	Interstate Commission for Juveniles	Opinion Number: 01-2017	Page Number: 1
<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters </p>			
Description: Demanding/Sending State’s Authority to seek return a juvenile in cases where charges are pending in the Receiving/Holding State under ICJ Rule 7-103		Dated: April 28, 2017	

Background:

Pursuant to Commission Rule 7-103, the ICJ Rules Committee has requested an advisory opinion regarding the authority of an ICJ Compact Office in the Demanding/Sending State to determine when a juvenile is eligible for return when there are charges in the holding/receiving state the requirements of the Compact and ICJ Rules on the following issue:

Issues:

What is the authority of a demanding/sending state to obtain the return of a juvenile if there are pending charges in the holding/receiving state?

Applicable Compact Provisions and Rules:


Rule 7-103: Charges Pending in Holding/Receiving State

Juveniles shall be returned only with the consent of the holding/receiving states or after charges are resolved when pending charges exist in the holding/receiving states.

Analysis and Conclusions:

When interpreting a statute or a regulation we must begin with its text. The language of Rule 7-103, clearly precludes a return or extradition of juveniles to a sending state while charges are pending in the holding/receiving, without that state’s consent or until “**after charges are resolved. . .**” As the U.S. Supreme Court has opined, “[W]hen the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (internal quotation marks omitted). Thus, the text of the statute or regulation, when the meaning is clear, must control its interpretation and application.

The intent and effect of this rule is to prevent a return or extradition, if there are pending charges in the holding/receiving state. Thus, where there is an outstanding warrant from the sending state requiring return or extradition of a juvenile who has pending charges in the receiving state, the rule acts as a ‘tolling provision’ for any obligation to return or extradite the juvenile until resolution of those charges whether by dismissal or adjudication.

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Detaining such a juvenile is not precluded and may be the only way to prevent a juvenile from absconding. However, as noted in the specific case from which this request for guidance arose, holding the juvenile until the resolution of the charges in question could result in detention for a period in excess of that which a state court might determine to be consistent with due process. The provisions of ICJ Rule 7-103 don't expressly prohibit the release of a such a juvenile pending disposition of the pending charges and a court's determination not to order detention for an extended period of time may be justifiably premised out of concern that such detention at some point would run afoul of the demands of due process. See *Morrissey v. Brewer*, 408 U.S. 471, 481, 488 (1972) ("The revocation hearing must be tendered within a reasonable time after a parolee is taken into custody."). See also *Doggett v. U.S.*, 505 U.S. 647, 651 (1992) ("... delays of less than a year (between indictment and trial) are as a general matter constitutionally adequate . . ."); also, *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

Accordingly, the provisions of ICJ Rule 7-103 clearly preclude a return of a juvenile when charges are pending in the holding/receiving state until the pending charges against the juvenile are resolved or upon the consent of the holding/receiving state and demanding/sending state that such juvenile is available for return. While a court order that such a juvenile may be released from custody, based upon due process concerns, does not appear to be irreconcilable with the provisions of ICJ Rule 7-103, additional clarity with respect to the 'interplay' of the interests and responsibilities of the home/demanding state, the holding/receiving state, and the Court under the ICJ certainly justifies a review of the rule provisions and possible amendment of the rule to clarify the authority of the holding/receiving state.

Summary:

When a demanding/sending state seeks the return of a juvenile and there are pending charges in the holding/receiving state, the provisions of ICJ Rule 7-103 clearly preclude a return of the juvenile until the pending charges against the juvenile are resolved or upon the consent of the holding/receiving state and the demanding/sending state that such juvenile is available for return. Although a court order that such a juvenile may be released from custody, based upon due process concerns, is not irreconcilable with the provisions of ICJ Rule 7-103, additional clarity with respect to the 'interplay' of the interests and responsibilities of the demanding/sending state, holding/receiving state, and the Court under the ICJ justifies a review of the rule provisions and possible amendment of the rule to clarify the authority of the holding/receiving state.