



INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Use of ICJ Records Rather than Testimony by Out-of-State Personnel

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Overview of the Issue

At the request of the Commission's Executive Committee, the following legal analysis has been prepared to serve as a resource documenting the legal implications of the significantly increased number of formal and informal requests for ICJ staff, Juvenile Probations Officers, and Supervisors to testify at hearings in other states regarding ICJ cases. The increase in such requests may stem from the increasing likelihood that remote legal proceedings will become permanent fixtures in some jurisdictions.

Given this change in court procedures within the American legal system, it is important for ICJ personnel, courts, and other legal personnel to understand the nature of interstate compacts and the manner in which ICJ-related business records are maintained in UNITY. UNITY is the data management system developed and authorized by the Commission to provide for the transfer and tracking of transfers of supervision and returns of such juveniles, including adjudicated juveniles, runaways, and absconders. If appropriate groundwork is laid, records from the UNITY system can often be admitted into evidence in lieu of testimony from out-of-state-personnel. As with all legal procedures, the information contained in this paper should be carefully reviewed with the legal advisor for your juvenile justice agency.

Nature of Interstate Compacts & UNITY Data Management System

The Interstate Compact for Juveniles (ICJ) is implemented by state juvenile courts throughout all fifty (50) states, the District of Columbia, and the U.S. Virgin Islands. To support these implementation efforts, the UNITY data management system provides a confidential and secure resource for communication and maintenance of data necessary for ensuring appropriate interstate supervision and returns.

UNITY can also provide business records appropriate for admission as evidence in courts throughout the nation. Therefore, it is necessary for the states using the UNITY data system to understand how this data may be recognized and admitted into evidence by state courts. The use of records available through UNITY can eliminate the need for substantive testimony by an ICJ compact administrator, probation officer, or staff.

Meeting Evidentiary Needs in ICJ Cases

As is the case in most legal proceedings, evidence is needed for various purposes in ICJ-related proceedings. While courts may be accustomed to hearing testimony from local probation and parole officers, such testimony may not be available in cases involving the ICJ. Although it may be technically possible for out-of-state personnel to testify remotely, they may not be available. Some officials or staff may be prohibited by their agency's policies or procedures from testifying in courts located in other states. Moreover, in most cases, state courts do not have the requisite jurisdiction to compel the testimony of an out-of-state witness, including an ICJ official or staff member from another state. See *People v. Smith*, 841 N.E.2d 489 (2005) (“Generally, a state has no power to subpoena witnesses over which it has no jurisdiction. Thus, the constitutional right of compulsory process, which includes the subpoena of witnesses, is applicable to the states but extends only to in-state process”); In accord, *People v. Graham*, 947 N.E. 2nd 294 (2011) (“Trial court's subpoena power does not extend across state lines”).

Furthermore, the U.S. Supreme Court has clarified that in extradition cases involving the return of both adult offenders and adjudicated juveniles the documentation required by the interstate rendition statutes “do[es] not contemplate an appearance by [the demanding state] in the respondent’s asylum state . . . *Ortiz v. Reed*, 524 U.S. 151, 153 (1998). The *Ortiz* Court, in taking notice of the hundreds of cases in which demands for extraditions are made, also observed that “The burden on a demanding state in producing witnesses and records in the asylum state to counter allegations of the respondent would be substantial indeed.” In an earlier opinion on which the *Ortiz* Court relied, the Court reiterated that “It is well established that extradition is intended to be a summary and mandatory proceeding and that the only prerequisites are to decide (a) whether the extradition documents are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition . . . These historical facts are readily verifiable.” *Michigan v. Doran*, 439 U.S. 282, 288 (1978). These principles have also been extended to extradition of juveniles. See *In re Boynton*, 840 N.W.2d 762 (2013).

Nonetheless, the difficulty created by the limitations on the ability of states to compel testimony of an ICJ Compact Administrator, Deputy Compact Administrator (DCA), or other staff member due to legal impediments can be remedied. There are legally permissible alternatives to their lack of availability.

Fortunately, data from the UNITY system can provide the evidence needed in hearings pertaining to the transfer or return of a juvenile subject to the ICJ. In order for data from UNITY to be admitted, care must be taken to ensure that it is appropriately admitted into evidence. Initially, the court or attorneys may indicate that it cannot be admitted due to the “hearsay rule.” However, there is an important “business records exception” to the “hearsay rule” that allows for such records to be admitted into evidence.

The Rules of Evidence & Business Records Exception

To fully grasp the business records exception, you must first understand the **hearsay rule**. This is a rule of evidence used by the courts to determine the admissibility of evidence in court proceedings. The hearsay rule generally forbids out-of-court statements that are offered for the truth of the matters asserted.

Many states model their hearsay rules and business records exception (partially or fully) on Rules 801-807 of the Federal Rules of Evidence (FRE). Under the FRE, a document is “inadmissible hearsay” unless it qualifies as an exclusion or exception to the hearsay rule. For that reason (and others), understanding the “business records exception” is critical for anyone who intends to provide written evidence in a court proceeding. While each jurisdiction may have its own version of the hearsay rule and business records exception, most are similar to the federal rules. Therefore, proper use of the business records exception requires that compact administrators and their legal advisors are familiar with rules applicable to their respective jurisdictions regarding how to properly introduce an exhibit, such as a business record, into evidence as an exception to the hearsay rule.

Under the Federal Rules of Evidence, a party seeking to comply with the business record exception to the hearsay rule must show that:

- The record was **made by – or from information transmitted by - a person with knowledge** of the information contained in it;
- The record was **made at or near the time of the event**;
- It was the business or organization’s **regular practice to make these types of records**;
- The record was **kept in the course of a regularly conducted activity**; and
- All these **conditions are shown by the testimony of the custodian or another qualified witness**,

Role of the Custodian of Records or Qualified Witness

In addition to the above-referenced criteria, the party seeking to use records as evidence must “lay the foundation” for admission of the records by having the “custodian of the record” or “another qualified witness” testify or submit an affidavit regarding how such records are created and maintained. The state which is the custodian of the records concerning the juvenile is typically the sending/home/demanding, state where the records concerning the juvenile originated. Generally, an ICJ Compact Administrator, DCA, or other ICJ office staff person would qualify as the custodian of records or an appropriate representative of the custodial state for purposes of testimony to lay the foundation for admission of records or prepare a business records affidavit.

To be an “other qualified witness,” *United States v. Wables*, 731 F.2d 440 (7th Cir. 1984) holds that it is not necessary that the person laying the foundation for the introduction of the business records have personal knowledge of their preparation, only familiarity with the record-keeping procedures of the organization. “It is clear that, in admitting documents under the business records exception to the hearsay rule, “the testimony of the custodian or otherwise qualified witness who can explain the record-keeping of his/her organization is ordinarily essential.” 4 *Weinstein, Evidence* § 803(6)[02] (1981). See also *Coughlin v. Capitol Cement Co.*, 571 F.2d 290, 307 (5th Cir.1978).” Such testimony establishes the regular practices and procedures surrounding the creation of the records, the very elements that are necessary for a finding of trustworthiness. See *Louisville & Nashville Railroad Co. v. Knox Homes Corp.*, 343 F.2d 887, 895 (5th Cir.1965). It is also important to remember that **the rule applies whether or not the affiant (person providing the affidavit) is available as a witness**. The use of an affidavit to authenticate business records does not implicate the confrontation clause. In *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2000), the Supreme Court recognized the distinction between affidavits created to give evidence against a defendant and affidavits created merely to authenticate an existing record: “the Sixth Amendment right to confront witnesses does not include the right to confront a records custodian who submits a . . . certification of a record that was created in the course of regularly conducted business activity.” *Id.* at 22 (internal citation omitted).

Use of Business Records Affidavit for ICJ Records

In many cases, UNITY records can be admitted based on a business record affidavit prepared by the custodian or other qualified witness, i.e., Compact Administrator, DCA, or other ICJ office staff. Such an affidavit could include a brief description of the ICJ's UNITY data management system and that the information concerning the juvenile is a product of juvenile justice case history provided by both the sending state and the receiving state. In addition, the affidavit should also document that production of the relevant record occurred at or near the time of processing of the compact transfer request.

Further, for the purpose of furnishing a "business records affidavit" or testimony concerning the reliability of such information, the reliability of the information is demonstrated by showing a) that it is customarily reported, retained, and exchanged with other compact states concerning juveniles transferred under the compact; and b) that the state producing the affidavit is the state that furnished the UNITY information about the offender in question, and which should be considered the 'custodian' of such records.

Regarding the requirement that such records are maintained as part of the business' regular practice, it is important to note that ICJ Rules require use of ICJ approved forms to document interstate-related case events and incidences. These ICJ Forms, related case notes, and other communications must be transmitted through UNITY, which produces these forms using data entered into the system by authorized users (*See* ICJ Rule 3-101: Electronic Information System). Thus, records generated and maintained via UNITY, including ICJ Forms, meet the requirements above for "regular practice to make these types of records" and that they are "kept in the course of a regularly conducted activity." Forms may either be completed offline and uploaded in PDF format into UNITY or may be generated by UNITY based on data entered by state officials. Either way, the ICJ Forms are created "at or near the time of the event" and maintained in data field and PDF format.

With regard to UNITY-generated forms, the UNITY system tracks changes to all data items that comprise Case Tasks and/or Case File Log. This includes the specific changes to all data fields and related form data fields; who made the change(s); and the date and time such changes were made. If relevant data is changed, a new form can be generated to reflect the changes. Any such changes would be automatically documented in the SQL database. For example, when a UNITY user completes an action relating to a case (such as editing a juvenile's demographic information or adding a violation report), the data fields update; and the date, time, and user ID are logged in the SQL database, creating a clear audit trail. Users may utilize Case Notes to make additional notes related to a case and use Case Communications to communicate additional case information to specific persons involved in the case.

Because an assigned officer modifying a UNITY data field or ICJ Form may be different from the officer that created the initial compact case record, UNITY's audit logs capture contemporaneous identifying information, so that a business records affidavit may trace the 'chain of edits to data entries.' Creation of the edit chain is critical to court proceedings where the reliability of information and changes to a record is in question. Also, when an ICJ case file is transmitted to the other state, the system locks certain data fields so that no further edits may occur.

It is equally important to establish that it is the regular practice of ICJ personnel to produce these types of records and that the preparation of these records occurs in the “regular course of business” based upon ICJ Rules and policies. In addition to the records and processes outlined above, compact offices may describe the UNITY system as follows:

UNITY is the nationwide electronic information system of the Interstate Commission for Juveniles. The system is used by all states and member territories to track adjudicated juveniles who are authorized to travel or relocate across state lines. The system is also used to share information regarding juvenile movement under the rules of the interstate compact. In addition to serving as the main communication tool for processing compact transfer requests, UNITY serves as a clearinghouse for juvenile justice information required under the provisions of the compact and ICJ Rules. UNITY data is accessible as either active case information or as an historical record.

Documentation of the requirement that such information is to be compiled and reported can be further supported by pointing out that the ICJ provides that:

“The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its bylaws and rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.” See ICJ, Article VII.

Data Maintained in UNITY is Property of States

Importantly, nothing in the foregoing text expresses or implies that any such data collected is the property of the Interstate Commission. In fact, it is clear from the language of Article I, which sets forth the Purpose of the Compact, that “each state has responsibility for the proper supervision of juveniles subject to the compact; and, that responsibility derives from “joint and cooperative action” including the creation of “. . . a system of uniform data collection, with access to information on active cases by authorized juvenile justice officials. . .” See ICJ Article I J. Consistent with the above compact provisions, Section I of the ICJ Administrative Policy (01-2012) Record Retention and Destruction Policy provides: “This policy applies to all physical and electronic records produced by ICJ. **This policy is not applicable to records or documents produced by member states which are maintained in accordance with policies and procedures established by their respective states.**” *[Emphasis added]*

The Commission acts consistently with this policy and the above compact provisions. It has not made use of the UNITY data, except as directed by the compact member states, that continue to own the information furnished in UNITY. Moreover, since the compact states are the ‘owners’ of the information that is submitted to UNITY, the compact states are responsible for the accuracy of the data and are best able to vouch for its reliability.

Summary

While courts may request testimony from out-of-state personnel, state courts generally lack jurisdiction to require testimony from someone in another state. Therefore, admission of reliable “business records” available through UNITY can be a critical component of hearings required by juvenile courts in order to provide for the transfer and tracking of transfers of

supervision and returns of such juveniles, including adjudicated juveniles, runaways, and absconders.

In order for data from UNITY to be admitted, care must be taken to ensure that it is appropriately admitted into evidence. Therefore it is important for ICJ personnel and their legal advisors to be familiar with the “business record exception” to the “hearsay rule,” in order to ensure that UNITY records can be properly submitted to the court. The business records exception is commonly used to admit documents which might otherwise be excluded as “hearsay.” At the heart of the “business records exception” is a concern with trustworthiness; and the requirements in FRE 803(6) exist to ensure that the records are in fact trustworthy. State ICJ personnel should work in conjunction their agency’s legal advisor to ensure that the requirements outlined above are met and data from the UNITY system can provide the evidence needed in hearings pertaining to the transfer or return of a juvenile subject to the ICJ.