1938) (holding that states may, with congressional consent, enact compacts even if those compacts would conflict with rights granted under a state constitution); *Wash. Metro. Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312, 1321-22 (4th Cir. 1983) (Maryland may confer on an interstate agency federal quick-take condemnation powers not available to state agencies under Maryland’s constitution); *Jacobson v. Tahoe Reg’l Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977) (holding that “causes of action based on state constitutional provisions must fail because the Compact, as federal law, preempts state law.”); *Frontier Ditch Co. v. Se. Colo. Water Cons. Dist.*, 761 P.2d 1117, 1124 (Colo. 1998) (“Thus, to the extent that there might be some arguable conflict between [the compact’s] Article VI B’s grant of exclusive jurisdiction to Kansas and the Colorado water court’s jurisdiction [granted in that state’s constitution], Article VI B is the supreme law of the land and governs the rights of the parties in this case.”).

Nonetheless, states may provide in a compact that compact provisions in conflict with a provision of a state constitution must yield, as has been agreed in [art. XIII](#) of the ICJ. By entering a compact, the member states contractually agree that the terms and conditions of the compact supersede state considerations to the extent authorized by the compact and relative to any conflicting laws or principles. In effect, compacts create collective governing tools to address multilateral issues. As such, they also govern multilaterally subject to the collective will of the member states but not under the control of any single member state. Thus, if there is conflict between the Compact and a state constitution, the state constitution prevails. Notwithstanding this provision, its applicability only arises where there is an actual conflict between the state constitution and the ICJ. *See* discussion *infra* Section 1.6.1.

**PRACTICE NOTE:** [Article XIII](#) of the Revised ICJ specifies “All compacting states’ laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.” This provision limits the application of the Supremacy Clause only to conflicts between the ICJ and state legislation, regulations, guidance documents, etc. which is discussed below in Section 1.6.1.

Courts also construe compacts with consent under federal law, and use federal law methods for interpreting compacts and reviewing interstate commissions’ interpretations and applications of compacts. *See, e.g., Carchman v. Nash*, 473 U.S. 716, 719 (1985); *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 507 F.2d 517, 519 (9th Cir. 1974) (“[A] congressionally sanctioned interstate compact within the Compact Clause is a federal law subject to federal construction”); *Friends of the Columbia Gorge v. Columbia River Gorge Comm’n*, 213 P.3d 1164, 1170–74, 1189 (Or. 2009) (applying the federal *Chevron* method for reviewing the interstate commission’s interpretation of federal law granting consent to the compact). It should be noted that *Chevron* has subsequently been modified and now must be applied based upon the more recent decisions of the Supreme Court in *Auer v. Robbins*, 519 U.S. 452 (1997) as modified by *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019)

Consent can also make federal remedies available for violation of a compact. 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, e.g., Bush v. Muncy*, 659 F.2d 402, 407 (4th Cir. 1981), *cert. denied*, 455 U.S. 910 (1982).

#### 1.4.2 Withdrawal and Modification of Congressional Consent

Once Congress grants its consent to a compact, the general view is that it cannot withdraw its consent. Although the matter has not been resolved by the U.S. Supreme Court, two federal circuit courts of appeal have held that congressional consent, once given, is not subject to alteration. *Tobin v. United States*, 306 F.2d 270, 273 (D.C. Cir. 1962) (stating, “such a holding would stir up an air of uncertainty in those areas of our national life presently affected by the existence of these compacts. No doubt the suspicion of even potential impermanency would be damaging to the very concept of interstate compacts.”); *see also Mineo v. Port Auth. of N.Y & N.J.*, 779 F.2d 939 (3d Cir. 1985) (following *Tobin*).

#### 1.5 Interpretation of Interstate Compacts

Because compacts are both statutes and contracts, courts interpret interstate compacts in the same manner as interpreting ordinary statutes, and also by applying contract law principles.

**PRACTICE NOTE:** No court has explained when to apply statutory construction principles versus contract law principles when interpreting an interstate compact.

When determining whether a state or compact agency applied the compact in a permissible manner, courts will generally apply a statutory construction approach. *See, e.g., Friends of the Columbia Gorge v. Columbia River Gorge Comm’n*, 213 P.3d 1164, 1170–74 (Or. 2009) As noted in Section 1.4.1 *supra*, for compacts with consent, courts will apply federal law, including federal decisional law unless the consent statute or compact specifically makes state statutory, regulatory, or decisional law applicable. For compacts that do not have consent, courts apply state law.

Because ICJ received congressional consent, regulatory provisions of the juvenile transfer process and processes for returning runaways, escapees, absconders, accused delinquents, and accused status offenders are enforceable under the Supremacy Clause. *Petty v. Tennessee–Missouri Comm’n*, 359 U.S. 275, 278, 79 S Ct 785, 794, 3 L.Ed.2d 804 (1959) (“The construction of a compact sanctioned by Congress under Art. I, s 10, cl. 3, of the Constitution presents a federal question). Furthermore, courts can and do routinely refer to the applicable decisional law concerning the compact, as informed by the ICJ offices, [ICJ Rules](#), and ICJ Bench Book for Judges and Other Court Personnel. *See for example Jessica J. v. State of Alaska*, 442 P. 3 771 (AK S. Ct. 2019).), footnote #39; also, *In re O.M.*, 565 A.2d 573, 586 (D.C. Cir. 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); *see also Colbert v. U.S.* 601 A.2<sup>nd</sup> 603 (D.C. Cir. 1992).

When interpreting a compact to determine whether a party state has breached the compact, courts typically apply principles governing interpretation of contracts. Where there is an ambiguity, courts apply contract interpretation principles such as negotiating history, *Oklahoma v. New Mexico*, 501 U.S. 221, 235 n.5 (1991); course of performance, *Alabama v. North Carolina*, 560 U.S. 330, 346 (2010); and usage of trade, *id.* at 341–42 (considering compacts that received contemporaneous consent); *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 633 (2013) (considering compacts of the same subject matter, but not receiving consent contemporaneously). In applying contract law principles, courts recognize that a compact represents a political compromise between “constituent elements of the Union,” as opposed to a commercial transaction. *Entergy Ark., Inc. v. Nebraska*, 358 F.3d 528, 542 (8th Cir. 2004). For example, the Eighth Circuit stated in one case:

While a common law contract directly affects only the rights and obligations of the individual parties to it, an interstate compact may directly impact the population, the economy, and the physical environment in the whole of the compact area. A suit alleging that a state has breached an obligation owed to its sister states under a congressionally approved interstate compact also raises delicate questions bearing upon the relationship among separate sovereign polities with respect to matters of both regional and national import.

*Id.* at 541–42. Consequently, the right to sue for breach of the compact differs from a right to sue for breach of a commercial contract; it arises from the compact, not state common law.

Courts generally strive to interpret and apply a compact uniformly throughout the states where the compact is effective. *See, e.g., In re C.B.*, 116 Cal. Rptr. 3d. 294, 295 (2010) (“One of the key elements of any interstate compact is uniformity in interpretation.”). To achieve a uniform interpretation, courts commonly look to other courts decisions; *see Jessica J. v. State of Alaska supra.* (“As the Pennsylvania Supreme Court concluded in *In the Interest of C.P.*, 533 A.2d 1001 (Pa. S.Ct. (1987) the “salient goal” of the ICJ is “to promote interests in reciprocity and cooperation among the participating states. That goal, which Alaska's legislature has adopted by implementing the ICJ, cannot be accomplished unless “each participating state recogniz[es] that sister sovereign states display no less jurisprudential excellence in dealing with issues involving the interests of runaway children.”) *Id.* at pp. 777-778.

**PRACTICE NOTE:** Courts help ensure a uniform interpretation of compacts by citing interstate commissions’ statements about and interpretations of their compacts. Interstate commissions prepare these statements and interpretations to avoid disputes and to help the states implement the compact uniformly. For example, the Interstate Commission for Adult Offender Supervision (ICAOS) issues advisory opinions and produces a Bench Book similar to this book. Courts commonly cite to ICAOS advisory opinions and the ICAOS Bench Book. *See, e.g., Rhode Island v. Brown*, 140 A.3d 768, 776-777 n.5 (R.I. 2016). [Article XIII, § B.3](#) of the Revised ICJ also authorizes the Interstate Commission for Juveniles to issue advisory opinions. This ICJ Bench Book discusses the ICJ’s resources, including advisory opinions, throughout Chapters 2 through 6. All resources are available [www.juvenilecompact.org](http://www.juvenilecompact.org). Courts are increasingly relying upon these interpretations to interpret the ICJ as well. *See Jessica J. v. State of Alaska*, 442 P. 3 771 (AK S. Ct. 2019).; *Also Matter of Aubree*, 79 NYS 3d 478 (Fam. Ct. NY, 2018) *In re Boynton*, 840 N.W.2d 762, (MI Ct. App. 2013).

## 1.6 Application of State Law that Conflicts with an Interstate Compact

Where state law and a compact conflict, courts are required under the Supremacy Clause (for compacts with consent) and as a matter of contract law to apply the terms and conditions of the 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. For a full discussion of giving compacts effect over conflicting state law, *see* BUENGER, ET AL., *supra*, at 54–66.

**PRACTICE NOTE:** Because the ICJ is the subject of Congressional consent, under the Compact Clause of the U.S. Constitution the consent of Congress “transforms the States’ agreement into federal law . . .” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Although most clearly articulated in *Cuyler v. Adams*, the rule that congressional consent transforms the states’ agreement into federal law has been recognized for some time. *Id.* at 438 n.7. Having the status of federal law, under the Supremacy Clause (U.S. CONST. art. VI, cl. 2), the provisions of the ICJ and [ICJ Rules](#) take precedence over conflicting state laws.

Many compacts are silent about how states may apply their own state law. In cases involving such compacts, courts use different analyses that generally reach the same holding. For example, the Ninth Circuit held that states may not apply state law unless the specific state law to be applied is specifically preserved in the compact. *Seattle Master Builders Ass’n v. Pac. Nw. Elec. Power & Conserv. Planning Council*, 786 F.2d 1359, 1364 (9th Cir. 1986). Similarly, the Eighth Circuit held that Nebraska did not have the unilateral right to exercise a veto over actions of an interstate commission created by a compact, reasoning:

“[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.”

*Nebraska v. Cent. Interstate Low-Level Radioactive Waste Comm’n*, 207 F.3d 1021, 1026 (8th Cir. 2000).

Occasionally, courts will invoke the Contracts Clause of the U.S. Constitution in analyzing whether a state may apply its own law to a compact. *See, e.g., U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 25-33 (1977) (Contracts Clause applied to state’s obligation to bondholders in connection with interstate compact); *Wroblewski v. Commonwealth*, 809 A.2d 247, 258 (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). Some courts use a contractual analysis without reference to the Contracts Clause of the federal or any state constitution. *E.g., 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.”).

By entering a compact, the member states contractually agree that the terms and conditions of the compact supersede conflicting statutory and regulatory 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 to the success and uniform application of the ICJ.

**PRACTICE NOTE:** Most compacts expressly preserve some state law or state authority, such as the State Constitutions as provided in [Article XIII](#) of the ICJ, and states frequently enact statutes and regulations that support and complement their administration of a compact. Such action in “approbation” rather than “reprobation” of a compact has been approved by the U.S. Supreme Court. *See Olin v. Kitzmiller*, 259 U.S. 260 (1922), in which the Court held that amended language to a compact by a member state which does not “impair” or “conflict” with existing compact language is permissible.

### 1.6.1 Analyzing Potential Conflicts between State Constitutions and ICJ

As with other compacts, the ICJ was drafted in a manner to generally avoid conflicts with state constitutions. Nonetheless, [ICJ art. XII § A\(2\)](#) provides, “All compacting states’ laws other

than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.”

Questions have been raised as to the applicability of the above provisions to the issuance of bail/bond based on state constitutional rights, for juveniles detained pursuant to ICJ. Issuance of bail/bond in ICJ cases is generally prohibited by [ICJ Rule 7-104](#), which states: “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.” While this rule may appear to conflict with state constitutional provisions at first glance, closer analysis reveals that state constitutional provisions which otherwise would require bail/bond do not conflict because they are not applicable to juveniles detained pursuant to the ICJ.

As a fundamental matter, courts only have authority to adjudicate matters over which they have jurisdiction. Before they may act, courts must ensure their power to do so. *See In re: 2016 Primary Election*, 836 F.3d 584 (6<sup>th</sup> Cir. 2016). State courts generally do not have jurisdiction to adjudicate juvenile cases initiated in other states, except as authorized by the terms of the ICJ. This was a principal reason why Congressional consent was necessary for the ICJ. *See In re O.M 565 A.2d 573 (D.C. 1989)*, in which the Court considered the underlying purposes of the predecessor compact to the current ICJ and determined that “the Compact was created and adopted by the states precisely because the Extradition Clause of the Constitution did not operate regarding supervision transfers with respect to juveniles.” *supra.* at 565 A.2d 573, 582-583.

Moreover, the Full Faith and Credit Clause of the U.S. Constitution also requires the holding/receiving state to afford full faith and credit to the judgment or order of the demanding/sending state, where the juvenile was adjudicated or charged. This provision of the U.S. Constitution states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. U.S. CONST. art. IV, §1.

The U.S. Supreme Court has further interpreted the above language to mean that the Court's Full Faith and Credit Clause precedents, for example, demand that state-court judgments be accorded full effect in other States and “preclude States from adopt[ing] any policy of hostility to the public Acts of other States.” *See Franchise Tax Board of California v. Hyatt*, 139 S.Ct. 1485 at p. 1281, 587 U.S. \_\_\_\_ (2019) (internal quotation marks omitted). In *Hyatt, supra.* the Court also clarified that “no State can apply its own law to interstate disputes over . . . interstate compacts.” *See Hyatt, supra.; Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 278–279 (1959)

## 1.7 Special Considerations for Litigation Involving Interstate Commissions

The question of which courts, state or federal, have jurisdiction to resolve a dispute involving an interstate compact follows common law rules applicable to other legal actions involving governmental parties, such as states. However, there are some unique issues and problems. Factors such as federal constitutional jurisprudence, the text of a compact, congressional consent, conflict of laws and comity may inform or restrict jurisdiction differently. There are also unique considerations for interpreting and enforcing compacts as well as determining what remedies are available in compact cases.

### 1.7.1 Relief Must Be Consistent with the Compact

In *Texas v. New Mexico*, the Supreme Court sustained exceptions to a Special Master's recommendation to enlarge the Pecos River Compact Commission, holding 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." 462 U.S. 554, 564 (1983). The Court emphasized this principle in *New Jersey v. New York*, stating, "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." 523 U.S. 767, 769 (1998). Although these cases were original jurisdiction cases in the U.S. Supreme Court, other courts have applied this principle to consider appropriate relief in cases involving interstate commissions and states' application of compacts. *E.g.*, *N.Y. State Dairy Foods v. Ne. 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); *HIP Heightened Independence & Progress, Inc. v. Port Auth. of N.Y. & N.J.*, 693 F.3d 345, 357 (3d Cir. 2012).

Where the compact does not articulate the terms of enforcement, courts have wide latitude to fashion remedies that are consistent with the purpose of the compact. In a later *Texas v. New Mexico* proceeding, the Supreme Court stated, "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." 482 U.S. 124, 128 (1987). The Court further noted, "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.'" *Id.* at 130–31; *see also Kansas v. Nebraska*, 135 S. Ct. 1042, 1052–53, 1057 (2015) (stating that within the limits of *Texas v. New Mexico*, "the Court may exercise its full authority to remedy violations of and promote compliance with the agreement, so as to give complete effect to public law" and allowing a disgorgement remedy not specified in the compact).

## 1.7.2 Eleventh Amendment Issues for Interstate Commissions

The Eleventh Amendment guarantees state sovereign immunity from suit in federal court. The Eleventh Amendment ensures that states retain certain attributes of sovereignty, including sovereign immunity. *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). Over the years, the U.S. Supreme Court has established a clear approach to determining whether an interstate commission is a “state” or political subdivision thereof such that it enjoys immunity under the Eleventh Amendment and, if so, then whether the states waived immunity in the compact. The application of the Eleventh Amendment immunity to interstate commissions is now well-established.

In *Petty v. Tennessee-Missouri Bridge Commission*, the Supreme Court concluded that the text of the compact stating that the Bridge Commission should have the power “to contract, to sue and be sued in its own name,” and Congress’s grant of consent to the compact, stating “that nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters . . .” effectively abrogated the states’ Eleventh Amendment immunity by reserving the jurisdiction of the federal courts. 359 U.S. 275, 277 (1959).

In *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, the Supreme Court analyzed the interstate commission’s claim of immunity in accord with its prior jurisprudence for determining when a non-state entity exercising a state power enjoys Eleventh Amendment immunity. 440 U.S. 391, 400-02 (1979). The Court considered whether the states describe and treat the non-state entity like a state agency, the level of state control over the entity, and whether the states’ budgets are the entity’s source of funding. *Id.* at 401. The Court concluded that the interstate commission enjoyed the states’ Eleventh Amendment immunity, noting that the Tahoe Regional Planning Compact described the interstate commission as a “separate legal entity” and a “political subdivision”; six of the ten board members of the commission were appointed by cities and counties and only four were appointed by the states; and the compact stated that obligations of the commission were not binding on either state, hence the states’ treasuries were not directly responsible for judgments against the commission. *Id.*

No case, however, has raised the application of the Eleventh Amendment to states applying the ICJ. Even if the Eleventh Amendment does not offer protection, the commission may be immune from suit governed by non-Eleventh Amendment considerations. For example, in *Morris v. Washington Metropolitan Area Transit Authority*, the court concluded that a bare “sue and be sued” clause extends only as far as other more specific partial waivers in the compact, not to any and all suits. 781 F.2d 218, 221 n.3 (D.C. Cir. 1986). Chapter 6 discusses immunity issues associated with application of the ICJ.

## 1.8 Party State, Interstate Commission, and Third-Party Enforcement of Compacts

Claims for breach of a compact typically involve one party state filing an action against another party state in the U.S. Supreme Court under the Court’s original jurisdiction in Article III,

§ 2 of the U.S. Constitution and 28 U.S.C. § 1251(a). *See, e.g., Texas v. New Mexico*, 462 U.S. 554 (1983). However, an interstate commission may join a party state as a plaintiff in an original jurisdiction action provided that it makes the same claims and seeks the same relief or its claims are wholly derivative of the plaintiff states' claims. *Alabama v. North Carolina*, 560 U.S. 330, 354–57 (2010).

Some compacts authorize the interstate commission to seek judicial action to enforce the compact against a party state. *See, e.g., INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION*, art. XII, § C; *Interstate Comm'n for Adult Offender Supervision v. Tennessee Bd. of Prob. & Parole*, No. 04-526-KSF (E.D. Ky. June 13, 2005) (permanent injunction). The ICJ, [art. XI, sec. C](#), contains a similar enforcement provision as the Interstate Compact for Adult Offender Supervision.

Many cases also involve third-parties seeking to enforce a compact, but the issue of third-party enforcement of a compact does not often arise. While courts do not always analyze compacts for implied enforcement by third parties, the most recent cases from at least two U.S. Courts of Appeals, construing the Interstate Compact for Adult Offender Supervision (ICAOS) have held that 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. *See, e.g., Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 103 (3d Cir. 2008) (third-party may not enforce a compact (ICAOS) where the compact does not expressly provide a private right of action); *M.F. v. N.Y. Exec. Dep't Div. of Parole*, 640 F.3d 491, 495 (2d Cir. 2011).

**PRACTICE NOTE:** Courts do not always analyze compacts for implied enforcement by third-parties, which suggests that parties and courts generally recognize third parties' actions, unless there is good reason to believe that third parties may not bring actions. However, recent case law has clarified that absent language showing an intent to create individual rights, they will not be implied.

## 1.9 Effect of Withdrawal (Article XI)

Under [Article XI](#), a state may withdraw from the 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 delinquents 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 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 of transfers of supervision and the return of runaways, escapees, absconders, accused delinquents, and accused status offenders.

### **1.10 Recommended Sources of Compact Law and Information**

For additional information on interstate compact law and interstate compacts generally, see Michael L. Buenger, Jeffrey B. Litwak, Richard L. Masters, & Michael H. McCabe, *The Evolving Law and Use of Interstate Compacts 2d ed.* (2016); Jeffrey B. Litwak, *Interstate Compact Law: Cases and Materials v.2.0* (2014) (available electronically only at [www.semaphorerepress.com](http://www.semaphorerepress.com)).

For historical context on interstate compacts, see Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L.J. 685, 688 (1925).

For historical context on compacts and as applicable to transfer of supervision of individuals on probation and parole under the ICAOS, 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 the legal analysis concerning the contractual nature of ICAOS as interpreted and applied in *Doe v. Pennsylvania Bd. of Prob. & Parole*, 513 F.3d 95, 105 n.7 (3rd Cir. 2008) (analyzing the contractual nature of ICAOS and citing the foregoing article); James G. Gentry, *The Interstate Compact for Adult Offender Supervision: Parole and Probation Supervision Enters the Twenty-First Century*, 32 MCGEORGE L. REV. 533 *passim* (2001).

For a report on interstate compact agencies and good governance, see U.S. Gov't Accountability Office, No. GAO-07-519, *Interstate Compacts: An Overview of the Structure and Governance of Environment and Natural Resource Compacts* (2007).



## CHAPTER 2

### OVERVIEW OF THE INTERSTATE COMPACT FOR JUVENILES

#### 2.1 General Principles Affecting the Interstate Movement of Juveniles

As an initial matter, the general principles affecting the interstate movement of juveniles are anything but general. 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. Therefore, 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. This is a constantly evolving area of law that defies generalizations and for every general principle there is most likely a host of exceptions. See Section 3.1 *infra*. 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.

##### 2.1.1 Right of Interstate Movement

The Supreme Court has recognized that the right of interstate movement is a fundamental right protected by the constitution. *United States v. Guest*, 383 U.S. 745, 767 (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, 520 (1964) (Douglas, J., concurring). The right to interstate travel is firmly embedded in the Supreme Court’s jurisprudence. The Supreme Court’s most recent and comprehensive explanation of the right to travel concluded that this right consists of three components: “[1] the right of a citizen of one State to enter and leave another State, [2] the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and [3], for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.” See *Saenz v. Roe*, 526 U.S. 489 (1999); also *Doe v. Pennsylvania Board of Probation and Parole*, 513 F. 3d 95, 113, (2008) (This case also approves a contractual analysis of the Interstate Compact for Adult Offender Supervision, which is also applicable to ICJ.)

Though the right to travel is recognized as a fundamental right, this right is limited or extinguished in the cases of a criminal convictions for both juveniles and adults, as with other constitutional guarantees. Juveniles’ rights may be limited extinguished either because of the constitutionally protected parental interest in child rearing or because a juvenile has been adjudicated for acts which are classified as crimes in the adult system. Simply because of their legal status as minors, 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, 541 (D.C. Cir. 1999) (quoting *Bellotti*, 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, or by the state’s interest in protecting them given their presumed vulnerability. *Vernonia supra.*; *see also Ramos v. Town of Vernon*, 353 F.3d 171, 193 (2d Cir. 2003)

Moreover, as a general proposition, convicted persons enjoy no right to interstate travel or a constitutionally protected interest to supervision in another state. *See Jones v. Helms*, 452 U.S. 412, 418-20 (1981); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987); *U.S. v. Knights*, 534 U.S. 112, 119 (2001) (“Just as other punishments for criminal convictions curtail an offender’s freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.”) While these cases relate to adult offenders, the U.S. Supreme Court has made it clear that the rights of juveniles who are on probation or parole to travel have been similarly limited and do not have the right to freely “come and go at will.” *Schall, supra. at p. 265.*

Convicted offenders have no right to control where they live in the United States; the right to travel is extinguished for the entire balance of their sentences. *See, e.g., Williams v. Wisconsin*, 336 F.3d 576, 581 (7th Cir. 2003). *See also, Jones v. Helms*, 452 U.S. 412, 419-20 (1981) (a person who has committed an offense punishable by imprisonment does not have an unqualified right to leave the jurisdiction prior to arrest or conviction). *See also United States v. Pugliese*, 960 F.2d 913, 916-16 (10th Cir. 1992). (‘No due process challenge may be made unless the challenger has been or is threatened with being deprived of life, liberty, or property.’) *See Cevilla v. Gonzales*, 446 F.3d 658, 662 (7th Cir. 2006). While all of the foregoing cases involved adult offenders, there is no indication that an adjudicated juvenile would be exempt from the general principles justifying the restriction in the right to interstate travel, even if an adjudicated juvenile could overcome the custodial interests of a parent or guardian. *See Schall, supra.* (“Juvenile’s liberty interest may, in appropriate circumstance, be subordinated to state’s *parens patriae* interest in preserving and promoting welfare of child”).

The absence of rights to interstate travel has important implications on the return of offenders. Because offenders possess no presumptive right to travel, in addition to public safety considerations and the management of corrections resources, states have discretion in managing both the sending and return of offenders. Just as the ICAOS is the primary tool for managing the interstate movement of offenders on probation or parole, the ICJ serves a similar function in the juvenile justice system. Like its adult counterpart, the ICJ controls such movement, as well as the return of juveniles whose supervisions transfers are not successful or absconders. The level of

process owed offenders in transferring supervision to another state is therefore subject to the [ICJ Rules](#).

### 2.1.2 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 delinquents until the passage of the Federal Juvenile Delinquency Act of 1938. Pub.L. No. 75-666, 52 Stat. 764 (1938); *United States v. Allen*, 574 F.2d 435, 437 (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 made no special exception for juveniles. *In re Boynton*, 840 N.W.2d 762, 766 (Mich. Ct. App. 2013) (“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.”); *see also Ex parte Jetter*, 495 S.W.2d 925, 925 (Tex. Crim. App. 1973); *In re O.M.*, 565 A.2d 573, 583 (D.C. 1989); *A Juvenile*, 484 N.E.2d 995, 997 (Mass. 1985).

[Article IV, §2 of the U.S. Constitution](#), commonly referred to as the Extradition Clause, provides the general framework for the interstate movement of individuals charged with criminal offenses, including juveniles, and subjects such individuals to extradition upon the demand of the executive authority of the state in which the crime was committed. Most states have adopted the Uniform Criminal Extradition Act (UCEA) or similar legislation to ensure that extraditions upon the demand of state executive authorities are consistent with Constitutional requirements.

The ICJ provides a Congressionally-authorized alternative to extradition as outlined in the U.S. Constitution, undoubtedly a reason Congressional consent was necessary. *See Carchman v. Nash, supra*. This alternative is particularly important because many cases involving juveniles do not rise to the level of criminal offenses. As described in the ICJ Purpose Statement: “It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: . . . (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...” INTERSTATE COMPACT FOR JUVENILES, [art. I](#) (2008).

Through the [ICJ Rules](#), the Interstate Commission has established procedural safeguards applicable to the return of juveniles to ensure protection of due process rights, including notice and opportunity to be heard. *See* Section 2.1.2 *infra*. However, procedural safeguards under the ICJ are somewhat relaxed because of the different objectives of the juvenile justice system. Relaxed procedural safeguards include: (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. *In Interest of C.J.W.*, 377 So.2d

22, 23 (Fla. 1979). Pre-adjudicated juveniles who have been charged with an offense may be subject to return or extradition under either the ICJ or the Extradition Clause/UCEA. The use of formal extradition as envisioned in the Extradition Clause may be particularly appropriate when pre-adjudicated juveniles face 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.

To help distinguish extradition and return requirements, the Commission amended [ICJ Rule 7-104](#), effective March 1, 2022, to specify that the ICJ applies to juveniles who are placed in custody pursuant to a warrant issued by a juvenile court. When the warrant is issued by an adult court in the home/demanding state, the UCEA or similar extradition law should be applied to extradite the juvenile, "unless the issuing authority in the home/demanding state determines that the juvenile should be returned pursuant to the ICJ." See [ICJ RULE 7-104](#) (INTERSTATE COMM'N FOR JUVENILES 202). Thus, the ICJ and its procedures is one of two options in the pre-adjudication stage.

[ICJ Rule 7-104](#) clarifies that the use of the ICJ is clearly controlling where the juvenile has not been charged with an offense that would subject them to trial as an adult in the demanding state, *i.e.*, status offenders and non-delinquent runaways. The ICJ is also applicable and controlling in cases involving post-adjudicated juvenile delinquents who are either (1) under some form of supervision, or (2) already subject to the ICJ due to a transfer of supervision. The application of the ICJ is required, not 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), as well as cases involving status offenses or runaways.

## 2.2 History of the Interstate Compact for Juveniles (ICJ)

The history of the ICJ dates back to 1950s. In 1954, Congress was spurred to action to address concerns regarding "a vast army of wandering kids being shuttled from place to place." The U.S. Senate Juvenile Delinquency Subcommittee launched an extensive investigation, which drew even more attention when findings became the subject of a Parade Magazine article, entitled "[Nobody's Children: How America's 300,000 runaway teen-agers get the runaround.](#)" Ross, S. & Keister, E. (1954, September). Subsequently, in 1955, several states recognized "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," and adopted an interstate compact to control the movement of juveniles providing for trans-state supervision, and creating an orderly mechanism for their return. INTERSTATE COMPACT ON JUVENILES, art. I (1955). The principal objectives of 1955 ICJ were: (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. INTERSTATE COMPACT ON JUVENILES art I, §§ (1) – (4) (1955) (On file with author). 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. *See In re O.M.*, 565 A.2d 573, 582-583 (D.C. 1989). The ICJ continues to advance these goals, but with specific and detailed authority for rulemaking and enforcement as well as other important improvements.

### **2.2.1 Why the “New” Interstate Compact for Juveniles?**

While the comprehensive revisions to the ICJ occurred more than a decade ago, its history is important in understanding the ‘context,’ which resulted in the enactment of the current statute which have been adopted by all fifty (50) states and two U.S. (2) territories.

The original Interstate Compact on Juveniles (1955 ICJ) was created when states handled relatively few interstate juvenile cases by comparison to today. The evolution of the manner in which juvenile justice issues are handled also 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 these 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.

Consequently, three (3) amendments to the 1955 ICJ had been drafted by the 1990s. However, only a few states had enacted all three (3) amendments, with a majority of states having adopted 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 meaningful or enforceable authority to hold other states accountable for following either the previous ICJ statute or the prior compact rules. These issues prompted concerns that the purposes and goals of the 1955 ICJ could not be carried out, and that public safety was at risk.

### **2.2.2 Drafting the Modern Interstate Compact for Juveniles (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, or

ICAOS), 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 for 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 for 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 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 enacted the new compact in 2008. The ICJ now has been adopted in 52 jurisdictions.

### 2.2.3 Adoption

As discussed, the ICJ is adopted when a state legislature passes the compact language by enacting the provisions of the agreement and it is signed into law by the governor. It should be noted that unlike some compacts that are adopted through Executive Order or by delegation of authority to a state official, the ICJ is adopted by enacting a statute that is substantially similar to and contains all pertinent provisions of the model compact language. As of 2024, the ICJ has been adopted in the following 52 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
Georgia	O.C.G.A § 49-4b-2	Signed April 28, 2014
Hawaii	HAW. REV. STAT. § 582D-1	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. § 621.01	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 2024, the following jurisdictions have not adopted the ICJ:

- American Samoa
- Guam
- Northern Marina Islands
- Puerto Rico

Until these jurisdictions (territories) enact the ICJ, there is no formal agreement through which transfers or returns of juveniles may be accomplished. Thus, the terms and conditions of any such transfers or returns will require negotiation by and between each ICJ state and each remaining non-member jurisdiction (territory) seeking to either transfer or return a juvenile on a case-by-case basis or by means of an individual agreement negotiated between each ICJ member state and any other non-member jurisdiction with which transfers or returns of juveniles are necessary. The ICJ specifically recognizes this inevitable consequence in [Article VI, Section F](#).

Congress has not consented for tribes to enter into agreements with states as members of the Interstate Compact for Juveniles. 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." As such, no authority exists under which the provisions of the ICJ statute or its rules can regulate transfers of juveniles to and from sovereign tribal nations or reservation lands. *See Oklahoma Tax Commission v. 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).

### 2.3 Purpose and Features of the ICJ

The purpose of the 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 the member states.
- Coordinate the operations of the ICJ with other compacts including the Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Adult Offender Supervision (ICAOS);

The 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 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.

## 2.4 ICJ Must Be Construed as Federal Law

The ICJ is not an advisory compact nor is the Commission a purely advisory body. Although the Commission has advisory responsibilities, the compact is more appropriately described as a regulatory compact creating a commission with broad rulemaking and enforcement powers. See INTERSTATE COMPACT FOR JUVENILES, [art. XIII\(b\)\(2\)](#) (2008); see *In re Dependency of D.F.M.*, 236 P.3d 961, 966 n.41 (Wash. Ct. App. 2010) (“RCW13.24.011 art. IV “. . . the Interstate Commission for Juveniles has the power to ‘[a]dopt rules to effect the purposes and obligations of [the Interstate Compact for 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.’”). See generally INTERSTATE COMPACT FOR JUVENILES, [art. VI-VII](#) (2008). Consequently, the 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 ICJ and its rules.

Based upon the foregoing analysis in Section 1.4 *supra*, the ICJ is considered a “federalized” compact, thus it carries the weight of federal law. As determined by the U.S. Supreme Court in *Cuyler v. Adams infra.*, “Where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause.” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). See also *Waterfront Comm’n of N.Y. Harbor v. Elizabeth-Newark Shipping*, 164 F.3d 177,180 (3<sup>rd</sup> Cir. 1998)(“Although the Compact is a creature of state legislatures, it is federalized by virtue of congressional approval pursuant to the Compact Clause.”)

The current 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.” 42 U.S.C. § 675 (2004). On the one hand, the ICJ regulates in an area that traditionally has been within the authority of the states which is also the case with the Interstate Compact for the Placement of Children for which the Consent of Congress was neither required nor sought by the compact member states. See, e.g., *New Hampshire v. Maine*, 426 U.S. 363, 369-70 (1976); cf., *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 [ICPC’s] legitimacy).

Nonetheless, 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 (JJDP) of 1974, 42 U.S.C. § 5601 *et seq.* (2012). 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. 18 U.S.C. § 5032 (2012); *United States v. Juvenile Male*, 864 F.2d 641, 644 (9th Cir. 1988); *see*, 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 ICJ may be considered a crime control compact to which Congress has given advanced consent pursuant to 4 U.S.C. § 112. This is particularly so given that in 1934 when consent was granted, the federal government maintained no technical legal distinction between juvenile delinquents and adult criminals. UNITED STATES 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 delinquents. Federal Juvenile Delinquency Act of 1938, Pub.L. No. 75-666, 52 Stat. 764 (1938); *see United States v. Allen*, 574 F.2d 435, 437 (8th Cir. 1978).

Additionally, although the Extradition Clause of the U.S. 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. *Roberts v. Reilly*, 116 U.S. 80, 94 (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). Moreover, 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. Even though special criminal proceedings may otherwise be required for juveniles, it has been held that such special proceedings are not required when extraditing juveniles. *E.g., Ex parte Jetter*, 495 S.W.2d 925, 925 (Tex. Crim. App. 1973) (There is "no limitation in the Uniform Criminal Extradition Act excluding minors from its operation."); *In re O.M.*, 565 A.2d 573, 582-83 (D.C. 1989).

Related cases reveal very little difference between the treatment of a juvenile in extradition proceedings and that of an adult where the process is being conducted under the general extradition statutes. Occasionally, a noteworthy difference has appeared in a case, but these cases have not developed any following. *In re Boynton*, 840 N.W.2d 762, 767 (Mich. Ct. App. 2013). Based on the foregoing, even though the 'federalized' nature of the ICJ has not yet been judicially affirmed, courts should construe the ICJ as federal law enforceable through the Supremacy Clause of the U.S. Constitution. Given the foregoing analysis on this issue and the fact that Congress has never taken issue with the ICJ's statutory assertion of congressional consent under the Crime Control Act, as well as the trend towards trying many juvenile delinquents as adults (thus the nature of an act and its context leaves open the possibility that such offenses will be treated as a crime except as to very young offenders), state courts and state officials should apply the ICJ as federal law. The ICJ governs in an area within Congress's legislative authority (interstate crime control) and implicates multistate regulation of cross border activity and has

been held to be an alternative to extradition under the federal Constitution. Moreover, a state law that would conflict with or attempt to supersede the ICJ would be unenforceable as either (1) a breach of contract and/or (2) a violation of federal law.

## 2.5 Key Definitions in the ICJ

Key definitions in the ICJ include the following:

- “Court” means: any court having jurisdiction over delinquent, neglected, or dependent children.<sup>3</sup>
- “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.

INTERSTATE COMPACT FOR JUVENILES, [art. II](#) (2008). 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

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<sup>3</sup> The [ICJ Rules](#) define the word “Court” as “any person or institution with the constitutional or statutory authority to adjudicate legal disputes and having jurisdiction over delinquent, neglected, or dependent children.” The definition was modified for additional clarity, effective March 1, 2022. See [ICJ RULE 1-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

the ICJ. Second, the terms are defined in very broad terms. This is intended to avoid an overly narrow reading of the 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 ICJ itself. See [ICJ RULE 1-101](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

## 2.6 The Interstate Commission for Juveniles

A significant portion of the 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*.

### 2.6.1 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 juvenile 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.

### 2.6.2 Rulemaking Powers (Article VI)

[Article VI](#) of the 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, local authorities, and courts must give full effect to the rules. See INTERSTATE COMPACT FOR JUVENILES, [art. IV, § 2](#) (2008); See *In re Dependency of D.F.M.*, 236 P.3d 961, 966 n.41 (Wash. Ct. App. 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 for 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,” 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, Section 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. See INTERSTATE COMPACT FOR JUVENILES, [art.VI, § E](#) (2008). 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 ICJ provides a mechanism for challenging Commission rules. Under [Article VI, Section 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. *Id.* at [art.VI, § D](#).

**PRACTICE NOTE:** The ICJ vests the Commission with authority to adopt binding rules to effectuate the purpose of the agreement. By the terms of the Compact, rules promulgated by the Commission “. . . 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.” INTERSTATE COMPACT FOR JUVENILES, [art. IV § 2](#) (2008). Coupled with the transformational effect of Congressional consent the provisions of both the ICJ Statute and [ICJ Rules](#) take precedence over conflicting state law. While states may provide in the agreement that compact provisions in conflict with a provision of a State Constitution must yield, as has been agreed in [Article XIII](#) of the ICJ, its applicability only arises where there is an actual conflict between the state constitution and the ICJ.

## 2.7 Enforcement of the ICJ and its Rules

One key feature of the 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 juvenile compliance. Juvenile compliance is a matter that rests with the member states’ courts, paroling authorities and corrections officials. Rather, the tools provided for in the 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, 52 n.8 (Conn. 2008) (Acknowledgement of rulemaking authority of Interstate Commission for Juveniles). However, the ICJ, like the ICAOS, does not create a private right of action. Cf. *Doe v. Pa. Bd. of Prob. and Parole*, 513 F.3d 95, 105 (3d Cir. 2008).

### 2.7.1 General Principles of Enforcement

The Commission possesses significant enforcement authority against states that are deemed in default of their obligations under the 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 (*see* INTERSTATE COMPACT FOR JUVENILES, [art. XI, § B\(1\)\(a\)](#) (2008); [ICJ RULE 9-103](#) (INTERSTATE COMM'N FOR JUVENILES 2024));
- Imposing alternative dispute resolution, including mediation or arbitration (*see* INTERSTATE COMPACT FOR JUVENILES, [art. XI, § B\(1\)\(b\)](#) (2008); [ICJ RULE 9-102](#)) (INTERSTATE COMM'N FOR JUVENILES 2024);
- Imposing financial penalties on a non-compliant state (*see* INTERSTATE COMPACT FOR JUVENILES, [art. XI, § B\(1\)\(c\)](#) (2008); [ICJ RULE 9-103](#) (INTERSTATE COMM'N FOR JUVENILES 2024));
- Suspending a non-compliant state (*see* INTERSTATE COMPACT FOR JUVENILES, [art. XI, § B\(1\)\(d\)](#) (2008));
- Termination from the Compact (*Id.* at [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 (*Id.* at [art. XI, § C](#) (2008)).

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. A state is liable and may be found in default for the failure of an administrative or political subdivision to uphold the provisions of the Compact and its rules. As discussed in [Advisory Opinion 03-2009](#),

[Article XIII \(B.\)](#) (of the ICJ statute) provides that "all lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission are binding upon the compacting states." . . . As in most states, counties are specifically classified and recognized as political subdivisions of the State. . . 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 . . . and a default in its obligations under the compact and authorized rules.

[ICJ Ad. Op. 03-2009](#) (INTERSTATE COMM'N FOR JUVENILES 2009)

### 2.7.2 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* INTERSTATE COMPACT FOR JUVENILES, [art. VII, § A\(2\)](#) (2008). *See In re O.M.*, 565 A.2d 573, 586 (D.C. Cir. 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 for 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 may initiate judicial enforcement against a non-compliant state by filing a complaint or petition in the appropriate U.S. District Court. Previous complaints have been resolved through negotiated settlements. 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 INTERSTATE COMPACT FOR JUVENILES, [art. XI, § C](#) (2008) (prevailing party shall be awarded all costs associated with the enforcement action, including reasonable attorneys’ fees); see [ICJ RULE 9-104](#) (INTERSTATE COMM’N FOR JUVENILES 2024) (In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys’ fees. See *Interstate Commission for Juveniles v. State of Rhode Island*, Case No. 5:10-CV-00059 (U.S.D.C. E.D. KY, 2/17/2010).

**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 INTERSTATE COMPACT FOR JUVENILES, [art. VI\(D\), XI\(C\)](#) (2008). See *Com. of PA Bd. of Prob. & Parole vs. Int. Comm’n for Adult Offender Supervision*, 2005 WL 419697 (D.C. Cir. 2005); The same is true for enforcement actions on behalf of the Compact Commission. See also *ICAOS vs. TN Bd. of Prob. & Parole*, No. 04-526-ICFS (E.D. Ky., 6/13/2005) (granting permanent injunction against Tennessee for violating the compact).

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 INTERSTATE COMPACT FOR JUVENILES, [art. VII, § A\(2\)](#) (2008). 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 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, 273-74 (2d Cir. 2004).

## 2.8 Immunity, Duty to Defend and Indemnification, Limitation on Damages

### 2.8.1 Qualified Immunity

The 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. It provides:

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. . .

INTERSTATE COMPACT FOR JUVENILES, [art. V, § C\(1\)](#) (2008). 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, see Section 6.1-6.8, *infra*.

### 2.8.2 Duty to Defend & Indemnification

In addition to the qualified immunity extended to the executive director and employees of the Commission, the 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. See INTERSTATE COMPACT FOR JUVENILES, [art. V, § C\(3\)](#) (2008). 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 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. *Id.* at [art. V, § C\(4\)](#).

### **2.8.3 Limitations on Damages**

Because the 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, Section 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

### TRANSFERRING SUPERVISION OF JUVENILES

#### 3.1 General Purposes of the ICJ and Juvenile Justice System

The general purposes of juvenile delinquency laws are 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. *In re Charles G.*, 9 Cal. Rptr. 3d 503, 507 (Cal. Ct. App. 2004); *In re R.D.R.*, 876 A.2d 1009, 1013 (Pa. Super. Ct. 2005); see *Kirton v. Fields*, 997 So.2d 349, 353 (Fla. 2008) (suggesting that the 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. *E.g.*, *Hunt v. Wayne Circuit Judges*, 105 N.W. 531, 540 (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 ICJ is concerned primarily with runaways and supervised youth classified as either juvenile delinquents or status offenders and only to the extent that one state is transferring supervision responsibilities to another state. It is important to understand that a related compact may 'overlap' with the ICJ under certain circumstances. Most notably, ICJ often overlaps with the Interstate Compact on the Placement of Children (ICPC), which controls interstate transfers of dependent or neglected youth. For discussion of concerns related to both ICJ and ICPC, see *infra* Section 3.6.

In the context of ICJ transfers of supervision, the same two considerations that control juvenile delinquency are also considerations: (a) the best interests of the child, and (b) public safety. In relation to transfers of supervision, courts should determine whether a proposed transfer is (a) in the best interests of the juvenile, and (b) suitable. 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. A failure to make such findings may constitute reversible error. See *In re Welfare of Z.S.T.*, No. A09-324, 2009 WL 4910319, at \*4 (Minn. Ct. App. Dec. 22, 2009). *Contra In re J.P.*, 511 A.2d 210, 212-13 (Pa. Super. Ct. 1986) (Under Interstate Compact on Juveniles, which preceded the modern Interstate Compact for Juveniles, trial court had no jurisdiction to inquire into juvenile's best interests).

For many years, trends in juvenile justice gave greater weight to the public safety aspects of the juvenile justice system. See, *e.g.*, *New Jersey 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). In recent years, "public safety"

considerations have been given greater weight in determining the appropriate disposition. *See, e.g., In re Ronald C.*, No. A128756, 2010 WL 3897760, at \*2 (Cal. Ct. App. 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. Maryland*, 988 A.2d 1011, 1026 (Md. 2010) (one purpose of the juvenile corrections act is public and community safety). Thus, while a receiving state cannot deny a transfer of supervision simply because of the age of the juvenile or the nature of the offense, concerns for community and public safety may be a legitimate consideration.

Recent juvenile justice efforts also recognize that community-based programs play a critical role in promoting public safety. In a recent study conducted by the PEW Foundation examined the subject of extended out-of-home placements. Describing this project and its potential impact on juvenile justice programs, the report states:

Since 2012, a growing number of states have used data and research to inform sweeping policy changes that aim to improve juvenile justice systems. Their efforts include prioritizing use of detention and out-of-home placement for youth who present the greatest public safety risk, limiting the length of their confinement, reinvesting taxpayer savings to expand access to evidence-based services, and supporting community-based interventions for lower-level offenses. These changes reflect a growing body of research showing that costly, extended out-of-home placements often fail to produce better outcomes than alternative approaches.

To understand the challenges and benefits of this shift, staff members from The Pew Charitable Trusts spoke with current and former leaders of juvenile justice agencies from three states that have undertaken comprehensive reform: Randy Bowman of Kansas, Kristi Bunkers of South Dakota, and Merton Chinen of Hawaii.

Although the details vary, these leaders all said reform was necessary because their states were sending high numbers of low-level, low-risk youth to expensive out-of-home facilities and getting poor returns on those investments. They also agreed that using data and research to change minds and shape policy was critical to their states’ success, and they celebrated the opportunity presented by reform to redirect funds previously used for incarceration to strengthen evidence-based community programs.

[“How State Reform Efforts Are Transforming Juvenile Justice,”](#) PEW November 26, 2019.

### **3.2 Relationship Between Sending and Receiving States**

The relationship created by a transfer of supervision 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, 748 (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 Auth. 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.”).

Thus, in supervising out-of-state juveniles, including issues arising with regard to detention and return, 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*, No. 10A05–0512–CV–699, 2007 WL 258425, at \*3 (Ind. Ct. App. Jan. 31, 2007); *Scott v. Commonwealth*, 676 S.E.2d 343, 348 (Va. Ct. App. 2009); *see Tex. Atty. Gen. Op., No. DM-147* (1992).

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* [ICJ RULE 5-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024); *In re Crockett*, 71 Cal. Rptr. 3d 632, 639-40 (Cal. Ct. App. 2008) (considering 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 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 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.*

**PRACTICE NOTE:** While supervision can be transferred pursuant to the ICJ, jurisdiction cannot be transferred. Any proposed transfer of jurisdiction of an ICJ supervision case is in conflict with the Compact and ICJ Rules, as well as settled law in a number of compact member states. The transfer of supervision of a juvenile under the Compact and ICJ rules, as presently conceived, like the Interstate Compact for Adult Offender Supervision (ICAOS), does not deprive the sending state of jurisdiction over the offender. *See, e.g.,* Scott v. Virginia, 676 S.E.2d 343, 347 (Va. App. 2009); State v. Lemoine, 831 P.2d 1345 (Kan. Ct. App. 1992). For further discussion, see "Transfer of Jurisdiction Not Authorized Pursuant to the Interstate Compact for Juveniles" (INTERSTATE COMM'N FOR JUVENILES 2020).

### 3.3 Juveniles Covered by the ICJ

[Article I](#) of the 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." INTERSTATE COMPACT FOR JUVENILES, [art. I](#) (2008). Broadly speaking, the 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, with the exception of interstate runaways, a juvenile is not subject to the ICJ if no court-ordered supervision is imposed because of the underlying offense. See [ICJ RULE 1-101](#) (INTERSTATE COMM'N FOR JUVENILES 2024). A predicate for coverage under the ICJ is “supervision”.<sup>4</sup> 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 minor offenses are not subject to the ICJ absent a court or juvenile authority actually imposing some type of on-going supervision. However, a non-adjudicated juvenile sex offender sentenced under a “plea and abeyance” order is subject to the Compact. While such juvenile is classified as a “non-offender,” the Compact applies, provided the plea and abeyance order requires compliance with all laws and includes any other provisions, such as treatment or counseling, even if there are no other special conditions and/or no probation officer has been assigned to the juvenile. See [ICJ Ad. Op. 03-2011](#) (INTERSTATE COMM'N FOR JUVENILES 2011).

Second, it is important to note that whether 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\(H\)](#) of the Compact and [ICJ Rule 1-101](#) state, in effect, that the term “juvenile” means any person defined as a juvenile in *any* member state or by the rules of the Interstate Commission. Because the sentence is written in the disjunctive (that is, not “all” but “any”), the laws of the state where the offense occurred trigger the provisions of the ICJ, even if the individual would not be considered a juvenile in any other member state. See, e.g., *Washington v. Cook*, 64 P.3d 58, 58 (Wash. Ct. 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, *In re Appeal in Coconino Cty. Juvenile Action No. J-10359*, 754 P.2d 1356, 1352-63 (Ariz. Ct. App. 1987) (in cases 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, the fact that a juvenile delinquent may be covered by the ICJ does not limit the extradition powers of the states. A juvenile delinquent may be extradited under the Uniform Criminal Extradition Act. See, e.g., *Ex parte Jetter*, 495 S.W. 2d 925, 925 (Tex. Crim. App. 1973). However, the Uniform Criminal Extradition Act would not apply to the return of a runaway to their legal guardian or custodial agency. E.g., *A Juvenile*, 484 N.E.2d 995, 997 (Mass. 1985).

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<sup>4</sup> The [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 [ICJ RULE 1-101](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

## 3.4 Initial Considerations for Transfer of Supervision

### 3.4.1 General Eligibility Considerations

Because coverage is controlled by reference to the definition of juvenile in the ICJ and its rules, eligibility is a broadly defined concept. Thus, any “juvenile” covered by the ICJ is eligible to transfer supervision regardless of the underlying offense. As a preliminary matter, a person must be considered a “juvenile” in the sending state in order to be eligible for a transfer of supervision pursuant to the ICJ. [ICJ Rule 4-101\(2\)\(a\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024). As discussed in Section 3.4.5, *infra*, receiving states are obligated to provide supervision and services to “juveniles” transferred pursuant to the ICJ who would not be considered “juveniles” under the laws of the receiving state.

The ICJ and its rules weigh greatly in the direction of facilitating the transfer of supervision for all juveniles, 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. *E.P. v. District Court of Garfield Cty.*, 696 P.2d 254, 263-64 n.12 (Colo. 1985). The determination of who qualifies as a juvenile is controlled by the law of the sending state as further discussed in Section 3.4.5, *infra*.

[ICJ Rule 4-101\(2\)](#) 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 transfer of supervision under the ICJ, the juvenile must fulfill all of the following conditions:

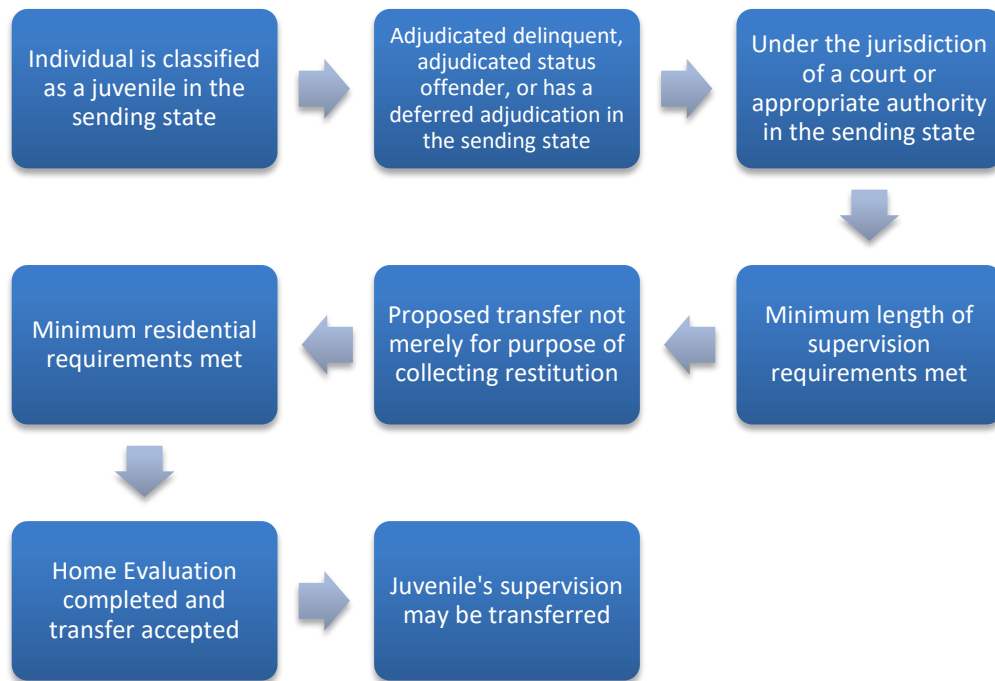
- (a) is classified as a juvenile in the sending state; and
- (b) is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication in the sending state; and
- (c) is under the jurisdiction of a court or appropriate authority in the sending state; and
- (d) has a plan inclusive of residing in 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) (i) will reside with a legal guardian, relative, non-relative or independently, excluding residential facilities; or  
(ii) is a full-time student at an accredited secondary school, accredited university, college, or licensed specialized training program and can provide proof of acceptance and enrollment.

Juveniles who have been accepted as full-time students as described in [ICJ Rule 4-101\(2\)\(f\)\(ii\)](#) shall be considered for supervision by the receiving state. *Id.* Such juveniles are eligible for transfer of supervision, subject to the acceptability of the transfer of supervision plan. Nothing in the rules mandates that students enjoy special consideration regarding the suitability of the residence.



Many ICJ cases involve juveniles who are adjudicated in states other than their state of residence. The state where the case originated is considered the “sending state” and the case where the juvenile is supervised is the “receiving state”, regardless of where the juvenile resided at the time of offense and/or adjudication. Moreover, such cases are often considered “mandatory acceptance” cases pursuant to [ICJ Rule 4-104\(5\)](#), because the juvenile’s legal guardian resides in receiving state and there is no legal guardian in the sending state. For further discussion of the “mandatory acceptance” rule, see *infra* Section 3.4.4.

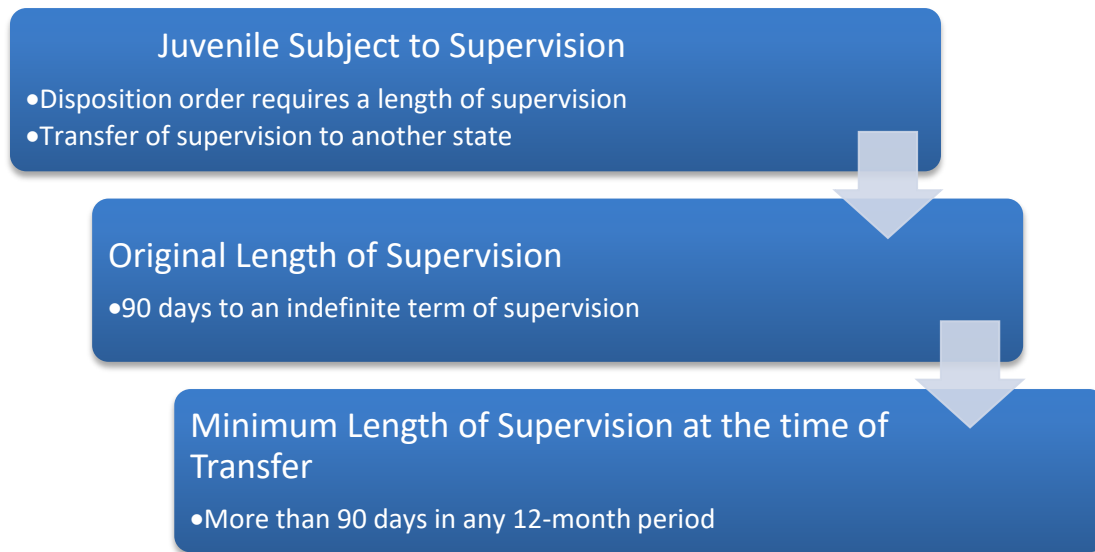
In addition, [ICJ Rule 4-102](#) requires the “sending state” to provide an ICJ Form VII, Out-of-State Travel Permit and Agreement to Return, when it is necessary for a juvenile “. . .to relocate prior to the acceptance of supervision, under the provisions of [Rule 4-104\(5\)](#). . .”



### 3.4.2 Length of Supervision Requirements

[ICJ Rule 4-101](#) establishes a “length of supervision” eligibility requirement for transfer of supervision. A juvenile is eligible to transfer supervision if:

- The plan of supervision indicates that the juvenile will reside in another state for a period exceeding ninety (90) consecutive days in any twelve (12) month period. [ICJ RULE 4-101\(2\)\(d\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024); 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. *Id.* at [RULE 4-101\(2\)\(e\)](#); and
- The transfer is not solely for the purposes of collecting restitution. *Id.* at [RULE 4-101\(4\)](#).



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 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 ICJ or its rules.

### 3.4.3 Age of Majority

[ICJ Rule 5-101 \(7\)](#) provides clear guidance regarding how state laws addressing age of majority should be applied in transfer of supervision cases. It states: “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 secure facility shall be determined by the laws regarding the age of majority in the receiving state.” [ICJ RULE 5-101\(7\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024)

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 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 juvenile notwithstanding any difference with the laws of the receiving state. *Id.* at [RULE 5-101](#). The sending state’s classification of juveniles who are treated as adults by court order, statute, or operation of law will also be dispositive of whether the ICJ or the Interstate Compact for Adult Offender Supervision (ICAOS) will be applicable to any transfer of supervision from the sending state to a receiving state. *Cf. Goe v. Comm’r of Prob.*, 46 N.E.3d 997, 999 (Mass. 2016).

In summary, when determining whether an individual is eligible for transfer of supervision, the laws of the sending state are determinative. For a discussion of issues concerning age of majority in relation to detention pending a return, *see* discussion *infra* Section 4.8.

### 3.4.4 Denials of Transfer of Supervision

While the Compact and its rules are designed to advance the general policy in favor of transfers, there are restrictions. The most significant restriction is the right and obligation of a receiving state to determine whether the proposed residence of a juvenile is suitable. As a preliminary step, the receiving state is responsible for conducting a home evaluation to assess suitability. A proposed transfer shall be accepted unless: (a) the proposed residence 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. [ICJ RULE 4-104\(4\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

The term “unsuitable residence” could include any number of situations in which the receiving state could deny transfer of supervision, including one in which the residence might present a danger to other children in the household. Examples include special concerns related to sex offenders, and where the residence involved is near a school, day care center, or other location where other children might be at risk. When supervision is not recommended, the home evaluation report must include a detailed justification to include why the proposed residence is “not safe and/or suitable.” [ICJ RULE 4-104\(4\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

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. [ICJ RULE 1-101](#) (INTERSTATE COMM'N FOR JUVENILES 2024); *see also Minnesota v. Williams*, No. C5-96-1174, 1996 WL 49504, at \*2 (Minn. Ct. App. Sept. 3, 1996) (stating that an offender shows commitment to rehabilitation by staying in substantial compliance with the terms and conditions of probation).

The age and offense of the juvenile may be considered when assessing the suitability of a proposed residence, but cannot be the sole grounds for denying transfer. [ICJ RULE 4-104\(3\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024). For example, a receiving state could deny a proposed transfer of supervision in a case involving an older sex offender whose proposed residence might put the juvenile in close proximity to other children. Thus, while the receiving state could not deny the transfer of supervision simply because of the juvenile’s age or the nature of offense, issues of public safety may justify denial of the transfer of supervision.

The authority to deny a transfer of supervision based on an “unsuitable residence” is constrained by custodial rights of parents/guardians, and the conflict between public safety and the welfare of the juvenile must also be consider. Regarding the residence of a juvenile with a person entitled to legal custody, [ICJ Rule 4-104\(5\)](#) includes a “mandatory acceptance” provision that effectively “overrides” the receiving state’s authority to deny a transfer of supervision when a legal guardian resides in the receiving state, but no legal guardian remains in the sending state.

This “mandatory acceptance” provision was developed in recognition of the constitutional rights of parents and guardians, as well as the general principal that it is in the best interest of a youth to reside in a state with at least one parent or other person with custodial responsibilities. In this circumstance, the receiving state has no discretion to deny the transfer of supervision based on concerns about the residence. For additional information regarding application of the mandatory acceptance rule, *see* discussion *infra* Section 3.6.1.

Questions sometimes arise regarding whether the citizenship status of a juvenile may be used by a receiving state to determine whether to accept or deny a transfer of supervision. The Compact does not prohibit a case from being accepted based on citizenship status, but allows the receiving state to consider this matter alongside the best interest of the youth and community safety. However, a receiving state may deny supervision to an undocumented immigrant solely because their status as an undocumented immigrant puts them in violation of federal law, and they are therefore not in “substantial compliance.” *See* [ICJ Ad. Op. 05-2010](#) (INTERSTATE COMM’N FOR JUVENILES 2010).

### 3.4.5 Juvenile Delinquents

The application of the ICJ is mandatory for transfer of 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 ICJ and its rules. The transfer of a juvenile delinquent to a receiving state without complying with the 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 ICJ. Thus, while a court may determine that an interstate dispositional transfer is in the best interests of the juvenile delinquent, it cannot effectuate that disposition outside the terms of the ICJ. *See* INTERSTATE COMPACT FOR JUVENILES, [art. VII, § A\(2\)](#) (2008) (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.” [ICJ RULE 4-101\(2\)\(a\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024). As noted earlier, the status of “juvenile” can be triggered by the laws of one member state even if another member state would not recognize that designation under its juvenile code because of differences in the age of majority. 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. Consequently, a receiving state may be obligated to provide supervision and services to a juvenile even though the juvenile would not be considered delinquent under their laws.

It is noteworthy that delinquency is defined differently in other legal settings. For example, the Uniform Juvenile Court Act defines a “delinquent child” is “a child who has committed a delinquent act and is in need of treatment or rehabilitation;” and defines “delinquent act” 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.” See UNIFORM JUVENILE COURT ACT § 2(3) (UNIF. LAW COMM’RS 1968). “Ordinarily, a delinquent act does not include minor traffic offenses, but does include serious offenses such as drunken driving or negligent homicide.” See, e.g., *id.* at § 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 juvenile at the time the act was committed, assuming the juvenile is not declared an adult for purposes of prosecution and trial. State law establishes the age for purposes of delinquency. See, e.g., *In re B.T.*, 82 A.3d 431, 434 (Pa. Super. Ct. 2013).

Under the Federal Juvenile Delinquency Act of 1938, 18 U.S.C. § 5032-5042 *et seq.*, “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, 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. 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 residence 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 transfer of supervision in a case involving an older sex offender whose proposed residence might put him or her in close proximity to other children or a school. The receiving state could not deny the transfer of supervision simply because the juvenile is an older sex offender. In the first instance, issues of public safety may work against a transfer of supervision. 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. [ICJ RULE 4-104\(3\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

For a discussion concerning the procedures for returning a juvenile delinquent to the sending state, see discussion *infra* Sections 4.4 through 4.6.

### **3.4.6 Status Offenders**

As with juvenile delinquents, the acceptance or rejection of the transfer of supervision or the relocation 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 relocation of a status offender outside the procedures provided in the ICJ. To do so would violate the 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 ICJ.

Pursuant to ICJ [Rule 1-101](#), “Accused Status Offender” means “a person charged with an offense that would not be a criminal offense if committed by an adult.” Other authorities provide similar, and often more specific, definition. For example, California law defines “status offender” 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 OJJDP “Literature Review – A Produce of the Modern Programs Guide” (“A ‘status offense’ is ‘a noncriminal act that is considered a law violation only because of a youth’s status as a minor offense which would not be a criminal offense if it were committed by an adult, 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 legal guardian or custodial agency 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 (UNIF. LAW COMM’RS 1968).

For a discussion concerning the procedures for returning a status offender to the home or sending state, see discussion *infra* Section 4.3-4.5.

### **3.5 Sentencing Considerations**

As an initial matter, it should be noted that the use of the ICJ as a supervision transfer mechanism has no bearing of the discretion of a prosecutor to proceed against a juvenile as an adult. The 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. E.g., *Menapace v. State*, 768 P.2d 8, 9 (Wyo. 1989). Consequently, the 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. E.g., *In re Bracewell*, 709 N.E.2d 938, 939-40 (Ohio Ct. 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.”); see *Schall v. Martin*, 467 U.S. 253, 263 (1984).

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 heightened responsibility to meet dispositional directives. *E.g.*, *In re S.S.*, No. D–8041–01/04D, 2005 WL 502836, at \*4800 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.”). In fact, the failure of a court to “explore the possibility of a child’s return to Pennsylvania, (to the home of a grandmother with whom the child had previously lived before moving to Florida where he was adjudicated delinquent), under an interstate compact for juveniles,” was reversible error and inconsistent with Florida law which required a “new disposition,” consistent with the statutory obligation “[t]o provide an environment that fosters healthy social, emotional, intellectual, educational, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state’s care.” *D.V. v. State*, 216 So.3d 3, 11 (Fla. Dist. Ct. App. 2017)

Consequently, the 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 ICJ. [ICJ Rule 1-101](#) specifically recognizes deferred adjudications as one form of adjudication that is covered by the ICJ. It defines a deferred adjudication as “a decision made by a court that withholds or defers formal judgment and stipulates terms and/or conditions of supervision.” [ICJ RULE 1-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024). As a result, the only differentiation between a deferred adjudication and a non-deferred adjudication for purposes of the ICJ is some requirement of supervision. So long as some element of supervision is involved, the terms of the ICJ are triggered. A court or executive authority cannot avoid the ICJ by simply classifying its disposition as “deferred.”

Additionally, because the 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 ICJ. In addition to the status of the individual as a juvenile, the essential element in triggering the 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 ICJ for purposes of transferring supervision and returning an absconder.

### **3.6 Processing Referrals**

[ICJ Rule 4-101](#) requires all member states to process referrals for transfer of supervision, 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. [ICJ RULE 5-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024). Consequently, juveniles on probation, parole or any other form of supervision are subject to the ICJ, assuming the length of time requirements are met.

The [ICJ Rules](#) recognize concurrent jurisdiction of both the ICJ and the Interstate Compact on Placement of Children (ICPC). Therefore, juveniles subject to the ICJ who are neglected or dependent are not precluded from placement and supervision through the ICPC. A juvenile who is not eligible for transfer under ICJ is not subject to the rules. *Id.* at [RULE 4-101\(3\)](#). Additional information about management of dual jurisdiction cases is available in the [“Best Practice Guide for ICJ and ICPC Dual Jurisdiction Cases.”](#) Additional information about management of dual jurisdiction cases is available in the Commission’s [“Best Practice Guide for ICJ and ICPC Dual Jurisdiction Cases.”](#)

### 3.6.1 Authority to Accept/Deny Referrals

One of the primary purposes of the compact is to “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.” INTERSTATE COMPACT FOR JUVENILES, [art. I](#) (2008). Therefore, states should generally accept requests for transfer of supervision whenever feasible pursuant to the ICJ Rules, and provide supervision according to the same standards as they would apply to their own juveniles. See [ICJ RULE 5-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

Pursuant to [ICJ Rule 4-104\(1\)](#), “Only the receiving state’s authorized Compact Office staff shall accept 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, [ICJ Rule 4-104](#) effectively prohibits any authority, other than the authorized Compact Office staff, from accepting or denying supervision of a juvenile. Local authorities, judges or other personnel have no authority to accept or deny a transfer of supervision outside the prior authorization or denial of a state’s authorized Compact Office staff.

Generally, a receiving state shall accept referral unless it finds that the proposed residence is unsuitable or if the juvenile is not in substantial compliance with the terms and conditions of supervision. 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. See [ICJ RULE 4-104\(3-4\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

Because of the unique legal status of juveniles, there is one significant exception to the general rule that allows for denial of transfer of supervision based upon the home evaluation. Pursuant to the “mandatory acceptance rule” set forth in [ICJ Rule 4-104\(5\)](#), transfer of supervision cannot be denied “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.” Consequently, once legal 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, 2009 WL 4910319, at \*3 (Minn. Ct. App., Dec. 22, 2009) (holding that court



did not err in refusing to transfer juvenile to another state where it was unsure whether a legal guardian permanently resided in the receiving state).

When acceptance of a transfer of supervision is mandatory under [ICJ Rule 4-104\(5\)](#), sending and receiving states must ensure that no court orders of the adjudicating judge or parole authority in the sending state are violated when considering the living arrangements of the juvenile in the receiving state. If the juvenile would be living with a victim, for example, the Compact does not authorize the receiving state to violate a “no contact” order and approve supervision. See [ICJ Ad. Op. 04-2014](#) (INTERSTATE COMM’N FOR JUVENILES 2021). Furthermore, homelessness or the threat of homelessness is not a valid reason to deny a transfer of supervision when there is no legal guardian remaining in the sending state. See [ICJ Ad. Op. 01-2018](#) (INTERSTATE COMM’N FOR JUVENILES 2018).

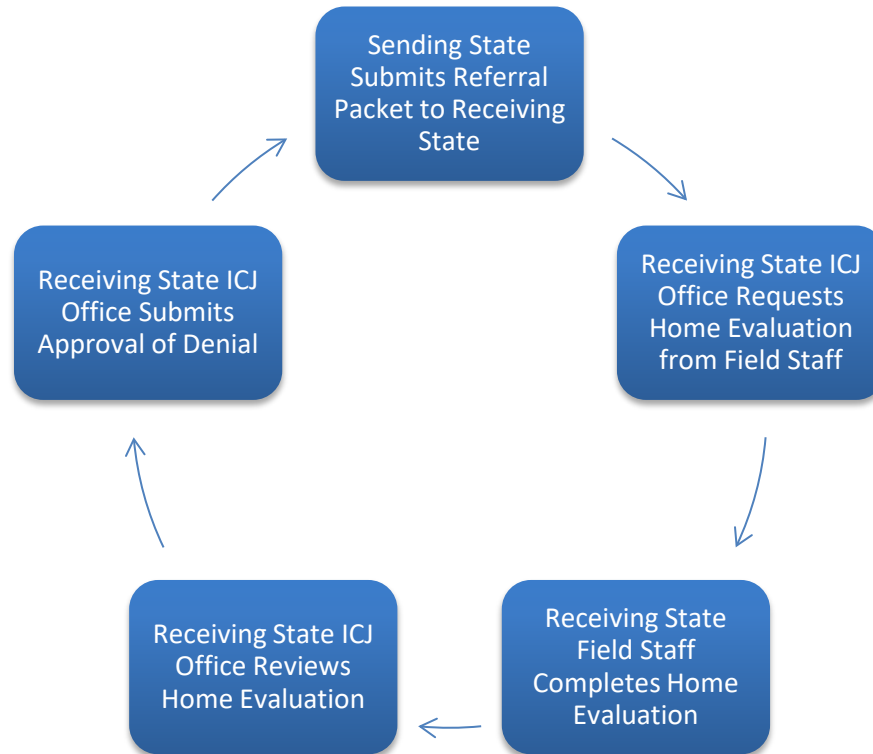
It must be emphasized that the terms of the [ICJ Rules](#) promulgated by the Commission “. . . have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.” See [ICJ, art. IV, 2](#) (2008). Coupled with the transformational effect of Congressional consent, the provisions of both the ICJ Statute and [ICJ Rules](#) take precedence over conflicting state law as both a statutorily enacted contract and the equivalent of federal law under the Supremacy Clause of the federal Constitution. While states may provide in the agreement that compact provisions in conflict with a provision of a State Constitution must yield, as has been agreed in [art. XIII](#) of the ICJ, its applicability only arises where there is an actual conflict between the state constitution and the ICJ.

### 3.6.2 Sending and Receiving Referrals

[ICJ Rule 4-102](#) governs the sending and receiving of referrals for transfer of supervision. 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.

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; and
- Within forty-five (45) calendar days of receipt of the referral, forward the home evaluation to the sending state along with the final approval or disapproval of the request for supervision.



For a discussion of expedited transfers, see discussion *infra* Section 3.7.7.

### 3.6.2.1 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 juvenile’s anticipated arrival date**. The ICJ Office in the sending state must send the following documents:

- Form IV, Parole or Probation Investigation Request;
- Form VI, Application for Services and Waiver; and
- The Order of Commitment.

The sending state shall also forward to the receiving state the following documents if available:

- The Petition and/or Arrest Report(s);
- A Legal and Social History;
- A supervision summary if the juvenile has been on supervision in the sending state for more than thirty (30) calendar days;
- A photograph of the juvenile; and
- Any other pertinent information deemed to be of benefit to 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. Additionally, ICJ Form V, Notification from Sending State of Parolee or Probationer Proceeding to the Receiving State, shall be forwarded prior to or at the time the juvenile relocates to the receiving state. [ICJ RULE 4-102\(2\)\(a\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

### 3.6.2.2 Juvenile Probationers

In cases involving juvenile probationers, the ICJ Office in the sending state must forward the following documents to the receiving state:

- Form IV, Parole or Probation Investigation Request;
- Form VI, Application for Services and Waiver;
- 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 the following:

- Legal and Social History;
- A supervision summary if the juvenile has been on supervision in the sending state for more than thirty (30) calendar days;
- A photograph of the juvenile; and
- Any other pertinent information.

Additionally, Form V, Notification from Sending State of Parolee or Probationer Proceeding to the Receiving State, shall be forwarded prior to or at the time the juvenile relocates to the receiving state, if the juvenile is not already residing in the receiving state. [ICJ RULE 4-102\(2\)\(b\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

**PRACTICE NOTE:** It is important to use the most current version of ICJ Forms. While Rule [4-104](#) does not require that a referral be rejected solely on the basis of using one or more out-of-date ICJ Forms, updated form versions contain the Commission's current standards for data collection and conform to the current version of [ICJ Rules](#). All current versions of ICJ Forms are available within the electronic information system and on the [Commission's website](#). Additionally, the Form VI, Application for Services and Waiver, is not considered "complete" unless it has the sending state judge/court or compact official's signature. See [ICJ Ad. Op. 02-2015](#) (INTERSTATE COMM'N FOR JUV., 2015); [ICJ Ad. Op. 04-2019](#) (INTERSTATE COMM'N FOR JUV., 2019).

### 3.6.3 Summary of Timelines

	Initial Referral (Sending State)	Local Referral & Home Evaluation (Receiving State)	Approve/Deny (Receiving State)	Relocation and Transfer of Supervision (Sending State)
Parolee	Submits referral packet 45 days prior to anticipated arrival in receiving state	Requests home evaluation from field staff	Submits home evaluation 45 days after receipt of referral from sending state	Maintains supervision of juvenile until relocation occurs within 90 days
Probationer	Submits referral packet			Maintains supervision of juvenile until relocation occurs within 90 days, if not already residing in receiving state

### 3.7 Ongoing Considerations for Transfers 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.

#### 3.7.1 Supervision and 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. See *In re S.H.*, No. A128298, 2011 WL 2152062, at \*5 (Cal. Ct. App. June 1, 2011) (“[Article I](#) of the ICJ provides that among its purposes was to ‘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 . . .*’”). While receiving states have limited discretion to deny 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 [ICJ RULE 4-101\(2\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024); *In re A.S.M.*, 325 P.3d 1251, 1255 (Mont. 2014) (requiring that ICJ application for transfer be approved prior to placement). Once the receiving state agrees to assume supervision, the sending state must issue reporting instructions to the juvenile on the Form V, Notification from Sending State of Parolee or Probationer Proceeding to the Receiving State, if the juvenile is not already residing in

the receiving state, and provide written notification of the juvenile's departure to the receiving state. [ICJ RULE 4-104\(6\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

Once supervision is transferred, the receiving state may not treat transferred juveniles any differently than it would treat its own juveniles. The express terms of the 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 [ICJ RULE 5-101](#) (INTERSTATE COMM'N FOR JUVENILES 2024); *E.g., In re Crockett*, 71 Cal. Rptr. 3d 632, 639-40 (Cal. Ct. App. 2008); *Palmer v. Commonwealth*, 632 S.E.2d 611, 615 (Va. Ct. 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 standards 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 of a juvenile. The receiving state must furnish quarterly progress reports to the sending state. Additional reports should be sent when specific concerns arise. For example, the receiving state shall send a report when there is a change in residence or a change in the person with whom the juvenile resides. If the juvenile is residing with a different person, the sending state can request information about the new residence without submitting new ICJ Forms. The sending state may propose alternative living arrangements or return the juvenile to the sending state. See [ICJ RULE 5-101\(1\), \(4\), \(5\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024). See [ICJ Ad. Op. 01-2020](#) (INTERSTATE COMM'N FOR JUVENILES 2020).

Both the sending and receiving states have authority to enforce the terms of supervision, which may include the imposition of sanctions in the receiving state. See [ICJ RULE 5-101\(3\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024). 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. *Id.* at [Rule 5-101\(7\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024); *Cf. In re B.W.*, 313 S.W.3d 818, 820 (Tex. 2010) (holding that a 13-year-old person could not legally consent to sex in the state where the case was adjudicated, and thus could not be adjudicated delinquent for offense of prostitution). However, where the receiving state holds a juvenile under the ICJ, the type of secure facility and laws governing age of majority are determined by the laws of the receiving state. *Id.*

### **3.7.2 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 as determined by the sending state or who may be required to register as a sex offender in the sending or receiving

state.” [ICJ RULE 1-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024). Such transfers implicate heightened public safety concerns and therefore are subject to more stringent requirements. Because sex offender registration laws vary significantly from state to state, the Commission provides a “[State Sex Offender Matrix](#)” resource.

In general, a juvenile sex offender’s supervision may be transferred to another state, which is obligated upon acceptance to supervise the juvenile under the same standards it applies to in-state sex offenders. *Id.* at [Rule 5-101](#). *See, e.g., In re Crockett*, 71 Cal. Rptr. 3d 632, 640 (Cal. Ct. App. 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.”). *See also Palmer v. Commonwealth*, 632 S.E.2d 611, 615 (Va. Ct. 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 standards 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.*, in accord *Doe v. Ward*, 124 F. Supp.2d 900 (W.D. Penn. 2000). (This reasoning was applied by the Court in interpreting a similar rule promulgated by the Interstate Commission for Adult Offender Supervision.)

Key requirements related to transfer of supervision of juvenile sex offenders include:

- 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. [ICJ RULE 4-103\(1\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024).
- When it is necessary for a juvenile sex offender to relocate or reside with a legal guardian prior to the acceptance of supervision, under the provision of [ICJ Rule 4-103\(3\)](#), the sending state shall determine if the circumstances justify the use of a travel permit, including consideration of the appropriateness of the residence. 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 shall be provided to the receiving state:
  - Form VI, Application for Services and Waiver;
  - Form IV, Parole or Probation Investigation Request;
  - Order of adjudication and disposition;
  - Conditions of supervision; and
  - Petition and/or arrest report.

- If available, the sending state shall also provide
  - Safety plan;
  - Specific assessments;
  - Legal and Social History information pertaining to the delinquent behavior;
  - Victim Information, i.e., sex, age, relationship to the juvenile sex offender;
  - The sending state’s current or recommended supervision and treatment plan;
  - A photograph of the juvenile; and
  - All other pertinent materials.*Id.* at [RULE 4-103\(2\)](#).
- In conducting home evaluations for juvenile sex offenders, the receiving state shall ensure compliance with local policies or laws to issuing reporting instructions. *Id.* at [RULE 4-103\(4\)](#).
- If the proposed residence is unsuitable, the receiving state may deny acceptance. *Id.* at [RULE 4-103\(4\)](#).
- 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. *Id.* at [RULE 4-103\(5\)](#), [\(6\)](#).
- Additionally, ICJ Form V, Notification from Sending State of Parolee or Probationer Proceeding to the Receiving State, shall be forwarded prior to or at the time juvenile relocates to the receiving state if the juvenile is not already residing in the receiving state. *Id.* at [RULE 4-103\(3\)](#).

### 3.7.3 Quarterly Progress Reports and 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 [ICJ Rule 5-101](#). It is clear that the [ICJ Rules](#) contemplate that continued supervision under the ICJ is clearly an “agency” relationship in which the receiving state becomes the agent of the sending state. However, it is also anticipated that ICJ personnel in both the sending and receiving states will continue to communicate and work together to facilitate the supervision process. For example, under [ICJ Rule 5-101\(3\)](#), “both the sending and receiving states shall have the authority to enforce terms of probation/parole, which may include the imposition of sanctions.” Moreover, under [Rule 5-101\(4\)](#), the receiving state is responsible for furnishing “written progress reports to the sending state on no less than a quarterly basis” and additional written progress reports “shall be sent in cases where there are concerns regarding the juvenile or there has been a change in residence or in the person with whom the juvenile resides.” See [ICJ Ad. Op. 3-2021](#) (INTERSTATE COMM’N FOR JUVENILES 2021).

A quarterly progress report should also be used to report a change of residence where the juvenile continues to reside with the same person(s). In such cases no new application for supervision services is necessary. However, the sending state may request additional information regarding the new residence. If the sending state does not support this change, they shall notify the receiving state and propose an alternative living arrangement or affect the return of the juvenile. See [ICJ RULE 5-101\(4-5\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

When there are concerns about the juvenile's behavior, it is essential that the receiving state make efforts to redirect the behavior. Efforts to redirect behavior may include, but are not limited to, therapeutic interventions, incentives graduated sanctions, or other corrective actions consistent with supervision standards in the receiving state. To promote equitable treatment of juveniles regardless of race, sexual orientation, gender cognitive ability, socio-economic status, victimization, adjudicated offenses, or location, the Commission amended [ICJ Rule 5-103](#) (effective March 1, 2022) to require that description of such efforts in all reports regarding juvenile non-compliance or failed supervision.<sup>5</sup>

At any time during supervision, if a juvenile is out of compliance with conditions of supervision, the receiving state shall notify the sending state of the condition(s) violated. As required by [ICJ Rule 5-103\(1\)](#), the violation report must contain:

- a. The date of the new citation or technical violation that forms the basis of the violation;
- b. Description of the new citation or technical violation;
- c. Status and disposition, if any;
- d. Supporting documentation regarding the violation including but not limited to police reports, drug testing results, or any other document to support the violation.
- e. Description of efforts made to redirect the behavior including therapeutic interventions, incentives and/or graduated sanctions, or other corrective actions consistent with supervision standards in the receiving state; and
- f. Receiving state recommendations.

The sending state shall respond to a report of a violation where revocation or discharge is requested by the receiving state no later than ten (10) business days following receipt by the sending state. The response shall include the action to be taken by the sending state, which may include continue supervision, and the date that action will occur.

Based upon these reports and other factors, if it is necessary to return a juvenile whose transfer of supervision has failed to the sending state and the Form VI, Application for Services and Waiver has the appropriate signatures, no further court procedure is required for the juvenile's return. [ICJ RULE 5-103\(3\)\(b\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024). However, if a juvenile is returned due to a failed transfer of supervision and is likely to have probation/parole revoked, courts may take additional action to ensure due process requirements are met. Further information regarding returns due to failed supervision is provided in Section 4.6.4, *infra*.

### 3.7.4 New Violations in the Receiving State

Nothing in the ICJ prohibits officials in a receiving state from filing new charges against a juvenile for actions committed in that state. For example, if a juvenile whose supervision was transferred commits an act of delinquency in the receiving state, that juvenile is subject to new

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<sup>5</sup> Justification for amendment available at <https://www.juvenilecompact.org/sites/default/files/2021RuleAmendmentsApproved.pdf>



charges 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 ICJ does not mean that the juvenile is exempt from complying with the laws of the receiving state. While the courts of the receiving state may not modify the terms and conditions of the sending state's dispositional order, and the juvenile continues to be subject to the jurisdiction of a sending state's court, a juvenile transferred under the 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) request 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.

### **3.7.5 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 Form IX, Absconder 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. See [ICJ RULE 5-102](#) (INTERSTATE COMM'N FOR JUVENILES 2024). For further discussion of retaking/return after failed supervision, see *infra* Section 4.6.

### **3.7.6 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 *id.* at [RULE 5-101\(8\)](#); *J.A.B. v. State*, 25 So.3d 554, 558 (Fla. 2010) (Statute's purpose is to fulfill the goal of providing restitution "wherever possible.").

### **3.7.7 Expedited Transfers**

While the [ICJ Rules](#) address the specific timeframes associated with transfers of supervision, the rules also provide procedures for conducting expedited transfers of supervision in certain circumstances. For example [ICJ Rule 4-102\(2\)\(a\)](#), which applies to juvenile parolees, [and](#)

[ICJ Rule 4-103\(3\)](#), which applies to juvenile sex offenders, provides guidance when it is necessary to relocate a juvenile out of state prior to the acceptance of supervision. The sending state determines if the circumstances justify the use of a travel permit, including consideration of the appropriateness of the residence. If approved, the sending state provides the receiving state with an approved travel permit. Further discussion of travel permits is provided in Chapter 5, *infra*.

### 3.7.8 Travel Permits

As discussed throughout this Bench Book, juveniles under supervision do not enjoy a free right of travel. [ICJ Rule 8-101](#) governs the issuance of travel permits, which are designed to promote public safety and keep track of juveniles under supervision. Travel permits cannot be issued on consecutive, ninety (90) calendar day intervals to circumvent the process for transferring supervision through the ICJ. *Id.* at [RULE 8-101\(4\)](#). Additional travel permit requirements are discussed in detail in Chapter 5, *infra*.

## 3.8 HIPAA Considerations

The Compact requires member states to share information regarding juveniles and their families when necessary for transfers of supervision of adjudicated delinquents, returns (including non-delinquent runaways), and travel permits. This information includes health information about these juveniles which is otherwise protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, the HIPAA Privacy Rule allows 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 or to identify or apprehend an individual who appears to have escaped from lawful custody.

It is also important to note that since the ICJ Commission developed the UNITY system in compliance with the mandates of the ICJ statute and duly authorized rules, as well as the FBI's Criminal Justice Information Services (CJIS) Security Policy, the use of UNITY is permitted pursuant to the HIPAA exemptions with respect to both Personal Identifiable Information (PII) as well as Personal Health Information (PHI). See [ICJ Ad. Op. 01-2021](#) (INTERSTATE COMM'N FOR JUVENILES 2021). See also [ICJ Ad. Op. 1-2011](#) (INTERSTATE COMM'N FOR JUVENILES 2011).

## 3.9 Victim Notification

Under [ICJ Rule 2-105](#), 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.

Throughout the duration of the supervision period, the receiving state 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 [ICJ RULE 2-105](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

### 3.10 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 adjudicated or prosecuted.

However, the receiving state is not required to continue providing 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. [ICJ RULE 5-104\(1\)\(a\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).
- Upon notice to the sending state, when the court order that formed the basis of supervision expires. *Id.* at [RULE 5-104\(1\)\(b\)](#).
- When a sending state fails to relocate a juvenile within ninety (90) days after acceptance by the receiving state unless a request for extension has been made and an appropriate explanation provided. *Id.* at [RULE 5-104\(2\)](#).
- 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. *Id.* at [RULE 5-104\(4\)](#).
- The receiving state may close the supervision case upon notification that the juvenile has been admitted to a residential facility for a planned stay in excess of ninety (90) calendar days. Upon release from the facility, if the juvenile remains on supervision within the sending state and meets eligibility requirements, the sending state shall submit a new referral.

Juvenile convicted of a crime in the receiving state, sentenced as an adult, and the adult sentence exceeds the juvenile sentence

Upon notice to the sending state when the court order has expired

Upon notice to the sending state when the maximum period of probation or parole has expired

Sending state fails to relocate juvenile within 90 calendar days after acceptance by the receiving state

Upon notice that the sending state has issued a warrant for absconder, or if juvenile has been on absconder status for 10 business days

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. *Id.* at [RULE 5-104\(3\)](#).

## CHAPTER 4

### RETURNING JUVENILES

#### 4.1 ICJ Returns and Due Process

A principal purpose for the ICJ is to affect the return of delinquent juveniles who have escaped or absconded, and non-delinquent runaways, through means other than formal extradition. Although juveniles are not entitled to all the due process procedures provided in an ordinary criminal trial, youths are entitled to receive sufficient due process to assure fair treatment. Consequently, due process requirements for juveniles subject to the ICJ vary greatly depending upon whether the juvenile is a non-delinquent runaway or being returned pursuant to another provision of the ICJ.

The status of juveniles as absconders, escapees, or delinquents substantially affects the process to which they are entitled under the ICJ and constitutional principles of due process. Although the ICJ and its administrative rules have not been the subject of robust judicial construction, general principles governing the status of probationers and parolees under the federal Constitution, other compacts, court decisions and state law are instructive and appear to be controlling on juveniles subject to the ICJ.

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*, "[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.'" 387 U.S. 1, 30 (1967); *Kent* 383 U.S. at 562; *see also*, *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), *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."); *accord In Re Roneikas*, 920 A.2d 49 (Md. Ct. App. 2007); *cf. People v. Anderson*, 825 N.W.2d 678 (2012) (" . . . juvenile proceedings are closely analogous to the adversary criminal process.)

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, juveniles 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*, 546 A.2d 1149, 1153 (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); *see* U.S. CONST. art. 1§ 9; U.S.C.A. Const. Amends. 6, 14”); *see also In Interest of W.*, 377 So. 2d 2 (Fla. 1979); *State v. Angel C.*, 715 A.2d 652, 667 (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.”)

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 Burns v. United States*, 287 U.S. 216, 220 (1932); *see also, United States ex rel. Harris v. Ragen*, 177 F.2d 303, 304 (7th Cir. 1949). Many state courts have similarly found that probation or parole is a “revocable privilege,” an act of discretion. *Wray v. State*, 472 So. 2d 1119, 1121 (Ala. 1985); *People v. Reyes*, 968 P.2d 445, 449-50 (Cal. 1998); *People v. Ickler*, 877 P.2d 863, 866 (Colo. 1994); *Carradine v. United States*, 420 A.2d 1385, 1391 (D.C. 1980); *Haiflich v. State*, 285 So.2d 57, 58 (Fla. Dist. Ct. App. 1973); *State v. Edelblute*, 424 P.2d 739, 745 (Idaho 1967); *People v. Johns*, 795 N.E.2d 433, 437 (Ill. App. Ct. 2003); *Johnson v. State*, 659 N.E.2d 194, 198-99 (Ind. Ct. App. 1995); *State v. Billings*, 39 P.3d 682, 685 (Kan. Ct. App. 2002); *State v. Malone*, 403 So. 2d 1234, 1238 (La. 1981); *Wink v. State*, 563 A.2d 414, 417 (Md. 1989); *People v. Moon*, 337 N.W.2d 293, 296 n.6 (Mich. Ct. App. 1983); *Smith v. State*, 580 So. 2d 1221, 1225 (Miss. 1991); *State v. Brantley*, 353 S.W.2d 793, 796 (Mo. 1962); *State v. Mendoza*, 579 P.2d 1255, 1257 (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. *E.g., People v. Main*, 199 Cal. Rptr. 683, 686 (Cal. Ct. App. 1984). An offender has no constitutional right to conditional release or early release. *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. S.C. Dept. of Prob., Parole & Pardon Servs.*, 576 S.E.2d 146, 149 (2002); *In re S.H.*, No. A128298, 2011 WL 2152062, at \*5 (Cal. Ct. App. June 1, 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. *E.g.*, *Woodward v. Murdock*, 24 N.E. 1047, 1048 (Ind. 1890); *Commonwealth ex rel. Meredith v. Hall*, 126 S.W.2d 1056, 1057 (Ky. 1939); *Guy v. Utecht*, 12 N.W.2d 753, 759 (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. *E.g.*, *Gulley v. Apple*, 210 S.W.2d 514, 518-19 (Ark. 1948); *Ex parte Tenner*, 128 P.2d 338, 341 (Cal. 1942); *State ex rel. Rowe v. Connors*, 61 S.W.2d 471, 473 (Tenn. 1933); *Ex parte Calloway*, 238 S.W.2d 765, 766 (Tex. Crim. App. 1951); *Ex parte Paquette*, 27 A.2d 129, 132 (Vt. 1942); *Pierce v. Smith*, 195 P.2d 112, 116 (Wash. 1948), *cert. denied*, 335 U.S. 834 (1948). 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. *E.g.*, *State ex rel. Bush v. Whittier*, 32 N.W.2d 856, 859 (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, 1191 (Ill. App. Ct. 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, 636 (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, 481 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782-83 (1973); *see also People ex rel. Silbert v. Cohen*, 271 N.E.2d 908, 909-10 (N.Y. 1971).

It is not a violation of the Fourteenth Amendment equal protection clause when the procedures prescribed under a uniform interstate compact are applied. *See, e.g.*, *People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458, 460 (N.Y. 1952). Similarly, in *Ex parte Tenner*, the court upheld the validity of a uniform statute for out-of-state parolee supervision (Interstate Compact on Probation and Parole) 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. 128 P.2d 338, 343 (Cal. 1942). In *People v. Mikula*, 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. 192 N.E. 546, 548 (Ill. 1934). 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. *Id.* The court concluded that there was no deprivation of advantage to anyone because of the statutory distinction between resident and nonresident convicts. *Id.*; *cf.*, *Williams v. Wisconsin*, 336 F.3d 576, 582 (7th Cir. 2003).

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, 848 (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 . . .”) 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 Mich. Dept. of Corr.*, 188 N.W.2d 552, 556 (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.

As discussed in Section 2.1.2, *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 juveniles are in accord. *See, e.g., State v. J.M.W.*, 936 So. 2d 555, 560, 560 n.9 (Ala. Crim. App. 2005) (“J.M.W. also argues that because he is a juvenile the Interstate Compact for 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).”); *In re Boynton*, 840 N.W.2d 762, 767 (Mich. Ct. App. 2013)(“Although a juvenile petition does not technically charge a crime, the rendition procedures established by the Compact for juveniles charged with delinquency are designed to be essentially the same as those long established for the extradition of adults charged with crimes”); *Ex parte Jetter*, 495 S.W.2d 925, 925-26 (Tex. Crim. App. 1973) (“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, 1290 (Ala. Crim. App. 2001); *accord In re O.M.*, 565 A.2d 573, 583 (D.C. 1989); *A Juvenile*, 484 N.E.2d 995, 997-98 (Mass. 1985). It is also important to note that a challenge as to whether extradition was proper under the ICJ or the Uniform Criminal Extradition Act must be raised prior to being delivered into custody of the charging state after which the legality of the extradition is no longer subject to legal attack. *E.g., R.L.A.C.*, 823 So. 2d at 1290.



#### 4.1.1 ICJ as an Alternative to Extradition/UCEA

[Article IV, Section 2](#) of the U.S. Constitution, known as the Extradition Clause or Interstate Rendition Clause, sets forth 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. Historically, procedures for implementing the Extradition Clause have been governed by the Uniform Criminal Extradition Act (UCEA).

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.

As discussed in Section 1.4 through 1.4.2 *supra.*, the ICJ was created with congressional consent, thereby creating a statutory alternative to traditional extradition. In addition, courts have clearly recognized the ICJ is a useful alternative to extradition that permits the lawful movement of a juvenile across state lines, regardless of whether extradition could be applied. *See In re Lydell J.*, 583 N.Y.S.2d 1007, 1010 (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 for 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*, 371 S.E.2d 510, 514 (N.C. Ct. App. 1988) (“North Carolina Interstate Compact for 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 re C.P.*, 533 A.2d 1001, 1003 (Pa. 1987).

Though both the ICJ and ICAOS have received congressional consent and serve as statutory alternatives to extradition, concerns are sometimes raised regarding standard procedures for returning fugitives pursuant to the UCEA. Under the UCEA, 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 UCEA prevents a person from voluntarily returning to a state. For juveniles, such voluntary returns are governed by [ICJ Rule 6-102](#).

While there are no published cases regarding the return of juveniles pursuant to the ICJ rather than UCEA, 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 UCEA. *E.g., In re Klock*, 184 Cal. Rptr. 234, 235 (Cal. Ct. App. 1982); *People v. Bynul*, 524 N.Y.S.2d 321, 328-29 (N.Y. Crim. Ct. 1987); see *Todd v. Fla. Parole and Prob. Comm'n*, 410 So.2d 584, 585 (Fla. Dist. Ct. App. 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 UCEA as to certain offenders and requires only minimal formalities as to the return of those offenders. *Id.* See also *In re O.M.*, 565 A.2d 573, 582-583 (D.C. 1989) which held that the ICJ was adopted by the states precisely because the Extradition Clause of the Constitution did not operate with respect to juveniles.” 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, 782-83 (10<sup>th</sup> Cir. 2007) (“Plaintiff’s waiver of extradition renders any formal request or permission from the requesting and sending state governors unnecessary); see also *People v. Gordon*, 672 N.Y.S.2d 631 (N.Y. Crim. Ct. 1998).

**PRACTICE NOTE:** The purpose of the 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 ICJ, including ICJ Rules [4-102\(2\)](#), [4-103\(2\)](#), and [5-103\(3\)](#) regarding waiver of extradition in certain circumstances. Therefore, a juvenile subject to the ICJ is subject to the “alternative procedures” provided in the Compact and its rules, not the provisions of the UCEA, unless a warrant is issued by an adult court pursuant to [Rule 7-104](#).

#### 4.1.2 Waiver of Extradition Requirements Under ICJ

Principal among the provisions of the 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 ICJ specifically provides among its purposes is to “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.” INTERSTATE COMPACT FOR JUVENILES, [art. I\(A\)](#) (2008). Although neither [Article I](#) of the ICJ nor ICJ Rules related to waiver of rights 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. *E.g., Gulley v. Apple*, 210 S.W.2d 514, 518-19 (Ark. 1948); *Woods v. State*, 87 So. 2d 633, 637 (Ala. 1956); *Ex parte Tenner*, 128 P.2d 338, 341 (Cal. 1942); *Louisiana v. Aronson*, 252 A.2d 733, 735 (N.J. Super. Ct. App. Div. 1969); *People ex rel. Rankin v. Ruthazer*, 107 N.E.2d 458, 460 (N.Y. 1952); *Pierce v. Smith*, 195 P.2d 112, 116 (Wash. 1948), *cert. denied*, 335 U.S. 834 (1948). 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. *E.g., People v. Bynul*, 524 N.Y.S.2d 321, 328 (N.Y. Crim. Ct. 1987).

Furthermore, each applicant for a transfer of supervision must sign a waiver concerning return or extradition to the sending state. *Id* at Rules [4-102\(2\)](#), [4-103\(2\)](#), and [5-103\(3\)](#). The Form VI, Application for Services and Waiver, contains the following waiver related to extradition requirements:

I further understand that if I fail to keep these promises, I may be returned to the sending state, and I hereby waive any right that I may have to contest my return to the sending state. I have read the above, or have had the above read and explained to me, and I understand its meaning and agree thereto. I understand and accept that a failure to comply with these terms and conditions may result in sanctions in both the sending and/or receiving state.

Pursuant to [ICJ Rule 5-103\(3\)\(b\)](#), if The Form VI, Application for Services and Waiver, has the appropriate signatures; no further court procedures will be required for the juvenile's return." For discussion of signature requirements, see [ICJ Ad. Op. 02-2015](#) (INTERSTATE COMM'N FOR JUVENILES 2015).

Courts considering similar proceeding for adult offenders have repeatedly determined that 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, 782-83 (10th Cir. 2007) (plaintiff's waiver of extradition renders any formal request or permission from the requesting and sending state governors unnecessary.); see also *People v. Gordon*, 672 N.Y.S.2d 631 (N.Y. Crim. Ct. 1998). 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. *E.g., Evans v. Thurmer*, 278 Fed. Appx. 679, 681 (7th Cir. 2008), *O'Neal v. Coleman*, No. 06-C-243-C, 2006 WL 1706426, at \*5 (W.D. Wis. June 16, 2006).

It is also important to note that a sending state has authority at all times to enter a receiving state and retake a juvenile, subject to certain requirements. See [ICJ RULE 7-106\(7\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024). A waiver signed as part of the application for services (Form VI) 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, for example, they are a lawful agent of the state enforcing a properly issued warrant. *Id* at RULES [4-102\(2\)](#) and [5-103\(3\)](#); see also *Ogden v. Klundt*, 550 P.2d 36, 39 (Wash. Ct. App. 1976).

Habeas corpus is generally unavailable to offenders being held pending return to the sending state under an interstate compact. *E.g., Stone v. Robinson*, 69 So. 2d 206, 210 (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, 628 (Wis. 1974) (constitutional rights of an offender whose supervision was transferred under the compact were 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, 1004 (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, 848 (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 Interstate Compact for Probation and Parole (the predecessor to the modern Interstate Compact for Adult Offender Supervision). See *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).

For further discussion of retaking/return after failed transfers of supervision, see *infra* Section 4.6.

## 4.2 General Considerations for ICJ Returns

As with all other compact provisions, the return process under the 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 INTERSTATE COMPACT FOR JUVENILES, [art. VII, § A\(2\)](#) (2008); *In re Pierce*, 601 P.2d 1179, 1183 (Mont. 1979). Like its predecessor compact, the 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 (1987). 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." *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951); *In re O.M.*, 565 A.2d 573, 580 (D.C. 1989).

The return of an out-of-state juvenile may occur under one of the four following broad categories:

- Release of non-delinquent runaways;
- Voluntary return;
- Non-voluntary return;
- Retaking/return of juveniles after failed transfer of supervision.

Some interstate runaways are subject to both the ICJ and the Interstate Compact on the Placement of Children (ICPC). "ICJ recognizes the authority of ICPC under Article V of the Interstate Compact on the Placement of Children and supports their authority to return ICPC youth who have run away from their out-of-state placement resulting in a demand for their return by the sending state. In the event a juvenile is held in a secure facility beyond twenty-four (24) hours (excluding

weekends and holidays), the appropriate provisions of the ICJ Rules shall apply.” See [ICJ RULE 6-104](#) (INTERSTATE COMM’N FOR JUVENILES 2024). Additional information about management of dual jurisdiction cases is available in the “[Best Practice Guide for ICJ and ICPC Dual Jurisdiction Cases.](#)”

#### 4.2.1 Impact of Suspected Abuse, Neglect, or Human Trafficking

Far too often, youth who run away or are involved in the juvenile justice system have experienced abuse or neglect at home. Therefore, all allegations and suspicions of abuse or neglect must be handled carefully in order to ensure the safety and well-being of the youth. The ICJ and its rules require the holding state to notify the home/demanding state of any concerns about abuse and neglect. See [ICJ RULE 6-105](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

Juvenile authorities may release a non-delinquent runaway to his/her legal guardian or custodial agency within the first twenty-four (24) hours (excluding weekends and holidays) of detainment without applying the Compact, except in cases where the holding authority suspects abuse or neglect. *Id.* at [ICJ RULE 6-101](#). However, if abuse or neglect is suspected, the holding state’s ICJ must be contacted and the ICJ must be applied. Unfortunately, human traffickers sometimes pose as parents or guardians. Care should be taken to verify the identification of the parent or guardian as well the right to custody of the person into whose care the juvenile is being released, particularly in light of increased awareness of human trafficking.

The ICJ clearly applies when a juvenile whom is subjected to human trafficking is also identified as an out-of-state runaway, absconder, or escapee. In such cases, the juvenile must be returned pursuant to the ICJ. States are required to follow applicable procedures for reporting and investigating allegations of abuse or neglect of juveniles. *Id.* at [RULE 6-105\(3\)](#).

Because the determination of the best interest of the juvenile is always a critical issue, the [ICJ Rules](#) are built upon the premise that authorities in the home state are in the best position to evaluate and promote the best interest of the juvenile. [ICJ Rule 6-105\(2\)](#) requires that, regardless of such concerns, the juvenile must be returned to the home state. These provisions are intended to ensure that determinations about best interest are made by authorities in the state with most access to information regarding relevant information. For further discussion regarding application of the “best interest” standard, *see infra* Section 4.3.

Some youths do not agree to voluntarily return to their home state, especially in cases involving abuse or neglect. In such cases, the appropriate authorities in the home/demanding state may determine that the juvenile will not be returned to legal guardian and make other arrangements for the juvenile. Unless the youth subsequently agrees to return voluntarily, such juveniles must be returned in accordance with [ICJ Rule 6-103](#). The requisition process shall be initiated by the custodial agency, or home/demanding state’s appropriate authority.

**PRACTICE NOTE:** Though human trafficking impacts all sorts of people, youth who runaway or face homelessness are targeted more frequently than others. Therefore, youth who have been trafficked may also be subject to the ICJ. More information about ICJ and human trafficking is available at <https://www.juvenilecompact.org/resources/human-trafficking-resources>.

### 4.3 Non-Delinquent Runaways

In addition to serving as an alternative to extradition for adjudicated and accused juvenile delinquents, the ICJ governs the return of non-delinquent runaways who cross state lines and are detained for more than 24 hours (excluding weekends and holidays). [ICJ RULE 6-101](#) (INTERSTATE COMM’N FOR JUVENILES 2024). Once a runaway has been detained more than 24-hours or where abuse or neglect is suspected by holding authorities, application of the ICJ is mandatory. *In Re Stacy B.*, 741 N.Y.S.2d 644, 646 (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.)

Runaways are defined as “persons within the juvenile jurisdictional age limit established by the home state, who (1) have voluntarily left their residence without permission of their legal guardian or custodial agency or (2) refuse to return to their residence as directed by their legal guardian or custodial agency but who may or may not have been adjudicated.” *Id.* at [RULE 1-101](#).

The ICJ applies to runaways exclusively in the context of returning them to the state where the legal guardian or custodial agency resides. Thus, where the ICJ applies to juvenile delinquents and status offenders in both the transfer of supervision 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 legal guardian(s) or custodial agency is located and the latter being the state where the runaway is located. These terms are also applicable in cases involving absconders and accused delinquents.

A runaway is entitled to a hearing prior to being returned to the custodial state. However, 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 generally In re C.J.W.*, 377 So.2d 22, 24 (Fla. 1979). When a non-delinquent youth agrees to voluntarily return to their home state, the ICJ Form III, Consent for Voluntary Return, is used to document to the youth’s consent, as required by [ICJ Rule 6-102](#). If the youth does not agree to return voluntarily, a non-voluntary return process must be initiated by the legal guardian or custodial agency in home/demanding state, in accordance with [ICJ Rule 6-103](#). Upon the receipt of a requisition from a demanding state, the court in the holding state must hold a hearing for the purpose of determining whether the person(s) demanding return has legal custody to do so and the requisition complies with all procedural requirements. [ICJ RULE 6-103\(6\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

While courts are naturally concerned about the best interest of the child, the holding state court’s determination in a requisition hearing should not be based on a best interest standard. Instead, if proof of entitlement is established, the requisition must be granted so that the youth can be returned to their home state, which can address concerns regarding the abuse, neglect, or other issues related to the best interest of the youth. To ensure that the best interest of the child

is addressed in the home state, ICJ requires that the holding state's ICJ office notify the home/demanding state of any allegations of abuse and neglect. Furthermore, "Allegations of abuse or neglect do not alleviate a state's responsibility to return a juvenile within the timeframes in accordance with the rules." *Id.* at [RULE 6-105](#). Further discussion of the impact of suspected abuse, neglect, or human trafficking is provided in Section 4.2.1, *supra*.

Numerous published cases address the scope of requisition hearings. Most recently, the Alaska Supreme Court held that the "Interstate Compact for Juveniles did not authorize a holding state to conduct a best-interests analysis before ordering return of a runaway juvenile, even when there were reports of abuse or neglect." *Jessica J. v. State of Alaska*, 442 P.3d 771 at p. 774 (AK S. Ct. 2019). See also *In re: C.P.*, 533 A.2d 1001, 1002 (PA 1987). See also *In re C.P.*, 533 A.2d 1001, 1002 (Pa. 1987); see *In re J.T. v. State*, 954 P.2d 174, 176 (Okla. Civ. App. 1997) ("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 ICJ is constitutionally infirm for not requiring such a finding."). Other courts have followed a similar rationale, finding that issues related to the "best interest" of the child are reserved to the requisitioning state. *E.g.*, *In re Teague*, 371 S.E.2d 510, 512 (N.C. Ct. App. 1988) (stating that when a judge finds the requisition in order, the juvenile shall be delivered to the demanding state). The Court in the case of *In re Texas* determined that the ICJ Form signed by the requisitioning state was dispositive of both 'endangerment' and 'best interest' of the juvenile in that the form states, "said juvenile's continued absence from legal custody and control is detrimental to the best interest of said juvenile and the public." 97 S.W.3d 744, 746 (Tex. App. 2003). By contrast, in interpreting [Article IV](#) of the Interstate Compact on Juveniles (the predecessor to the current ICJ), at least one state Supreme Court has held that courts in the holding state must afford a runaway the right to a hearing and 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." *State ex rel. White v. Todt*, 475 S.E.2d 426, 434 n.8 (W. Va. 1996); see *In Re M.D.*, 298 S.E.2d 243, 245 (W. Va. 1982) (court should determine whether return is in the best interest of the runaway); *Application of Pierce*, 601 P.2d 1179, 1183 (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).

Though a runaway who refuses to voluntarily return 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 previously discussed, a juvenile has never been afforded the same spectrum of procedural rights as adults. See generally *In re C.J.W.*, 377 So.2d 22, 24 (Fla. 1979).

One additional factor that must be considered is whether the juvenile is emancipated. When a juvenile who has not been adjudicated delinquent runs away without the consent of the legal guardian or custodial 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. *E.g.*, *People v. Lucas*, 992 P.2d 619, 623 (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.*

#### 4.3.1 JJDPA and Secure Detention of Non-Delinquent Runaways

When a non-delinquent runaway is held in secure detention pending return to the home/demanding state, concerns regarding the requirements of the Juvenile Justice and Delinquency Prevention Act (JJDPA) may arise. The JJDPA's deinstitutionalization of status offenders (DSO) requirement provides that youth charged with status offenses, and abused and neglected youth involved with the dependency courts, may not be placed in secure detention or locked confinement, except under certain circumstances.

Nonetheless, the JJDPA clearly provides an exemption for secure detention for out-of-state runaway youth held pursuant to the ICJ. The JJDPA expressly creates an exemption to the DSO requirements and permits detention of "*a juvenile who is held in accordance with the Interstate Compact on Juveniles as enacted by the State;*" see 34 U.S.C. 11133(a)(11)(A)(III). Moreover, there is no specific time frame set forth in the above provision. Section 34 U.S.C. 11133(a)(11)(A)(III) clearly allows such detention as long as the juvenile is being "held in accordance with the Interstate Compact on Juveniles." This includes the duly authorized administrative rules promulgated under the authority of the ICJ. The Commission's understanding has been affirmed by guidance provided by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). See OJJDP, "[\*An Overview of Statutory and Regulatory Requirements for Monitoring Facilities for Compliance with the Deinstitutionalization of Status Offenders, Separation, a Jail Removal Provisions of the JJDPA,\*](#)" (2019), at page 11.

Challenges to detention of runaways pursuant to the ICJ, and the predecessor compact, have not been successful. *E.g., In re Doe*, 73 P.3d 29 (Haw. 2003) (Under the provisions of the Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. 11133(a)(11)(A)(III) 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.); *L.A. v. Superior Court ex rel. County of San Diego*, 147 Cal. Rptr. 3d 431, 435 n.2 (Cal. Ct. App. 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*"); *Hopkins v. State*, 105 So.3d 470 (Fla. 2012); see 34 U.S.C. 11133(a)(11)(A)(III) (2012); see also Memorandum from Ashley Lippert, Exec. Dir., Interstate Comm'n for Juveniles & Richard L. Masters, Gen. Counsel, Interstate Comm'n for Juveniles, to All Interstate Comm'n for Juveniles Offices (May 20, 2010) (on file with author).



#### 4.4 Voluntary Returns

Second, an out-of-state juvenile may be voluntarily returned under [ICJ Rule 6-102](#). In addition to non-delinquent runaways, this rule applies to 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. [ICJ Rule 6-102\(2\)](#) provides the authority to hold an absconder, escapee, or accused delinquent "at a location it deems appropriate," even in absence of a warrant. See also [ICJ Ad. Op. 01-2019](#) (INTERSTATE COMM'N FOR JUVENILES 2019). For further discussion of issues related to detention, see *infra* Section 4.8.

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 after charges are resolved when pending charges exist in the holding/receiving state unless consent is given by the holding/receiving and demanding/sending states' courts and ICJ offices. See [ICJ RULE 7-103\(1\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024).

The court in the holding state is required to inform the juvenile of their rights and may elect to appoint counsel or guardian ad litem to represent the juvenile in this process. *Id.* at [RULE 6-102\(3\)-\(5\)](#). If the juvenile agrees to return to the home/demanding state, the juvenile must sign the approved ICJ Form III, Consent for Voluntary Return of Out-of-State Juvenile, in the presence (physical or electronic) of the court.

Juveniles must be returned by the home/demanding state within five (5) business days of receiving Form III, Consent for Voluntary Return of Out-of-State Juvenile. This period may be extended up to an additional five (5) working days with approval from both ICJ offices. The [ICJ 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. *Id.* at [RULE 6-102\(6\)-\(9\)](#).

The home/demanding state is also responsible for the costs of transportation and for making transportation arrangements. See *id.* at [RULE 7-101](#). Further, [ICJ Rule 7-102](#) 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.

#### 4.5 Non-Voluntary Returns

Since some juveniles will not voluntarily return, the ICJ Rules set forth procedures for non-voluntary returns to be used when juveniles in custody refuse to voluntarily return and when juveniles whose whereabouts are known need to be picked up and detained pending return. When the juvenile is a runaway or accused status offender, the non-voluntary return process

begins with the legal guardian or custodial agency filing of a requisition in accordance with ICJ Rule 6-103(3)(a) - (c) Where the juvenile is an absconder, escapee, or accused delinquent, a requisition must be filed in accordance with [ICJ Rule 6-103A\(3\)](#).

The obligation of member states to honor requisitions under the ICJ is widely recognized. For example, in *State v. Cook*, the court held that an adult defendant who was properly charged under Texas law with a crime while a child was subject to the jurisdiction of the Texas Juvenile Court. Thus, pursuant to the ICJ, the Washington Court was required to honor Texas' rendition request and return the juvenile to Texas, despite the defendant's claim that he was no longer a juvenile. 64 P.3d 58, 58 (Wash. Ct. App. 2003) ("The Uniform Interstate Compact for 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 return pursuant to the compact to extradition and held that the return proceedings were applicable even after the offender had become an adult if the crimes in question were committed as a juvenile, stating, "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 59. "[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." *Id.*; *see also In re State*, 97 S.W.3d 744, 745 (Tex. App. 2003) (demanding state's requisition under Interstate Compact for Juveniles for return of juvenile from the holding 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 affect 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 a refusal to voluntarily return. Upon receipt of the requisition, 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 must be held within thirty (30) calendar days of receipt of the requisition. *See* ICJ RULES [6-103](#), [6-103A](#) (INTERSTATE COMM'N FOR JUVENILES 2024). Once in detention, the juvenile may be held for a maximum of ninety (90) calendar days, pending non-voluntary return to the home/demanding state. *Id.* The holding/receiving state's age of majority laws determine whether the juvenile shall be held in a juvenile or adult facility. *Id.* at [RULE 7-105\(1\)](#). Also, [ICJ Ad. Op. 03-2012](#) (INTERSTATE COMM'N FOR JUVENILES, 2012).

Neither the ICJ nor its rules require that a juvenile to have an active record in the National Crime Information Center (NCIC) for a holding state judge to honor a home/demanding state's requisition. If a court refuses to take action on a requisition unless there is an active record in NCIC, the holding state judge is essentially creating a new requirement, which is outside of the Compact and therefore is in conflict with the Compact. *See* ICJ RULES [6-103](#), [6-103A](#) (INTERSTATE COMM'N FOR JUVENILES 2024); [ICJ Ad. Op. 04-2021](#) (INTERSTATE COMM'N FOR JUVENILES 2021). Moreover, [ICJ Rule 6-103\(6\)](#) makes it clear that, "The purpose of said hearing [in the holding state] is to determine proof of entitlement for the return of the juvenile." The home/demanding state is

responsible for determining the best interest of the child. For further discussion, *see supra* Section 4.3.

Upon determination that proof of entitlement is established, the court shall order the juvenile's return to the home/demanding state. The [ICJ Rules](#) define "proof of entitlement" as "documentation or other evidence submitted as part of a requisition that enables a court to verify the authority of the requisitioner to the return of a juvenile." *See* [ICJ RULE 1-101](#) (INTERSTATE COMM'N FOR JUVENILES 2024). If proof of entitlement is not established, the Rule requires the court to issue written findings providing the reason(s) for denial. Requisitioned juveniles must 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. *Id.* at [RULE 6-103A\(9\)](#).

Juveniles are to be returned only after charges are resolved when pending charges exist in the holding/receiving state, unless consent is given by the holding/receiving and demanding/sending states' courts and ICJ Offices. *Id.* at [RULE 7-103](#). ICJ Offices should collaborate to ensure the timely return of the juvenile once pending charges have been resolved. In addition to being responsible for the juvenile's return within five (5) 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. *Id.* at [RULE 7-101](#).

When the out-of-state juvenile is a runaway or accused status offender, courts are sometime called upon to address cases in which the legal guardian or custodial agency in the home/demanding state is unable or refuses to initiate the requisition process. In such cases, another appropriate authority in the home/demanding state is required to do so. *Id.* at [RULE 6-103\(10\)](#). In *J.T. v. State*, 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. 954 P.2d 174, 176 (Okla. Civ. App. 1997) ("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 for Juveniles is constitutionally infirm for not requiring such a finding."); *accord In re State*, 97 S.W.3d 744, 746 (Tex. App. 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."); *In re Stacy B.*, 741 N.Y.S.2d 644 (N.Y. Fam. Ct. 2002).

Courts and ICJ offices should also be aware of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), a uniform law approved by the Uniform Law Commission. UCCJEA is another means by which courts are authorized to exercise emergency jurisdiction in cases involving family abuse and limits the relief available in emergency cases to temporary custody orders. However, UCCJEA is not generally relevant to ICJ cases.

In cases where the juvenile is identified as an absconder, questions may arise regarding whether the juvenile is in fact an absconder. The [ICJ Rules](#) define "absconder" as a "juvenile

probationer or parolee who hides, conceals or absents him/herself so that he/she is unavailable for the legal process or authorized control.” See [ICJ RULE 1-101](#)(INTERSTATE COMM’N FOR JUVENILES 2024). It is noteworthy that this definition was amended in 2022 to remove the reference to the juveniles “intent,” so that evidence regarding the juvenile’s intent is not required. For further discussion of absconders under ICJ supervision, see *supra* Section 3.7.5.

**PRACTICE NOTE:** The ICJ and its rules impose upon the member states (including courts of a member state) an absolute prohibition against admitting a juvenile to bond when the home/demanding state enters a warrant into NCIC as a “not eligible for bond.” [ICJ RULE 7-104\(4\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024)

#### 4.6 Retaking/Return of Juveniles After Failed Transfer of Supervision

The fourth circumstance under which a juvenile may be returned pursuant to the compact arises when an ICJ transfer of supervision has failed. There are four scenarios in which this can occur. First, the sending state has absolute authority to retake a juvenile when notified of a violation. Pursuant to ICJ Rule 5-103 (3), the decision of the sending state to retake a juvenile shall be conclusive and not reviewable within the receiving state...” *Id.* at [RULE 5-103\(3\)](#).

Secondly, pursuant to ICJ [Rule 5-103A\(1\)\(a\)](#), the receiving state may determine supervision has failed when a juvenile is not detained and a legal guardian remains in the sending state. In this circumstance, the receiving state must have documented efforts or interventions to redirect the behavior, and one of the following must apply:

- i. The juvenile no longer resides in the residence approved by the receiving state due to documented instances of violation of conditions of supervision; or
- ii. An alternative residence is determined to be in the best interest of the juvenile due to documented instances of violation of conditions of supervision and no viable alternatives have been located in the receiving state; or
- iii. An immediate, serious threat to the health and safety of the juvenile and/or others in the residence or community is identified.

Thirdly, the sending state must take action when a juvenile does not reside with a legal guardian and the person with whom the juvenile resides requests the juvenile be removed from his/her home.. *Id.* at [RULE 5-103A\(1\)\(b\)](#).

Fourthly, the receiving state can determine that a juvenile who is a student or resides independently in the receiving state has a failed transfer of supervision due to documented instances of violations of conditions of supervision, when the receiving state has documented efforts or interventions to redirect the behavior. *Id.* at [Rule 5-103A\(1\)\(c\)](#).

In all such cases the receiving state must notify the sending state of the determination using the Form IX, Failed Supervision Report, which must contain:

- a. Details regarding how the supervising agent determined supervision in the receiving state failed; and
- b. Description of efforts or interventions to redirect behavior or maintain current residence; and
- c. Any pending charges in the receiving state.

The sending state must respond within ten (10) business days and either secure alternative living arrangements or return the juvenile within ten (10) business days. *Id.* at [RULE 5-103A\(3\)](#).

It is clear that under [ICJ Rule 5-101\(1\)](#) a receiving state can apply any standard which is applied to its own juveniles in the evaluation of a particular transfer, and under the provisions of [ICJ 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. See [ICJ Ad. Op. 01-2010](#) (INTERSTATE COMM'N FOR JUVENILES 2010).

If it is necessary to retake a juvenile whose transfer of supervision has failed and the Form VI, Application for Services and Waiver, has the appropriate signatures, no further court procedures are required for the juvenile's return. [ICJ RULE 5-103\(3\)\(b\)](#) (INTERSTATE COMM'N FOR JUVENILES 2024). Upon notification to the receiving state's ICJ Office, 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. Pursuant to the Compact and [ICJ Rule 5-103](#), where there has been a waiver of formal extradition proceedings, officers need only establish their authority and the identity of the juvenile. Once the officers' authority 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. *Id.* at [RULE 5-103](#). Interference by court officials would constitute a violation of the ICJ and its Rules.

Alternatively, a warrant may be issued, and the supervising state (receiving state) shall honor the warrant. In such circumstances, juveniles shall be apprehended and detained, pending return to the sending state. 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 Auth. 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). This provision extends to all juveniles transferred under the compact, including non-adjudicated juveniles who have a deferred adjudication in the sending state. See [ICJ Ad. Op. 04-2011](#) (INTERSTATE COMM'N FOR JUVENILES 2011) ("[ICJ Rule 5-103](#) governs the return of a juvenile to the sending state when an ICJ supervision 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.")

The sending state is required to return the juvenile in such cases within five (5) business days upon receiving notice of the failed transfer of supervision, in a safe manner, pursuant to ICJ

Rules [7-102: Public Safety](#) and [7-107: Airport Supervision](#). See [ICJ RULE 5-103\(3\)\(d\)](#) (INTERSTATE COMPACT FOR JUVENILES 2024). With limited exceptions, the decision to retake a juvenile rests solely in the discretion of the sending state. *Id.* 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. *Id.* at [RULE 5-103\(3\)\(a\)](#).

**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 may require that the sending and receiving states comply with various hearing requirements. See *Morrissey v. Brewer* and *Gagnon v. Scarpelli* *infra* at Section 4.6.1.

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 ICJ is not to regulate the transfer and return of juveniles 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 INTERSTATE COMPACT FOR JUVENILES, [art. I](#) (2008). 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." *Id.* at [art. VII, § A\(2\)](#).

#### 4.6.1 Due Process Rights May Be Triggered by Potential Revocation

The failure of a transfer of supervision may cause the sending states to conclude that the juvenile should be retaken. Pursuant to [ICJ Rule 5-103\(3\)](#), "The decision of the sending state to retake a juvenile shall be conclusive and not reviewable within the receiving state." Furthermore, pursuant to [ICJ Rule 5-103\(3\)\(b\)](#), if "(T)he Form VI, Application for Services and Waiver, has the appropriate signatures; no further court procedures will be required for the juvenile's return." Therefore, it is clear that no due process hearing is required by the Compact or the ICJ Rules.

Nonetheless, constitutional due process considerations outlined by the U.S. Supreme Court may be triggered in some cases. It is important to emphasize that there may be a distinction between retaking that may result in revocation and retaking that will not result in revocation of the juvenile's probation/parole.

Where the retaking of a juvenile may result in revocation of conditional release by the sending state, some courts may take additional measures to address basic due process considerations that are the foundation of the Supreme Court's decisions in *Morrissey, supra.*, *Gagnon, supra.*, *In re Gault, supra.*, and the [ICJ Rules](#). In some cases, probable cause and other

due process considerations are addressed during a detention hearing, arraignment, or other initial hearing.

As discussed in Section 4.1 *supra*, juveniles who are adjudicated delinquent have limited rights. Nonetheless, several U.S. Supreme Court cases may affect the process for retaking of juveniles whose transfers of supervision 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, 481 (1972) (parolee entitled to revocation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782-83 (1973) (probationer entitled to revocation hearing); *Carchman v. Nash*, 473 U.S. 716, 725-26 (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).

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, e.g., People ex rel. Silbert v. Cohen*, 29 N.Y.S.2d 12 (1971). In *State v. K.M.*, the Court, relying on *Morrissey*, held that a juvenile revocation hearing based upon a delinquent juveniles' failure to comply with sex offender treatment protocols was "subject to minimum procedural due process protections and do not require the same kind of procedural safeguards as a criminal trial. *Morrissey*, 408 U.S. at 481-85." No. 49566-0-II, 2018 WL 1108744, at \*3 (Wash. Ct. App. Feb. 27, 2018); *see also State v. Robinson* 85 P.3d 376 (Wash. Ct. App. 2004).

#### 4.6.2 Right to Counsel

Under the [ICJ Rules](#), a state is not specifically obligated to provide counsel in circumstances of retaking or revocation. Nonetheless, in the case of a requisition hearing to affect the non-voluntary return of an absconder, escapee or accused delinquent, a court has the discretion to appoint counsel or guardian ad litem. *See ICJ RULE 6-103(A)(6)* (INTERSTATE COMM'N FOR JUVENILES 2024). 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 if he or she may have difficulty in presenting their version of disputed facts, cross-examining witnesses, or presenting complicated documentary evidence. *Gagnon v. Scarpelli*, 411 U.S. 778, 788 (1973); *see generally In re Gault*, 387 U.S. 1 (1967); *see also Silbert v. Cohen*, 29 N.Y.S.2d 12 (1971); *People ex rel. Arthur F. v. Hill*, 29 N.Y.S.2d 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*, 411 U.S. 778. 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. *E.g.*, *State v. Ellefson*, 334 N.W.2d 56, 57 (S.D. 1983). However, the law in this area is unsettled. At least one case provides insight into the Supreme Court's jurisprudence with regard to the right to counsel in non-traditional criminal sentencing proceedings. *See, e.g.*, *Alabama v. Shelton*, 535 U.S. 654, 662 (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 for the underlying offense, not for the probation violation. 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 they 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).

#### **4.6.3 Probable Cause Hearings**

If one assumes the principals outlined in *Morrissey* and *Gagnon* are applicable to juveniles as well as adults, a juvenile must be afforded a probable cause hearing where retaking was triggered by something other than the commission of a new felony offense *and* revocation of conditional release by the sending state is likely. 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, supra*. And *Morrissey, supra*. 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. The 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.

#### 4.6.4 Retaking Hearings

The *Gagnon* and *Morrissey* decisions do not require probable cause type hearings in all circumstances of retaking. 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 whose supervision has been transferred. See [ICJ Rule 5-103](#) (INTERSTATE COMM'N FOR JUVENILES 2024). Retaking hearings are narrower in focus, and generally conducted to confirm the identity of the juvenile and the authority of the demanding officer.

For example, in *Ogden v. Klundt*, 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. 550 P.2d 36, 39 (Wash. Ct. App. 1976). 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 are 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 holding 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).

It is also important to note is that state courts sometimes choose to grant more due process and other protections under their state constitutions than available under the federal Constitution. *See, e.g., State v. Henry*, 732 P.2d 9 (1987); *State v. Pellicci*, NH S.Ct., 580 A.2d 710 (1990).

#### **4.7 ICJ Business Records as Evidence**

While courts may request testimony from out-of-state personnel to corroborate the alleged violations, state courts generally lack jurisdiction to require testimony from someone in another state. Therefore, admission of reliable “business records” available through the Commission’s UNITY data management system can be critical.

UNITY is the Uniform Nationwide Interstate Tracking for Youth data management system created by the Interstate Commission to support the implementation of the ICJ. Data from the UNITY system can provide the evidence needed in hearings pertaining to the transfer or return of a juvenile subject to the ICJ, and is admissible pursuant to the “business records exception” to the “hearsay rule” that allows for such records to be admitted into evidence.

At the heart of the “business records exception” is a concern with trustworthiness; and the requirements in FRE 803(6) exist to ensure that the records are in fact trustworthy. State ICJ personnel can work in conjunction their agency’s legal advisor to ensure that the requirements outlined above are met and data from the UNITY system can provide the evidence needed in hearings pertaining to the transfer or return of a juvenile subject to the ICJ. *See Interstate Comm’n for Juv., “[Use of ICJ Records Rather Than Testimony](#),”* (2021).

Additionally, the ICJ Commission developed the UNITY system in compliance with the mandates of the ICJ statute and duly authorized rules, as well as the FBI’s Criminal Justice Information Services (CJIS) Security Policy. Therefore, the use of UNITY is permitted pursuant to the HIPAA exemptions with respect to both Personal Identifiable Information (PII) as well as Personal Health Information (PHI). *See [ICJ Ad. Op. 01-2021](#) (INTERSTATE COMM’N FOR JUV., 2021).*

#### **4.8 Detention**

When a juvenile is detained pursuant to the ICJ, local authorities must advise the holding state’s ICJ office. The holding state’s ICJ office shall contact the juvenile’s home/demanding state’s

ICJ Office concerning the case. [ICJ Rule 6-102\(2\)](#) provides the authority to hold an absconder, escapee, or accused delinquent “at a location it deems appropriate,” even in absence of a warrant. (“In the absence of an active warrant, the holding state shall have the discretion to hold the juvenile at a location it deems appropriate.”) *See also* [ICJ Ad. Op. 01-2019](#) (INTERSTATE COMM’N FOR JUVENILES 2019).

[ICJ Rule 7-105 \(1\)](#) provides guidance regarding the secure detention while the juvenile is pending return:

Where circumstances require the holding/receiving court to detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the holding/receiving state. This would include an out-of-state juvenile that is charged as an adult and is subject to extradition under the Uniform Criminal Extradition Act (UCEA), or the home/demanding state’s own extradition laws.

However, the laws of holding/receiving state must be applied to determine the type of secure facility to be used when an individual is detained pursuant to the ICJ. If an individual is detained pursuant to the ICJ, the age of majority of the receiving state determines the type of secure facility in which the juvenile shall be held. For a discussion of issues concerning age of majority in relation to transfers of supervision, *see* discussion *supra* Section 3.4.3. For discussion of concerns related to the Juvenile Justice Delinquency and Prevention Act (JJDP), *see supra* Section 4.3.1.

Habeas corpus is generally unavailable to offenders being held pending return to the sending state under an interstate compact. *See supra* Section 4.1.2.

#### **4.8.1 Detention Required / Not Eligible for Bond**

A juvenile subject to a warrant issued under ICJ jurisdiction has no right to bail. Moreover, [ICJ Rule 7-104\(4\)](#) specifically prohibits any court or paroling authority in *any holding state* from releasing a juvenile in custodial detention to bail. Given that the ICJ mandates that the rules of the commission must be afforded standing as statutory law in every member state, the “not eligible for bond” provision of [ICJ Rule 7-104\(4\)](#) has the same standing as if the rule was a statutory law promulgated by that state’s legislature. *See* INTERSTATE COMPACT FOR JUVENILES, [art. IV](#) (2008). In *Schall v. Martin, supra*, the U.S. Supreme Court noted that “The juvenile’s . . . interest in freedom from institutional restraints . . . must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*.” 467 U.S. 253, 265 (1984). Thus, the U.S. Supreme Court reiterated that juveniles do not enjoy the same level of constitutional protection as adults.

The “not eligible for bond” provision in [ICJ Rule 7-104\(4\)](#) is not novel. In fact, State Constitutions generally prohibit or significantly limit eligibility of bail for adjudicated or convicted offenders, including adjudicated delinquents. This is also the case with regard to adult offenders under similar requirements of the Interstate Compact for Adult Offender Supervision (ICAOS). The rationale for denial of bail to both adjudicated juveniles as well as convicted adult offenders has been concisely stated in *Ogden v. Klundt*, 550 P.2d 36, 39 (Wash. Ct. App. 1976)(“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.”) See [ICJ Ad. Op. 01-2022](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

The Interstate Compact for Adult Offender Supervision “ICAOS” also 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.”). Moreover, officials in a receiving state have been held to be bound by no bail determinations made by officials in a sending state under the predecessor statute to ICAOS. See, e.g., *State ex rel. Ohio Adult Parole Auth. 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 Compact by Pennsylvania decision as to consideration of probationer for release). States have recognized the propriety of the “no bail” requirements associated with the Adult Compact, 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. 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). See *Morrissey v. Brewer*, 408 U.S. 471, 481, 488 (1972) (“The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, as respondents suggest occurs in some cases, would not appear to be unreasonable”). See also *Doggett v. United States*, 505 U.S. 647, 651 (1992) (“delays of less than a year (between indictment and trial) are as a general matter constitutionally adequate . . .’); accord *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

**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 bond when the home/demanding state enters a warrant into NCIC as “not eligible for bond.”



## CHAPTER 5

### TRAVEL PERMITS

#### 5.1 Importance of Travel Permits

For many juveniles under probation or parole supervision, out-of-state travel is prohibited unless special authorization for travel is granted by probation/parole authorities. Limiting the rights of under supervision to travel does not violate their constitutional rights. *E.g., In re Antonio R.*, 93 Cal. Rptr. 2d 212, 215 (Cal. Ct. App. 2000) (holding that the ICJ accords juvenile court broad discretion to restrict travel, which does not “impermissibly burden” the juvenile’s constitutional rights). Consequently, the ICJ has put into place special rules governing travel.

Despite this common condition of probation/parole, out-of-state travel is extremely common, as juveniles may need to travel out-of-state for healthcare, education, employment, or family purposes. In many cases, juveniles are adjudicated in states other than where they or their legal guardian reside or their or custodial agency is located. Therefore, the ICJ and its rules provide mechanisms for issuance of travel permits to ensure that juveniles can travel to other states when needed, help keep track of supervised juveniles, and promote public safety. Travel permits are frequently required for supervised youth traveling to another state, regardless of whether supervision has been transferred pursuant to the ICJ.

#### 5.2 Time Parameters

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. Travel permits cannot be issued on a consecutive, ninety (90) calendar day rolling basis to circumvent the process for transferring supervision through the ICJ. See [ICJ Rule 8-101\(4\)](#) (INTERSTATE COMM’N FOR JUVENILES 2024).

#### 5.3 Mandatory Travel Permits

[ICJ Rule 8-101](#) governs the issuance of travel permits and requires travel permits for specific juveniles when traveling out-of-state for a period in excess of twenty-four (24) consecutive hours. Regardless of whether supervision has been transferred, travel permits are mandatory for juveniles who have been adjudicated or have deferred adjudications and are on supervision for the most serious offenses, specifically:

- sex-related offenses;
- violent offenses that have resulted in personal injury or death; and
- offenses committed with a weapon.

Travel permits are also required in some cases based on certain circumstances related to the juvenile or the travel. Thus, travel permits are mandatory for juveniles who are:

- state committed;
- pending a request for transfer of supervision;
- returning to the state from which they were transferred for the purposes of visitation;
- transferring to a subsequent state(s) with the approval of the original sending state; or
- have transferred to another state and the victim notification laws, policies, and practices of the sending and/or receiving state require such notification. *Id.*

In some cases, travel by supervised juveniles triggers victim notification requirements. The sending state's supervising officer is responsible for victim notification in accordance with the laws and policies of that state. *Id.* at [RULE 8-101\(5\)](#). For more discussion regarding victim notification requirements, *see* discussion *supra* Section 3.9.

#### 5.4 Discretionary Travel Permits

Travel permits are sometimes issued in cases in which they are not required, particularly when a supervised juvenile travels out-of-state to a residential facility for placement. Pursuant to [ICJ Rule 4-101\(2\)\(f\)\(i\)](#), a supervised juvenile placed in a residential treatment facility is not eligible for a transfer of supervision through ICJ. Nonetheless, some states issue travel permits for juveniles traveling to such facilities in the interest of community safety. This scenario is permitted by [ICJ Rule 8-101\(2\)](#), which states: "juveniles traveling to a residential facility for placement shall be excluded from this rule; however, states may elect to use the Form VII, Out-of-State Travel Permit and Agreement to Return, for notification purposes."

#### 5.5 Travel Permit Requirements related to Transfer of Supervision

A travel permit may be issued to allow for "testing a residence," i.e. to allow parties to determine if the living arrangement is suitable. However, travel permits cannot be substituted for transfer of supervision. Issuance of multiple travel permits for a juvenile who is eligible for transfer of supervision constitutes a violation of the ICJ and its rules.

Out-of-state travel for a juvenile under Compact supervision is at the discretion of the supervising person in the receiving state. If the sending state wishes to retain authority to approve travel, it shall do so by notifying the supervising state in writing. When the sending state retains authority to approve travel permits, the receiving state shall request and obtain approval prior to authorizing the juvenile's travel. *Id.* at [RULE 8-101\(4\)](#). Further discussion of issues related to transfers of supervision is provided in Chapter 3, *supra*.



### 5.5.1 Travel Permits Prior to Relocation for Parolees and Juvenile Sex Offenders

Travel permits are commonly used when it is necessary for the juvenile to relocate prior to acceptance of supervision. *Id.* at [RULE 8-101](#). Special care must be taken when it is necessary for a paroled juvenile or a juvenile sex offender to relocate prior to the acceptance of supervision due to the lack of a legal guardian in the sending state. If the sending state determines that the circumstance justifies the issuance of a Travel Permit, it must provide a written explanation as to why regular procedures for submitting the referral could not be followed. Then, the sending state must provide the complete referral to the receiving state within ten (10) business days. The receiving state has discretion regarding whether to expedite the referral. *Id.* at [RULE 4-102\(2\)\(a\)\(ii\)-\(iii\)](#); [RULE 4-103\(3\)](#).



## CHAPTER 6

### LIABILITY AND IMMUNITY CONSIDERATIONS FOR JUDICIAL OFFICERS AND EMPLOYEES

**PRACTICE 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.

#### 6.1 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 Dev. Ctr.*, 621 F.3d 249 (3rd Cir. 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., Ala. Dept. of Corr. v. Merritt*, 74 So. 3d 1 (Ala. Ct. App. 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 (Tex. 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); *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*, 319 S.W.3d 914 (Tex. App. 2010). If a state chooses by legislation to waive its immunity, a court strictly construes the waiver in favor of the state. *Bd. of Educ. of Baltimore Cty. 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 Neb.*, 788 N.W.2d 264 (Neb. 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. Wash. Metro. Area Transit Auth.*, 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); accord *Proctor v. Wash. Metro. Area Transit Auth.*, 990 A.2d 1048 (Md. 2010).

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.

**PRACTICE 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.

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*, the court rejected the immunity claims by a private contractor hired to administer a pre-trial diversion program. 517 F.3d 1070 (9th Cir 2008) 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 Eleventh 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 Auth. of La.*, 823 F. Supp .2d 420 (W.D. La. 2011), *Frazier v. Pioneer American LLC*, 455 F.3d 542, 547 (5th Cir. 2006)

## 6.2 Liability Considerations under 42 U.S.C. § 1983

### 6.2.1 General Principles

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, 2007 WL 2994070 (D. Kan. Oct. 12, 2007); *see also Sconce v. Interstate Com'n for Adult Offender Supervision*, No. CV 08-39-M-DWM-JCL, 2009 WL 579399 (D. Mont. Mar. 5, 2009); *see also Ball v. Gootkin*, 2022 WL 215163 (S. Ct. Mont. January 25, 2022). 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. Wash. Suburban Sanitary Comm'n*, 66 F.3d 669 (4th Cir. 1995).

## 6.2.2 Private Right of Action under an Interstate Compact

In a compact similar in purpose and scope to the 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. Pa. Bd. of Prob. 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 M.F. v. N.Y. Exec. Dept. Div. of Parole*, 640 F.3d 491 (2d Cir. 2011); *Orville Lines v. Wargo*, 271 F. Supp. 2d 649 (W.D. Pa. 2003). *See also* Lucero v. Pennella et. al., 2019 WL 3387094, USDC, (E.Dist. CA, 2019). 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 ICJ speak only to the obligations of the party states and not the rights of individuals. The language of the 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 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. Miss. Dep't of Corr.*, 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. Miss. Dep't of Corr.*, 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. Miss. Dep't of Corr.*, 841 So.2d 1127 (2003). Given the similarities in scope, purpose and effect between the 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 ICJ who then harms another person.

## 6.3 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*, 710 F. Supp. 2d 408 (S.D.N.Y. 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*, 739 F.Supp.2d 1005 (W.D. Mich. 2010).

### 6.3.1 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. 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*, 702 S.E.2d 17 (Ga. Ct. App. 2010).

### 6.3.2 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*, 7<sup>th</sup> 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*, 325 S.W.3d 481 (Mo. Ct. App. 2010).

### 6.3.3 Types of “Acts” Under the ICJ\*

The distinction between discretionary and ministerial is a critical consideration for state officials charged with administering the ICJ. Many of the [ICJ Rules](#) impose ministerial acts on state officials. *See, e.g., ICJ Rule 4-102 (INTERSTATE COMM’N FOR JUVENILES 2024) (Sending and Receiving Referrals); [5-101\(4\)](#) (mandating the quarterly filing of reports); [8-101](#) (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, [ICJ Rule 4-104](#) 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 the sending state provide written notification of the juvenile's departure to the receiving state.*

## 6.4 Immunity Waiver

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\* The question of whether a state official’s acts under the 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* Section 6.3.1 – 6.3.2. 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.



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 (Wash. 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 (N.D. Ga. 1980).

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 Cty.*, 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).

## 6.5 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. Ga. State Bd. of Pardons & Paroles*, 851 F.2d 1307, 1310 (11th Cir. 1988); *Clark v. 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 Prob.*, 690 P.2d 38 (Ariz. 1984). The relocation of juveniles by a probation counselor is an administrative function and the court's mere knowledge of a relocation 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).

## 6.6 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.

*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 Cty./Kansas City, Kan.*, 432 F.3d 1163, 1165 (10th Cir. 2005); *Robinson v. Warden, N. NH Corr. Facility*, 634 F. Supp. 2d 116 (D. Me. 2009) 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, 2007 WL 2994070 (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).

## 6.7 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 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. City of Philadelphia*, 92 Fed. Appx. 873 (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 Serv., 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*, 98 F. Supp. 2d 672 (E.D. Pa. 2000).

## 6.8 Summary of Cases Discussing Liability in the Context of Supervision

### 6.8.1 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 Inst. of Wash., 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 Corr. 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 Sys.*, 89 P.3d 800 (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 Cty. Adult Prob. 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 P.2d 352 (Cal. 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 (Idaho 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 & Cmty. 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. Ct. 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. S.C. 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. Ct .App. 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.

### 6.8.2 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*, 151 P.3d 353 (Alaska 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 (W.D. 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. 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.
- *Dep't of Corr. v. Lamine*, 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 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 & Corr.*, 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 Cty.*, 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. Ct. 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.

## APPENDIX

### COMMISSION RESOURCES

The Interstate Commission for Juveniles provides a wide variety of resources to assist states in implementing the Compact. Resources are distributed primarily through the Commission's website: [www.juvenilecompact.org](http://www.juvenilecompact.org). Links to key legal resources and process charts are provided below.

#### ORGANIZING DOCUMENTS

- ❖ [INTERSTATE COMPACT FOR JUVENILES – STATUTORY LANGUAGE](#)
- ❖ [ICJ RULES](#)
- ❖ [BY-LAWS OF THE INTERSTATE COMMISSION FOR JUVENILES](#)

#### WHITE PAPERS

- ❖ [Why Your State Can Be Sanctioned for Violating the Compact](#) (September 2012)
- ❖ [Temporary Secure Detention of Non-Adjudicated Juvenile Runaways](#) (October 2013)
- ❖ [Transfer of Jurisdiction Not Authorized Pursuant to the Interstate Compact for Juveniles](#) (February 2020)
- ❖ [Distinction Between Suspension of ICJ Rules & Suspension of Enforcement](#) (October 2020)
- ❖ [ICJ Returns, Human Trafficking, and Federal Authorities](#) (May 2021)
- ❖ [Use of ICJ Records Rather than Testimony by Out-of-State Personnel](#) (August 2021)

#### PROCESS CHARTS

- ❖ [Overview of the Transfer of Supervision](#)
- ❖ [Travel Permit Overview](#)
- ❖ [Release of a Non-Delinquent Runaway](#)
- ❖ [Voluntary Return of a Juvenile](#)
- ❖ [Non-Voluntary Return of a Runaway and/or Accused Status Offender](#)
- ❖ [Non-Voluntary Return of an Escapee, Absconder, or Accused Delinquent](#)
- ❖ [Return for Failed Transfer of Supervision](#)
- ❖ [Transportation Overview for Returning a Juvenile to the Home/Demanding/Sending State via Air](#)

## ADVISORY OPINIONS

- ❖ [Advisory Opinion 01-2009](#) (June 24, 2009)  
ICJ Appropriate Appointing Authority
- ❖ [Advisory Opinion 02-2009](#) (June 24, 2009)  
Authority of Ex-Officio members and “appointees” or “proxies” in ICJ Commission meetings
- ❖ [Advisory Opinion 03-2009](#) (August 31, 2009)  
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
- ❖ [Advisory Opinion 01-2010](#) (January 25, 2010)  
Receiving state’s ability to sanction Juveniles under ICJ Rule 5-101(1)
- ❖ [Advisory Opinion 04-2010](#) (July 22, 2010)  
Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands
- ❖ [Advisory Opinion 05-2010](#) (September 13, 2010)  
Clarification for juveniles who are undocumented immigrants
- ❖ [Advisory Opinion 01-2011](#) (February 10, 2011)  
HIPAA Exemptions for the ICJ
- ❖ [Advisory Opinion 03-2011](#) (May 26, 2011)  
Pleas and abeyance cases for non-adjudicated juveniles
- ❖ [Advisory Opinion 04-2011](#) (October 24, 2011)  
Non-adjudicated juveniles held in secure detention for a failed supervision
- ❖ [Advisory Opinion 01-2012](#) (January 26, 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
- ❖ [Advisory Opinion 02-2012](#) (April 10, 2012)  
Detention and supervision fees associated with new charges

- ❖ [Advisory Opinion 03-2012](#) (August 23, 2012)  
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?
- ❖ [Advisory Opinion 05-2012](#) (July 26, 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
- ❖ [Advisory Opinion 03-2014](#) (September 18, 2014)  
Provisions for cooperative detention within ICJ
- ❖ [Advisory Opinion 04-2014](#) (December 11, 2014)  
ICJ Authority in Cases where Approval of Supervision May Result in Violation of Court Orders
- ❖ [Advisory Opinion 02-2015](#) (August 24, 2015)  
Signatures on the Form VI
- ❖ [Advisory Opinion 01-2016](#) (July 28, 2016)  
Pre-adjudicated home evaluation requests
- ❖ [Advisory Opinion 02-2017](#) (October 6, 2017)  
Out-of-state juvenile sentenced to incarceration
- ❖ [Advisory Opinion 01-2018](#) (January 25, 2018)  
Transfer of Supervision where the Parent May be Homeless
- ❖ [Advisory Opinion 02-2018](#) (June 28, 2018)  
Return of Juvenile Serving a Sentence for New Offense in a Receiving State
- ❖ [Advisory Opinion 03-2018](#) (September 10, 2018)  
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.
- ❖ [Advisory Opinion 01-2019](#) (January 24, 2019)  
In the absence of a warrant, what would appropriately authorize a holding state to hold a juvenile
- ❖ [Advisory Opinion 02-2019](#) (March 28, 2019)  
State's obligation to inform juvenile that s/he may not be returned to home state and whether the Form III may be withdrawn

- ❖ [Advisory Opinion 04-2019](#) (September 9, 2019)  
Is the use of an outdated Form VI a legitimate basis for the receiving state to treat the referral of a supervision case as an incomplete referral?
- ❖ [Advisory Opinion 01-2020](#) (March 1, 2020)  
Can receiving state require sending state to provide revised Forms VI and IV when a juvenile makes an intrastate move after transfer of supervision is approved?
- ❖ [Advisory Opinion 01-2021](#) (May 19, 2021)  
HIPAA permits sharing information as required by the ICJ, including through the UNITY System
- ❖ [Advisory Opinion 02-2021](#) (May 19, 2021)  
Limits of ICJ authority to conduct records checks for another state on juveniles not subject to ICJ.
- ❖ [Advisory Opinion 03-2021](#) (August 19, 2021)  
Does the prohibition against communication between ICJ member states as provided in ICJ Rule 2-104 forbid all communication between a supervised juvenile and prior case workers in the sending state once supervision is accepted?
- ❖ [Advisory Opinion 04-2021](#) (November 18, 2021)  
Can a holding state judge refuse to take action on a requisition if there is no active missing person record for the juvenile in NCIC?
- ❖ [Advisory Opinion 01-2022](#) (August 25, 2022)  
ICJ Limits on Issuance of Bail by Holding State