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<b>ICJ Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director: Ashley H. Lippert</b> <b>Chief Legal Counsel: Richard L. Masters</b>			
<b>Description:</b> Provisions for cooperative detention within ICJ		<b>Dated:</b> September 18, 2014  <b>Revised:</b> March 14, 2018 <sup>1</sup>	

**Background:**

Pursuant to ICJ Rule 9-101(3)<sup>1</sup>, the State of North Dakota has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

**Issues:**

North Dakota and Minnesota are jointly pursuing a contract for the joint use of a Juvenile Detention Center facility in located in Moorhead, Clay County, Minnesota that is near the border between North Dakota and Minnesota. This facility will be used for the cooperative detention of juveniles who are awaiting adjudication on charges of delinquency and delinquency related matters in Cass County, North Dakota, and who will be temporarily detained in the Minnesota facility.

North Dakota seeks clarification as to whether the provisions of the ICJ or ICJ rules apply to the proposed contract for cooperative detention of these alleged delinquent North Dakota juveniles in the Minnesota facility or is this prohibited by the terms of the Interstate Compact for Juveniles?

**Applicable Compact Provisions and Rules:**

ICJ Rule 4-101(1) states:

“Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state.”

ICJ Rule 4-101(5) states:

“A juvenile who is not eligible for transfer under this Compact is not subject to these rules.”

Article I of the Compact, in relevant parts, states:

The compacting states to the Interstate Compact recognize that each state is responsible for

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<sup>1</sup> This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from [ICJadmin@juvenilecompact.org](mailto:ICJadmin@juvenilecompact.org).

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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. . .

Article I of the Compact, in relevant parts, further states:

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: . . . (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles. . .

**Analysis and Conclusions:**

It is clear that the applicability of the Compact is limited to the “proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole . . .” as well as juveniles “who have absconded, escaped or run away from supervision and control.” If the cooperative detention of North Dakota juveniles is for the purpose of temporarily keeping these juveniles in secure custody while awaiting adjudication on charges of delinquency and related matters, and does not involve any type of conditional, or other, release to the community, while under supervision, then the Compact does not apply to such juveniles. While not explicitly stated, Article I of the Compact is clear that a juvenile is not subject to the ICJ if no court-ordered supervision is imposed because of the underlying offense. As stated in the ICJ Bench Book, “A predicate for coverage under the ICJ is ‘supervision.’”

Moreover, ICJ Rule 4-101(1) only requires Compact party states to process referrals involving juveniles who “are under juvenile jurisdiction in the sending state.” It is equally clear, under ICJ Rule 4-101(5)<sup>1</sup> that “a juvenile who is not eligible for transfer under this Compact is not subject to these rules.”

Even if there is some form of conditional release for education or employment purposes, among the intended purposes of the ICJ, which are stated in Article I, includes the following:

“It is the purpose of this Compact, through means of joint and cooperative action among the Compacting states to: . . . (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services . . .”

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Because the term “cooperative institutionalization” is not defined in the Compact, the common meaning of the term as defined in the dictionary controls. See *Keegan v. U.S.*, 325 U.S. 478 (1945). Cooperative means “involving two or more people or groups working together to do something,” while “institutionalization” means “to put in the care of an institution.” Taken together these terms in the context of the provisions of ICJ Article I (D) would clearly embrace the situation described in this request for informal legal guidance by which the two (2) states are working together to place these delinquent juveniles in the care of an institution.

**Summary:**

In sum, the proposed contract for the cooperative use of a Juvenile Detention Center facility located in Moorhead, Clay County, Minnesota and near the border between North Dakota and Minnesota for the temporary detention of juveniles awaiting adjudication on charges of delinquency in Cass County, North Dakota and detained in the Minnesota facility, is not prohibited by the terms of the Interstate Compact for Juveniles. In the absence of a transfer of supervision as defined by the terms of the Interstate Compact for Juveniles, such juveniles are not subject to these rules pursuant to Article I of the ICJ and ICJ Rules 4-101(1) and 4-101(5). Alternatively, because such an arrangement constitutes a contract **“for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services . . .” as contemplated in ICJ Article I, (D)**, it is not prohibited by the Compact, even if such juveniles are conditionally released into the community for education or employment.