	Interstate Commission for Juveniles	Opinion Number: 04-2021	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters			
Description: Can a holding state judge refuse to take action on a requisition if there is no active missing person record for the juvenile in NCIC?		Dated: November 18, 2021	

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:

The State of Tennessee has asked, “Can a holding state judge refuse to take action on a requisition if there is no active missing person record for the juvenile in NCIC?”


Applicable Compact Provisions and Rules:

ICJ Rule 6-103(3), in relevant part, provides:

When the juvenile is a runaway and/or an accused status offender, the legal guardian or custodial agency shall petition the court of jurisdiction in the home/demanding state for a requisition. When the juvenile is already in custody, this shall be done within sixty (60) calendar days of notification of the juvenile’s refusal to voluntarily return.

- a. The petitioner may use Form A, Petition for Requisition to Return a Runaway Juvenile, or other petition. The petition shall state the juvenile's name and date of birth, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of his/her running away, his/her location at the time application is made, and other facts showing that the juvenile is endangering his/her own welfare or the welfare of others and is not an emancipated minor.
 - i. The petition shall be verified by affidavit.
 - ii. The petition is to be accompanied by a certified copy of the document(s) on which the petitioner’s entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees.
 - iii. Other affidavits and other documents may be submitted with such petition.

- b. When it is determined that the juvenile should be returned, the court in the home/demanding state shall sign the Form I Requisition for Runaway Juvenile.

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ICJ Rule 6-103(6) provides:


“The court in the holding state shall inform the juvenile of the demand made for his/her return and may elect to appoint counsel or a guardian ad litem. The purpose of said hearing is to determine proof of entitlement for the return of the juvenile. If proof of entitlement is not established, the court shall issue written findings detailing the reason(s) for denial.”

Analysis and Conclusions

The provisions of ICJ Rule 6-103(3) set forth the requirements for the requisition, pursuant to which the legal guardian or custodial agency shall petition the court of jurisdiction in the home/demanding state for a requisition. When the juvenile is already in custody, this shall be done within sixty (60) calendar days of notification of the juvenile’s refusal to voluntarily return. Nothing in this section includes the pre-requisite that there is an active file in the National Crime Information Center (NCIC). Moreover, ICJ Rule 6-103(6) makes it clear that, “The purpose of said hearing [in the holding state] is to determine proof of entitlement for the return of the juvenile.”

By refusing to take action on a requisition unless there is an active record in NCIC, the holding state judge is essentially creating a new requirement, which is outside of the Compact and therefore is in conflict with the Compact.

The U.S. Supreme Court has held 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. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951) *See also 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).

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Furthermore, appropriate use of the NCIC Missing Persons File will result in the lack of an active missing person record in the system in many cases. Pursuant to the NCIC 2000 Operating Manual, “A missing person record will be *retired immediately* upon receipt of a locate message” (emphasis added). Nat’l Crime Info. Ctr., NCIC 200 Operating Manual, Section 1.7, https://www.mass.gov/files/documents/2019/01/16/NCIC%202000%20Operating%20Manual_0.pdf. Thus, the missing person record is generally retired immediately once the youth is located, because the youth is no longer considered missing.

Holding state courts may review other related records that document the status of a juvenile as a missing person and/or previous availability of an NCIC missing person record, such as police reports or apprehension and detention reports. However, none of these documents are required for the requisition to be processed pursuant to the provisions of the ICJ. Furthermore, as discussed above, the holding state may not impose additional requirements. The U.S. Supreme Court has concluded that not even a member state court may unilaterally impose duties on the Commission that the compact did not specify. See *Dyer, supra*. at p.30; See also *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30 (1994).

Instead, the court in the holding state is entitled to rely on the authority of the Interstate Compact of Juveniles and the ICJ Rules. Pursuant to ICJ Rule 6-103(3), the home/demanding state’s court is responsible for determining if the criteria for issuance of a requisition are met. Once this determination has been made by the home/demanding state, the holding state’s “court shall order the juvenile be held pending a hearing on the requisition.” ICJ Rule 6-103(5). Furthermore, as defined by ICJ Rule 6-103(6), “the purpose of said hearing is to determine proof of entitlement for the return of the juvenile.”

Summary

Based upon the above points and authorities, when a home state judge has entered a requisition for the non-voluntary return of a youth, the holding state judge cannot refuse to take action on the requisition under the ICJ based on the fact that there is no active missing persons record for the youth in NCIC.