

 Interstate Commission for Juveniles	Opinion Number: 01-2019	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters		
Description: In the absence of a warrant, what would appropriately authorize a holding state to hold a juvenile	Dated: January 24, 2019	

Background:

Pursuant to Commission Rule 9-101(3), the state of Minnesota required an interpretation of Rule 6-102(2) and the Executive Committee authorized the release of this Advisory Opinion so that the interpretation may be circulated to all states.

Issues:

- 1) In the absence of a warrant, what would appropriately authorize a holding state to hold the juvenile?
- 2) Would holding a juvenile based only on a verbal request constitute a due process violation?

Applicable Law and Rules:

ICJ Rule 6-102(2) provides:

Probation/parole absconders, escapees or accused delinquents who have an active warrant shall be detained in secure facilities until returned by the home/demanding state. ***In the absence of an active warrant, the holding state shall have the discretion to hold the juvenile at a location it deems appropriate. (emphasis added)***

Background

Minnesota provided the following scenario:

A juvenile is on probation in their home state so they are not subject to the compact as they live in the state they were adjudicated in. The juvenile gets arrested in another state (border state), but there is no warrant, they are not reported as a runaway and they were not charged with a crime yet. Would the compact apply? And if so, how would the holding state have the authority to hold? Can the demanding state verbally request a hold with no other documentation?

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Analysis and Conclusions:

In construing statutory provisions (or in this case the ICJ rules), the U.S. Supreme Court has held first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning . . . [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997).

While the above language of ICJ Rule 6-102(2) is not “plain and unambiguous,” the context of the rule suggests that the language of the rule can be construed to provide the authority to hold an absconder, escapee, or accused delinquent. The second sentence of this section of the statute states that **"In the absence of an active warrant, the holding state shall have the discretion to hold the juvenile at a location it deems appropriate"**(emphasis supplied). This section does not state that the holding state has the discretion **not to hold** the juvenile, but only that it may do so "at a location it deems appropriate."

Since the ICJ is a compact, the statute and authorized ICJ rules provide the authority to hold a juvenile even if in conflict with another state statute. In *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 33 (1951), the U.S. Supreme Court made clear that an interstate compact cannot be “. . . given final meaning by an organ of one of the contracting states.” Member states may not take unilateral actions, such as the adoption of conflicting legislation or the issuance of executive orders or court rules that violate the terms of a compact. See *Northeast Bancorp v. Bd. of Governors of Fed. Reserve System*, 472 U.S. 159, 175 (1985). See *Wash. Metro. Area Transit Auth. v. Once Parcel of Land*, 706 F.2d 1312, 1318 (4th Cir. 1983); *Kansas City Area Transp. Auth. v. Missouri*, 640 F.2d 173, 174 (8th Cir. 1981). See also *McComb v. Wambaugh*, 934 F. 2d 474, 479 (3rd Cir. 1991); *Seattle Master Builders Ass’n v. Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986); *Rao v. Port Authority of New York*, 122 F. Supp. 595 (S.D.N.Y. 1954), aff’d 222 F.2d 362 (2nd Cir. 1955); *Hellmuth & Associates, Inc. v. Washington Metropolitan Area Transit Authority*, 414 F. Supp. 408, (Md. 1976).

Under the above principles, this section of the authorized ICJ rules, which have the force and effect of law, provide the authority to hold a juvenile in the absence of an active warrant.

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With respect to the second question concerning whether holding a juvenile based only on a verbal request would be consistent with due process, it is important to remain mindful of the fact that a juvenile has never been afforded the same spectrum of procedural rights as adults. *See generally In re C.J.W.*, 377 So.2d 22, 24 (Fla. 1979). Moreover, the rights of a person who is actually, or constructively in the custody of state corrections officials due to the conviction of a criminal offense differs markedly from citizens in general, or for that matter citizens under suspicion of criminal conduct. *People v. Gordon*, 672 N.Y.S.2d 631, 636 (N.Y. Sup. Ct. 1998). Thus, the mere fact that a request to hold a probation/parole absconder, escapee or accused delinquent under ICJ Rule 6-102(2) is oral rather than written would not in and of itself be a denial of due process. Nonetheless, a written request would nonetheless appear to be advisable for the purposes of documentation and proof that such a request was made.

Summary:

ICJ Rule 6-102(2) provides the authority to hold an absconder, escapee, or accused delinquent, even in absence of a warrant.

The mere fact that a request to hold a probation/parole absconder, escapee or accused delinquent under ICJ Rule 6-102(2) is oral rather than written would not in and of itself be a denial of due process. Nonetheless, a written request would nonetheless appear to be advisable for the purposes of documentation and proof that such a request was made.