	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 04-2018</b>	<b>Page Number: 1</b>
<p align="center"> <b>ICJ Advisory Opinion</b>  <b>Issued by:</b>  <b>Executive Director: MaryLee Underwood</b>  <b>Chief Legal Counsel: Richard L. Masters</b> </p>			
<b>Description:</b> Whether a person should be returned as a juvenile when being detained as a juvenile in the holding state, but has an outstanding warrant from an adult court in the home state		<b>Dated:</b> December 13, 2018  <b>Revised:</b> January 24, 2019	

**Background:**

Pursuant to Commission Rule 9-101(3), the ICJ Executive Committee has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

**Issues:**

This issue was presented as a request for legal guidance from Illinois concerning a potential amendment of the ICJ Rule 6-102. The proposed rule addresses cases in which an out-of-state juvenile is being detained as a juvenile in the holding state and has an outstanding warrant from an adult court in the demanding state.


As described by Illinois, “In these cases, returns of juveniles are not being tracked in JIDS, as required by the Compact, which makes it more difficult to facilitate their returns. . . According to Advisory Opinion 03-2012, these juveniles should be returned as juveniles.” Illinois also noted that states reportedly experience several barriers, including:

- Some states will assist, but request that the return not be entered into JIDS
- Other states indicate the ICJ Office is not required to assist because related guidance is provided in an Advisory Opinion, “not a rule.” Instead, they direct the holding state to contact the detention center where the youth/adult is in custody.

As examples of the variation among states, the following examples have been provided:

*EXAMPLE 1:*

Offender was detained in a juvenile detention facility based on the age of majority in Holding State. The warrant from Demanding State was issued out of the adult court, even though the offender was a juvenile at the time the charge was filed. When contacted, Demanding State advised Holding State that this was “an adult matter” and should be handled through the Interstate Compact for Adult Offender Supervision (ICAOS). Holding State’s ICAOS office declined involvement, because the offender was classified as a juvenile in Holding State. After the Holding State’s ICJ Office advised Demanding State’s ICJ Office of Advisory Opinion 03-2012, Demanding State agreed to facilitate the return, but declined to track the return in JIDS (because it was considered an adult court case in the demanding state).

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**EXAMPLE 2:**

A local sheriff department in Holding State’s notified Demanding State that an offender from the Demanding State was being detained on new charges filed in Holding State’s adult court. Demanding State’s ICJ Office notified Holding State’s ICJ Office. Holding State’s ICJ Office informed Demanding State’s ICJ Office that this was “an adult case” and that Demanding State should contact the Holding State’s sheriff department directly. Demanding State facilitated the return of the youth within both states and there was no tracking.

**Applicable Rules:**

ICJ Rule 5-101(7) states:

The age of majority and duration of supervision are determined by the sending state. Where circumstances require the receiving court to detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the receiving state.


**Analysis and Conclusions:**

The proposed rule change is in part for the purpose of ‘codifying’ the substance of Advisory Opinion 03-2012, as it relates to returns. Some states reportedly indicate that Advisory Opinion 03-2012 is not applicable because it addresses cases involving transfers of supervision (rather than returns).

The Advisory Opinion 03-2012 is based, in part, on ICJ Rule 5-101(7), which states:

***The age of majority and duration of supervision are determined by the sending state.*** Where circumstances require the receiving court to detain any juvenile under the ICJ, the type of secure facility shall be determined by the laws regarding the age of majority in the receiving state. *(emphasis added)*

It is noteworthy that Rule 5-101(7) is part of Section 500: Supervision in Receiving State. Nonetheless, it provides a clear mandate that laws of the original state (sending state in transfers of supervision and home/demanding/sending state in returns) govern whether the ICJ applies. A similar mandate regarding the predominant role of the home/demanding state is reflected in Rule

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7-102, which states: “The home/demanding/sending state's ICJ Office shall determine appropriate measures and arrangements to ensure the safety of the public and of juveniles . . .” Therefore, while Advisory Opinion 03-2012 specifically addresses transfers of supervision, an interpretation of similar issues related to returns would reach a similar result.

*ICJ and ICAOS as Mandatory Legal Alternative to Extradition*

Some states have also suggested that it is more appropriate to use extradition procedures in these cases. This position is not consistent with current law concerning a fundamental purpose of the ICJ, as well as the Interstate Compact for Adult Offender Supervision (ICAOS), which is to serve as a legal alternative to extradition which has been approved by Congress pursuant to the Compact Clause (Art. I , Sec. 10, Clause 3). As such the Revised ICJ is to provide for the effective transfer of delinquent juveniles on probation or parole to other states where they may be cooperatively supervised, and to affect the return of delinquent juveniles who have escaped or absconded, or juveniles who have run away from home, through means other than formal extradition.

The purpose of the ICJ is to control and prevent crimes, not only through the transfer of supervision of offenders convicted of crimes, but also to return them to a state from which they have absconded. Therefore, the Extradition Clause of the U.S. Constitution is implicated in that both ICJ and its adult counterpart the ICAOS are alternatives to extradition under the Constitution. *See* U.S. CONST. Art. IV, § 2, Cl. 2. Furthermore, in the case of *In Re O.M.*, the District of Columbia Court of Appeals stated that “the Compact was created and adopted by the states precisely because the Extradition Clause of the Constitution did not operate with respect to juveniles.” 565 A.2d 573, 582-583 (D.C. 1989).

Among the fundamental purposes of the ICJ is to provide for the “return of juveniles. . . accused of an offense to the state requesting their return.” Based upon this statutory mandate, it is consistent with the purposes of the ICJ to enable juveniles to be returned under the ICJ whenever possible and rules such as the proposed amendment to ICJ Rule 6-102 are consistent with that purpose. The application of the ICJ in return cases is dependent upon 1) the age of majority as determined by the sending state and 2) whether the juvenile is a runaway, absconder, escapee, or accused delinquent.

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*Impact of Charges Filed in an Adult Court*

When a juvenile has charges pending in the home state, the juvenile can be returned as an “accused delinquent,” which is defined under the ICJ is “A person charged with an offense that, if committed by an adult, would be a criminal offense.” The fact that a juvenile has been “charged as an adult” and a warrant has been issued does not terminate that person’s status as a juvenile or “accused delinquent.” Being charged as an adult should not be equated with being tried and convicted as an adult. In order to clarify that the status of the juvenile remains unaffected it would also be wise to amend the definition of “accused delinquent.”

Furthermore, it may be a violation of the juvenile’s due process guarantees, at this early stage of the proceeding, to deny such juvenile access to the protections otherwise available such as detention in an adult facility as provided pursuant to the Juvenile Justice Delinquency Prevention Act (“JJDP A”). In fact, the JJDP A prohibits detention of a juvenile in an adult setting until tried or convicted in an adult court. Given the fact that such juveniles have merely been charged and an outstanding warrant has been issued, it is consistent with the JJDP A and juvenile justice reform principals to both utilize the juvenile justice system and, consistent with the purposes of the ICJ, to return such juveniles pursuant to the ICJ.

**Summary**

When an out-of-state juvenile is being detained as a juvenile in the holding state and has an outstanding adult warrant in the demanding state, the Compact should be applied if the person is classified as a juvenile in the home/demanding state. In such cases, the juvenile should be returned to the home/demanding/sending state as a juvenile.

ICJ Rule 6-102 applies to non-delinquent juveniles, probation and parole absconders, escapees, and accused delinquents, including those who are charged with adult offenses. Moreover, it is clearly consistent with the fundamental purposes of the Compact to provide a rule which requires that these juveniles should be returned as juveniles. These returns of juveniles under the Compact should also be entered into the Juvenile Interstate Data System (“JIDS”).