Interstate Commission for Juveniles	Opinion Number 04-2010	Page Number: 1

ICJ Advisory Opinion

Issued by:
Executive Director: Ashley H. Lippert
Chief Legal Counsel: Richard L Masters

Description:	**Dated:**
Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands.	July 22, 2010

Background:

Pursuant to Commission Rule 9-101.3, a request has been made by the state of Montana to address the following issues:

Applicability and enforceability of the rules of the Interstate Compact for Juveniles with sovereign tribal nations and reservation lands.

Issues:

Whether the Interstate Compact for Juveniles and its duly authorized rules apply to juveniles residing in sovereign tribal nations and reservation lands.

Analysis and Conclusions:

Article I., Section 10, Clause 3 of the U.S. Constitution contains what is sometimes referred to as the 'Compact Clause' of the Constitution and provides, that States may enter into interstate compacts subject to Congressional consent when the subject matter of the compact has the potential to intrude upon the power of the federal government or alter the political balance of power between the states and the national government. See *U.S. Steel Corp., v. Multistate Tax Commission, 434 U.S. 452 (1978).* 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."

Thus, it is clear that Congressional consent is always required before a state can enter into an arrangement with a foreign state or power, or before two or more states can enter into "treaties, alliances, and confederations." As applied to tribal nations, the U.S. Supreme Court has previously determined that any exercise of state power over tribes requires Congressional consent and coupled with the limiting language of the treaty clause it is reasonable to conclude that such consent is also required before a State may enter into such an agreement or compact with a recognized tribe, particularly where, as in the case of the Interstate Compact for Juveniles, it would be necessary for the states to collectively exercise authority over eligible transfers of juveniles. See *Oklahoma Tax Commission v.*

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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).* This is further evidenced by the requirement of federal statutes such as the *Indian Gaming Regulatory Act,* 25 U.S.C. *Sec. 2701 et seq.* which, among its extensive regulatory provisions, grants congressional consent to states to individually, upon request of a tribe, enter into compacts for the purposes of conducting gaming activities in that state.

Based upon the referenced provisions of the U.S. Constitution and decisions of the U.S. Supreme Court, in the absence of the Consent of Congress for tribes to enter into agreement with the states as members of the Interstate Compact for Juveniles, no such authority exists under which the provisions of the compact or its rules can regulate transfers of juveniles to and from sovereign tribal nations or reservation lands.