	Interstate Commission for Juveniles	Opinion Number: 01-2022	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters			
Description: ICJ Limits on Issuance of Bail by Holding State		Dated: August 25, 2022 Revised: March 23, 2023 ¹	

Background:

The ICJ Executive Committee has referred the legal review of a potential conflict between ICJ Rule 7-104(4) which prohibits a juvenile in custody in a holding state pursuant to a warrant issued by a juvenile court from another state from being released on bond and ICJ Art. XII § A(2) under which some states raise constitutional provisions that establish a “right to bail” in certain cases. Concerns were raised after bail was issued in multiple cases in which pre-adjudicated youths detained pursuant to ICJ on warrants issued by a home/demanding state were subsequently released on bond issued by a judge in a holding state.


Issues:

As Chairperson of the ICJ Rules Committee, the Commissioner of the State of North Carolina has asked, “What authority does a judge in a holding state have to issue bond, or bail, on an ICJ case from another state?” The NC Commissioner takes the position that a holding state does not have the authority to issue bail or bond on such a case and has asked for a legal analysis of the authority which allows or prohibits the holding state court from doing so.

Applicable Compact Provisions and Rules:

The ICJ has been adopted by all 50 states, the District of Columbia, and the US Virgin Islands for the express purpose of governing the interstate movement of juveniles, including “. . . 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; . . .” See [ICJ Article I](#). Thus, the ICJ is the applicable body of law when a juvenile has left their home state and has run away, absconded, escaped from supervision, or been accused of an offense in another state requesting their return. Once a state legislature has enacted the compact, its provisions bind all agencies, state officials, and citizens to terms of the compact. Thus, application of ICJ is not discretionary, it is mandatory in all cases that fall within its subject matter. Further discussion of the legal implications of interstate compacts is available in the Commission’s [Bench Book for Judges and Court Personnel](#), Chapter 1.

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Article IV of the ICJ statute provides the powers and duties of the Interstate Commission for Juveniles and expressly identifies these powers which include the following:

2. To promulgate rules to effect the purposes and obligations as enumerated in this Compact, 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;** (emphasis supplied).
3. **To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact** and any by-laws adopted and rules promulgated by the Interstate Commission. (emphasis supplied):
4. **To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.”** (emphasis supplied).


ICJ Generally Prohibits Bail

The Commission has promulgated rules applicable to holding states with respect to juvenile cases from other states. ICJ Rule 7-104 (4) provides in relevant part: “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.**” (emphasis supplied).

The ICJ Bench Book references the above provisions of ICJ Rule 7-104 and states at Section 4.8.1 as follows:

“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* to admit 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). . .*”

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Furthermore, Rule 6-103A provides that: “Probation/parole escapees, absconders or accused delinquents who have been taken into custody on a warrant shall be detained in secure facilities until returned by the demanding state.” Similar provisions are included in ICJ Rule 6-102 and 6-103. Thus, the ICJ Rules are clear: when a juvenile is in custody in a holding state pursuant to a warrant issued by a juvenile court in another state, the holding state shall not release the juvenile in custody on bond.


Analysis of Right to Bail Provisions in State Constitutions

Nonetheless, state courts are sometimes called upon to issue bail in cases involving ICJ youth, based upon state constitutional provisions. Many state constitutions include provisions that establish a “right to bail” for most offenses. For example, the Constitution of the State of Washington states: “All persons charged with a crime shall be bailable by sufficient sureties...” Washington Const. art. I, § 20. It is understandable that such constitutional provisions can create confusion when compared with ICJ Art. XII § A(2) which 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.” Thus, if there is conflict between the Compact and a state constitution, the state constitution prevails. However, the applicability of this provision only arises where there is an actual conflict between the state constitution and the ICJ.

It is clear that provisions such as the foregoing bail requirement are not applicable to adjudicated or convicted offenders and case law in virtually every state has uniformly held such requirements applicable only prior to trial and not following conviction. See for example *State v. Smith*, 527 P.2d 674 (1974) in which the Washington Supreme Court held that there is “no implication that this provision and its limitation are, or should be, applicable to bail and release of criminal defendants after conviction and pending appeal.” also *State v. Currington*, 700 P.2d 942 (1985)[Idaho Supreme Court held this constitutional section providing that all persons should be bailable by sufficient sureties except for capital offenses confers right to bail only prior to trial and not following conviction or during pending appeal. [Const. Art. 1, § 6](#)].

Moreover, the state constitutional provisions which otherwise would require bail 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.

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Courts must determine jurisdiction over the defendant and the subject matter. Before they may act, courts must ensure their power to act. See *In re: 2016 Primary Election*, 836 F.3d 584 (6th Cir. 2016). It is equally important to emphasize that 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.

Therefore, the jurisdiction of the holding state court is limited to that which is granted by the ICJ. When a pre-adjudicated juvenile is detained pursuant to a warrant from another state, the ICJ only authorizes the holding state court to take such action as is necessary to return the juvenile to the demanding state. It does not grant jurisdiction for the holding state to take any other action to adjudicate the matter at bar. Since the holding state court lacks jurisdiction to address bail, there is no conflict between state the state constitutional bail provision and the ICJ Rules.


Since the juvenile in question is the subject of a proceeding from another state over which the holding state does not have the authority to adjudicate the matter, the holding state’s provisions related to bail are not applicable. Instead, the provisions of ICJ Rule 6-102, 6-103, or Rule 6-103A must be applied, particularly those related to detainment.

Full Faith and Credit Clause

Moreover, the Full Faith and Credit Clause of the U.S. Constitution also appears to apply to require the judgment or order of the state where the juvenile was adjudicated to the judicial proceeding in the state where the juvenile is detained. 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 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.,

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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); See Art. IV, § 1. 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).

Summary

In sum, the Interstate Compact for Juveniles and applicable ICJ Rules, as well as the Full Faith and Credit Clause of the Constitution, are applicable to the situation put forward by the ICJ Commissioner from North Carolina. Based on the above authorities, a judge in a holding state does not have the authority to issue bond or bail on an ICJ case from another state.

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