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<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters </p>			
Description: Return of Juvenile Serving a Sentence for New Offense in a Receiving State		Dated: June 28, 2018	

Background:

The State of Ohio has an active juvenile warrant out on a juvenile involving 4 sexual assault charges of 3 counts of Rape (F-1) and one count of Gross Sexual Imposition (F-3). Ohio would like to extradite the juvenile back to Ohio on the juvenile warrant. The juvenile was 14 years old when he allegedly committed these offenses and is currently 20 years of age.

However, the juvenile is currently serving an adult prison sentenced in Florida of 3 ½ years. The juvenile’s anticipated release date from Florida’s adult facility is January 27, 2020.

Issues:

Pursuant to ICJ Rule 9-101(3), the State of Ohio has requested a formal advisory opinion regarding the requirements of the Compact and ICJ Rules regarding a sending state’s ability to return a juvenile who is serving a sentence for a new offense committed in the receiving state.

The following questions are addressed:

1. Can Ohio request that the juvenile be returned through the ICJ return process on the juvenile warrant prior to completion of the sentence in the receiving state?
2. Can this offender be extradited back through the adult compact process if the individual is over the age of majority in both states?


Applicable Compact Provisions and Rules:

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

“Juveniles shall be returned only after charges are resolved when pending charges exist in the holding/receiving state, unless consent is given by the holding/receiving and demanding/sending states’ courts and ICJ Offices.”

Analysis and Conclusions:

One of the quintessential purposes of the ICJ is to provide an alternative to extradition of juveniles to states in which criminal charges are pending. This is also a primary purpose for the Interstate Compact for Adult Offender Supervision (ICAOS). As stated in Section 1.4 of the ICJ

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Bench Book, “the control of crime through the orderly transfer of supervision, as an alternative to extradition of both adult offenders (ICAOS) on parole and probation, as well as their juvenile ‘counterparts,’ (ICJ) is the rationale articulated by the Court in *In Re: O.M. Appellant*, 565 A.2d 573, 582-583 (1989) and is the same as that cited in support of the determination for congressional consent granted to the Interstate Compact for Adult Offenders. See *Doe v. Pennsylvania Board of Probation and Parole*, 513 F.3d 95, 99, 103 (3rd Cir. 2008); also *M.F. v. N.Y. Exec. Dept., Div. of Parole*, 640 F.3d 491 (2nd Cir. 2011). See also *Carchman v. Nash*, 473 U.S. 716, 719 (1985).”

However, the application of the provisions of the ICJ and its authorized rules to the return of juveniles is respectful of the sovereignty of each member jurisdiction. Where there are pending charges, which exist in the receiving/holding state, ICJ Rule 7-103 prohibits the return of the juvenile until “after charges are resolved,” or “consent is given” by the courts.


The U.S. Supreme Court has held that when interpreting statutes, “[O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (*internal quotation marks omitted*). Thus, based upon the above ICJ Rule it is clear that under the ICJ, pending charges must be resolved in the receiving state or consent must be given in order to return the juvenile under ICJ Rule 7-103.

Nonetheless, Ohio posits the question as to whether the juvenile in question can be returned to Ohio under the provisions of ICAOS based upon the fact that the juvenile has reached the age of majority in both Ohio and Florida where the juvenile is incarcerated.

A review of the ICAOS Rules reveals a similar rule. ICAOS Rule 5-501(1) provides:

Notwithstanding any other rule, if an offender is charged with a subsequent felony or violent crime, the offender shall not be retaken or ordered to return until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense, unless the sending and receiving states mutually agree to the retaking or return.


It is equally important to emphasize that Article I of the ICJ statute provides that among the purposes of the ICJ is to “coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles **particularly in those cases where**

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concurrent or overlapping supervision issues arise.” (emphasis added). Thus, ICJ member states have a duty to coordinate the operation of the ICJ in supervision cases where both compacts may be implicated. In that context and based upon the unambiguous requirements imposed by similar rules of both ICJ and ICAOS, the return or retaking of an offender under either compact **cannot** be accomplished without the agreement of Florida officials or until the charges are resolved, including completion of the sentence in the receiving state.

Ohio also expressed a concern that because the State is aware of the juvenile’s whereabouts that the juvenile court may require the prosecutor to provide justification for the delay in extradition of the juvenile on the outstanding warrant. Because Ohio has enacted the ICJ and is subject to its provisions as well as the ICJ Rules, the above analysis provides clear authority and in fact prevents the return of this juvenile except as provided under the foregoing provisions of ICJ Rule 7-103.

The obligation of member states to honor compact provisions and rules regarding requisitions under the ICJ is recognized in cases such as *State v. Cook*, where the Court held that under Texas law, an adult defendant, who was properly charged with a crime while a child, was subject to the jurisdiction of the Texas Juvenile Court, and thus the Washington Court was required, pursuant to the Interstate Compact for Juveniles, to honor Texas' rendition request and return the juvenile to Texas, despite the defendant's claim that he was no longer a juvenile. 64 P.3d 58, 58 (Wash. Ct. App. 2003) (“The Uniform Interstate Compact for Juveniles . . . governs, among other things, the return from one state to another of delinquent juveniles who have escaped or absconded. Both Washington and Texas adopted the Compact.”). The Court analogized rendition under the compact to extradition and held that the rendition proceedings were applicable even after the offender had become an adult if the crimes in question were committed as a juvenile, stating, “Cook contends the Compact does not apply to him because he is not a juvenile. The State responds that because the Texas juvenile court had jurisdiction under Texas law and Texas made a proper rendition request, the Compact requires Washington to honor the demand. We agree.” *Id* at 59. “[E]xtradition cases have typically looked to the law of the demanding state to determine whether the person charged is a juvenile. Cases under the Uniform Criminal Extradition Act have likewise found the demanding state's determination of juvenile status controlling.” *Id.*; see also *In re State*, 97 S.W.3d 744, 745 (Tex. App. 2003) (demanding state's requisition under Interstate Compact for Juveniles for return of juvenile from asylum state was “in order,” and thus judge of asylum state was required to return the juvenile to the demanding state upon receipt of the requisition).

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Summary:

Based upon the above provisions of the ICJ rules and legal analysis, where there are pending charges, which exist in the receiving/holding state, ICJ Rule 7-103 prohibits the return of the juvenile until “after charges are resolved,” or “consent is given” by the courts. Moreover, ICJ member states have a duty to coordinate the operation of the ICJ in supervision cases where both compacts may be implicated and where requirements are imposed by similar rules of both ICJ and ICAOS, the return or retaking of an offender under either compact **cannot** be accomplished without the agreement of Florida officials or until the charges are resolved.