	Interstate Commission for Juveniles	Opinion Number: 04-2018	Page Number: 1
<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters </p>			
Description: 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	<p> Dated: December 13, 2018 Revised: April 14, 2020 </p>		

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 regarding 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 (the Commission’s electronic information system), 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 the Commission’s electronic information system.
- 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:

Juvenile 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 person 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 person 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 juvenile 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(6) 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:

As a preliminary matter, some states assert that the matter is addressed by Advisory Opinion 03-2012. Other 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(6), 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(6) 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 state in returns) govern whether the ICJ applies. A similar mandate regarding the predominant role of the home/demanding state is reflected in Rule 7-102, which states: “The home/demanding/sending state's ICJ Office shall determine appropriate

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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 voluntary returns would be consistent.

Extradition and ICJ as a Legal Alternative


Article IV, Section 2 of the U.S. Constitution (“the Extradition Clause”) provides the general framework for the interstate movement of individuals charged with a criminal offense. The Extradition Clause subjects such individuals to extradition upon the demand of the executive authority of the state in which the crime was committed. In addition to the Constitution, federal law (18 U.S.C § 3182) provides requirements for extradition.

The Uniform Criminal Extradition Act (UCEA) has been adopted by many states to provide additional guidelines. The UCEA is not mandatory and not all states have adopted it. States that haven’t adopted the UCEA have their own extradition laws that comply with the federal statute.

One of the fundamental purposes of the ICJ is to serve as a legal alternative to extradition. Authorized by Congress pursuant to the Compact Clause (Art. I , Sec. 10, Clause 3), 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.

Impact of Charges Filed in an Adult Court

As discussed in the ICJ Bench Book, a juvenile charged by an adult court may be subject to either extradition or return pursuant to the ICJ. “The mechanisms that govern the movement of pre-adjudicated juvenile delinquents are not entirely clear. As there was no distinction between juveniles and adults in federal law for many years, arguably pre-adjudicated delinquents may be subject to transfer under either the ICJ or the Uniform Criminal Extradition Act.” See *ICJ Bench Book at Section 4.5.4*. Furthermore, some state courts have found that: “The constitutional provision and the legislation governing extradition make no special provisions for juveniles, and the cases, at least by implication if not expressly, recognize that juveniles may be extradited the same as adults.” See *In re Boynton*, 840 N.W.2d 762, 766 (Mich. Ct. App. 2013); also *Ex parte Jetter*, 495 S.W.2d 925 (Tex. Crim. App. 1973); *In re O.M.*, 565 A.2d 573, 583 (D.C. 1989); *A Juvenile*, 484 N.E.2d 995, 997 (Mass. 1985).

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When a juvenile has charges pending in the home/demanding state, the juvenile may 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 necessarily be equated with being tried and convicted as an adult.

Nonetheless, when a person classified as a juvenile in one or more states is “charged as an adult,” the person may also be extradited pursuant to the Extradition Clause and UCEA. In many cases, extradition provides additional due process protections. Exercising abundance of caution through use of extradition processes may be particularly important in cases where the person does not voluntarily agree to return pursuant to the ICJ and/or where the home/demanding state has demanded extradition.

Regardless of whether a juvenile is to be extradited or returned pursuant to the ICJ, care should be taken to ensure that protections afforded by the Juvenile Justice Delinquency Prevention Act (JJDPa) are honored. The JJDPa prohibits detention of a juvenile in an adult setting until tried or convicted in an adult court. Consistent with the JJDPa, ICJ Rule 7-105-1 dictates the youth be detained per the laws of the holding state. Thus, requiring a juvenile to be extradited under the UCEA would have no bearing on the detention in the holding state.

Summary

In 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 juvenile may be returned pursuant to the ICJ if the person is classified as a juvenile in the home/demanding state, unless extradition is demanded by the state in which the alleged crime was committed. In such cases, the juvenile should be extradited pursuant to the Extradition Clause and UCEA or, in the event the state hasn’t enacted UCEA, their own extradition laws. When these returns of juveniles are made pursuant to the Compact, such returns should also be entered into the Commission’s electronic information system.