


**UNDERSTANDING EXTRADITIONS**

**UCEA, DUE PROCESS, & MORE**

OCTOBER 20, 2020  
1:00 – 2:30 PM EST




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**UNDERSTANDING EXTRADITIONS**

**AD HOC COMMITTEE ON JUVENILE/ADULT ISSUES**

- Julie Hawkins (MO), Chair
- Tomiko Frierson (IL)
- Jeff Cowger (KS)
- Cathy Gordon (MT)
- Caitlyn Bickford (NH)
- Nina Belli (OR)
- Daryl Liedecke (TX)
- Ellen Hackenmueller (AK)
- Howard Wykes (AZ)
- Tracy Howard (FL)
- Maxine Baggett (MS)
- Edwin Lee, Jr. (NJ)
- Stephen Horton (NC)
- Natalie Primak (PA)
- Amanda Behe (PA)
- Richetta Johnson (VA)
- Joy Swantz (WI)




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**UNDERSTANDING EXTRADITIONS**

**AD HOC COMMITTEE ON JUVENILE/ADULT ISSUES**

- Developed 4 Rule Amendment Proposals
- Recommended revision of Advisory Opinion 2018-04
- Developed Best Practice: Bail/Bond for Adult Charges in the Holding State with Juvenile Warrant in the Demanding State
- Recommended Training re: Extraditions & Adult Processes




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## UNDERSTANDING EXTRADITIONS

**Presenters**

- **Rick Masters**, Legal Counsel
- **Cathy Gordon**, Montana Commissioner, Adult & Juvenile Compacts
- **Susan Meier**, New Jersey Extradition Secretary

**Moderator**

- **MaryLee Underwood**, Executive Director




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## UNDERSTANDING EXTRADITIONS

**RICK MASTERS**  
LEGAL COUNSEL, ICJ




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## UNDERSTANDING DUE PROCESS



Due Process Established by  
U.S. Constitution

**“No person shall . . . be deprived of life, liberty, or property, without due process of law”**  
- 5<sup>th</sup> Amendment (applies to federal authorities)

**“. . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . .”**  
- 14<sup>th</sup> Amendment (extends to state authorities)

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### UNDERSTANDING DUE PROCESS



U.S. Supreme Court interprets Due Process clauses broadly, concluding that they provide:

- procedural due process (in civil & criminal proceedings); &
- substantive due process (prohibiting vague laws)

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### DUE PROCESS FOR JUVENILES

#### In re Gault, 387 U.S. 1 (1967)



U.S. Supreme Court determined the Constitution requires the Due Process Clause of the 14<sup>th</sup> Amendment applies to juvenile defendants, as well as adult defendants; and that a youth charged with delinquency in juvenile court has many of the same due process rights guaranteed to adults accused of crimes such as:

- Right to Counsel
- Right against self-incrimination
- Right to notice of charges & to confront witnesses against them

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### DUE PROCESS FOR JUVENILES

#### Kent v. U.S., 383 U.S. 541 (1966)



Juvenile offenders are entitled to same amount of due process of law as adults while under the jurisdiction of a juvenile court, including:

- Right to have charges proved against them beyond a reasonable doubt
- Right against double jeopardy

Juvenile arrested without a warrant must be provided with a probable cause hearing

- *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

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### ADDITIONAL DUE PROCESS CASE LAW

- McKeiver v. Pennsylvania, 403 U.S. 528 (1971)
- In re Anthony, 763 A.2d 136 (Md. 2000)
- In re Roneikas, 920 A.2d 496 (Md. Ct. App. 2007)
- People v. Anderson, 825 N.W.2d 678 (2012)
- Breed v. Jones, 421 U.S. 519 (1975).
- In Interest of Davis, 546 A.2d 1149, 1153 (Pa. Super. Ct. 1988)
- In Interest of W., 377 So. 2d 22 (Fla. 1979)
- State v. Angel C., 715 A.2d 652, 667 (Conn. 1998)




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### ICJ & DUE PROCESS

- ICJ Rules & Forms provide due process protections
  - Fair treatment across state lines
  - Hearing requirements
  - Notification requirements
- All state & local officials must ensure due process
- Judges provide final line of protection




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**Form IA/VI**  
Waiver of Due Process Rights

Documents juvenile's understanding of ICJ process & waives Constitutional due process rights

Some judges won't accept because it waives Constitutional due process rights

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## UNDERSTANDING EXTRADITIONS



### Extradition Clause U.S. Constitution, Art. IV, Sec. 2

"A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

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## UNDERSTANDING EXTRADITIONS

### Federal Extradition Law

#### 18 U.S.C § 3182

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District, or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District, or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within 30 days from the time of the arrest, the prisoner may be discharged.

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## UNDERSTANDING EXTRADITIONS

### Uniform Criminal Extradition Act (UCEA)

- Constitution and federal statute place outer limits on extradition procedures, but states are free to use more relaxed standards
- UCEA provides additional standards and procedures
- Uniform law adopted by most states, but not all
  - Drafted as a "uniform law," but each state makes changes
  - State that have not adopted may have similar statute or may make Executive Agreement with other states

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**COMPACTS AS ALTERNATIVES TO EXTRADITION**

- Interstate Compact for Juveniles (ICJ)
- Interstate Compact for Adult Offender Supervision (ICAOS)
  - Both authorized by Congress
    - Congressional consent: Crime Control Act (4 USC § 112(a))
    - Permitted by Compact Clause, US Constitution (Art. I , Sec. 10, Clause 3)




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**ICJ RETURN OR UCEA EXTRADITION?**



- Both may be applicable
- UCEA may provide additional due process protections
  - Most significant if does not voluntarily agree to return
- Home/demanding state determine how to proceed

*- Advisory Opinion 04-2018 (revised)*

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**DETENTION OF JUVENILES**

**Juvenile Justice Delinquency Prevention Act**

- JJDPA prohibits detention of a juvenile in an adult setting until tried or convicted in an adult court
- JJDPA applies, regardless of whether ICJ or UCEA used
- ICJ Rule 7-105 states . . . "the type of secure facility shall be determined by the laws regarding the age of majority in the holding state."

*- Advisory Opinion 04-2018 (revised)*




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### INTERSTATE AGREEMENT ON DETAINERS (IAD), 18 U.S.C. APP. III

- Interstate compact enacted by US Congress in 1970
- Procedures for transfer of prisoner incarcerated in one state to another state to dispose of outstanding criminal charges
- ICJ applies if juvenile to be returned after release from incarceration




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### ADDITIONAL ICJ RESOURCES

Additional Resources at [www.juvenilecompact.org](http://www.juvenilecompact.org)

- *ICJ Bench Book for Judges & Court Personnel*
- Legal Advisory Opinions
- White Papers
- Best Practices
- Training Resources




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### UNDERSTANDING EXTRADITIONS

CATHY GORDON  
MONTANA COMMISSIONER,  
ADULT & JUVENILE COMPACTS




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**INTERSTATE COMMISSION FOR  
ADULT OFFENDERS SUPERVISION  
(ICAOS)**



- Transfer of Supervision & Retaking
- Only involved if offender in ICAOS supervision
- Distinctions from ICJ

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**EXAMINING DIFFERENCES**

**Warrants**

- ICJ Rule 7-104
- ICAOS Definition of "Warrant"
- ICAOS Rule 5.111 (Denial of Bail)




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**ICJ RULE 7-104: WARRANTS**

2. Holding states shall honor all lawful warrants as entered by other states and shall, no later than the next business, day notify the ICJ Office in the home/demanding/sending state that the juvenile has been placed in custody pursuant to the warrant. Upon notification, the home/demanding/sending state shall issue a detainer or provide a copy of the warrant to the holding state.
3. Within two (2) business days of notification, the home/demanding/sending state shall inform the holding state whether the home/demanding/sending state intends to act upon and return the juvenile, or notify in writing the intent to withdraw the warrant. If mandated under other applicable rules, such as those pertaining to runaways or failed supervision, the absence of a warrant does not negate the home/demanding/sending state's responsibility to return the juvenile.

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### ICAOS DEFINITION: WARRANT

**Warrant** – means a written order of the court or authorities of a sending or receiving state or other body of competent jurisdiction which is made on behalf of the state, or United States, issued pursuant to statute and/or rule and which commands law enforcement to arrest an offender. The warrant shall be entered in the National Crime Information Center (NCIC) Wanted Person File with nationwide pick-up radius with no bond amount set.

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### ICAOS RULE 5.111

Denial of bail or other release conditions to certain offenders

An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted to bail or other release conditions in any state.

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## UNDERSTANDING EXTRADITIONS



### ICAOS has Specific Focus

- Only involved if offender is on ICAOS Supervision
- No extraditions/returns of other adult offender
- Mandated retaking/extradition

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### ICAOS RULE 5.102

#### Mandatory retaking for a new felony or new violent crime convictions

- a) Upon a request from the receiving state, a sending state shall retake an offender from the receiving state or a subsequent receiving state after the offender's conviction for a new felony offense or new violent crime and:
  - 1. completion of a term of incarceration for that conviction; or
  - 2. placement under supervision for that felony or violent crime offense.
- b) When a sending state is required to retake an offender, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.

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### ICAOS RULE 5.103

#### Offender behavior requiring retaking

- a) Upon a request by the receiving state and documentation that the offender's behavior requires retaking, a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the violation report.
- b) If the offender is ordered to return in lieu of retaking, the receiving state shall request reporting instructions per Rule 4.111 within 7 business days following the receipt of the violation report response.
- c) The receiving state retains authority to supervise until the offender's directed departure date. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender's failure to appear in the sending state.
- d) If the sending state issues a warrant under subsection (c) of this rule, the receiving state shall attempt to apprehend the offender on the sending state's warrant and provide notification to the sending state. If the receiving state is unable to locate the offender to affect the apprehension, the receiving state shall follow Rule 4.109-2 (a) and (b).

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### ICAOS RULE 5.103-1

#### Mandatory retaking for offenders who abscond

- a) Upon receipt of an absconder violation report and case closure, the sending state shall issue a warrant and, upon apprehension of the offender, file a detainer with the holding facility where the offender is in custody.
- b) If an offender who has absconded is apprehended on a sending state's warrant within the jurisdiction of the receiving state that issued the violation report and case closure, the receiving state shall, upon request by the sending state, conduct a probable cause hearing as provided in Rule 5.108 (d) and (e) unless waived as provided in Rule 5.108 (b).
- c) Upon a finding of probable cause the sending state shall retake the offender from the receiving state.
- d) If probable cause is not established, the receiving state shall resume supervision upon the request of the sending state.
- e) The sending state shall keep its warrant and detainer in place until the offender is retaken pursuant to paragraph (c) or supervision is resumed pursuant to paragraph (d).

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## ADDITIONAL ICAOS RESOURCES

Available at [www.interstatecompact.org](http://www.interstatecompact.org)

- *ICAOS Bench Book for Judges & Court Personnel*
- *Compact Online Reference Encyclopedia (CORE)*
- Advisory Opinions
- White Papers
- Best Practices
- On-Demand Training

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## UNDERSTANDING EXTRADITIONS

SUSAN MEIER  
NEW JERSEY EXTRADITION SECRETARY




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## UNDERSTANDING EXTRADITIONS

### Uniform Criminal Extradition Act (UCEA)

- Adopted by all States & Territories except:
  - Louisiana, Mississippi, South Carolina & Puerto Rico
  - DC cannot adopt because of unique status
  - State laws allow for non-fugitive cases
- Waivers
  - Pre-signed
  - Recognized regardless of court used




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**UNDERSTANDING EXTRADITIONS**

- Special cases
  - Federal inmate
  - Incarcerated Juvenile
  - Indian Reservation
  - Material Witnesses
  - Mental health, treatment or hospital facility
  - Military status
  - On probation, parole or e-monitoring
  - In a foreign country
- Executive Agreements
  - "Treaties" between Governors & not subject to review

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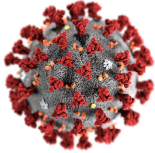
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**UNDERSTANDING EXTRADITIONS**

**Impact of COVID-19**

- Decision whether to extradite
- Transportation issues
- Pre-transfer testing & refusals
- Pick-ups/holding
  - 30-day limit is permissive (not mandatory) and, extenuating circumstances allow for more time (People v. Superior Court (Lopez) (1982) 130 Cal.App.3d776, 786-787).
  - No state may be a safe haven for fugitives from a sister State's criminal justice system (Michigan v. Doran (1978) 439 U.S. 282, 287).




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**UNDERSTANDING EXTRADITIONS**

- Comity:
- Working together to triage cases between states
- Consider crime(s) committed (in or out-of-state), local charges, timeframe involved, statutes, case law, different ages of majority, other Compacts (such as ICJ, ICAOS, IAD, Corrections, Mental Health & Parole/Probation) & transportation issues




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**UNDERSTANDING EXTRADITIONS**

**Connect with State Extradition Officials**

- Governor's Counsel's, Attorney General's or Secretary of State's Office & sometimes in the Department of Corrections
- National Association of Extradition Officials  
[www.extraditionofficials.org](http://www.extraditionofficials.org)




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**UNDERSTANDING EXTRADITIONS**

**SUSAN MEIER**  
NEW JERSEY EXTRADITION SECRETARY  
MEIERS@NJDCJ.ORG  
(609) 610-5029




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**UNDERSTANDING EXTRADITIONS**

**NEW RESOURCES**




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## ADVISORY OPINION 04-2018

### Detention in Holding State

<b>Interstate Commission for Juveniles</b>	Opinion Number 04-2018	Page Number 1
<b>ICJ Advisory Opinion</b> Issued by: <b>Mark W. Stevenson</b> Chief Legal Counsel, Richard L. Masters		
Description: Executive Committee should be retained as a juvenile when being returned as a juvenile in the holding state, but has an outstanding warrant from an adult court in the home state.	Date: October 13, 2018	Revised: April 16, 2020

**Background:**  
Pursuant to Commission Rule 9-201(3), the ICJ Executive Committee has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

**Issue:**  
This issue was presented as a request for legal guidance from Illinois regarding cases in which an out-of-state juvenile is being returned as a juvenile in the holding state and has an outstanding warrant from an adult court in the demanding state.

As described by Illinois, "In these cases, returns of juveniles are not being tracked in IJIS (the Commission's information administration system), as required by the Compact, which makes it more difficult to facilitate their return. ... According to Advisory Opinion 03-2012, these juveniles should be returned as juveniles." Illinois also noted that states reportedly experience several issues, including:

- Some states will assist, but request that the return not be entered into the Commission's administrative information system.
- Other states indicate the ICJ Office is not required to assist because related guidance is provided in an Advisory Opinion, "not a rule." Instead, they direct the holding state to contact the detention center where the youth is held in custody.

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## BEST PRACTICE:

### Bail/Bond for Adult Charges in the Holding State with Juvenile Warrant in the Demanding State

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## UNDERSTANDING EXTRADITIONS

### Q & A SESSION

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