



INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Transfer of Jurisdiction Not Authorized Pursuant to the
Interstate Compact for Juveniles

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The Executive Committee of the Interstate Commission for Juveniles (the Commission) requested the following legal analysis to ensure courts and other agencies are aware of requirements of the Interstate Compact for Juveniles (ICJ) and rules concerning a proposed transfer of jurisdiction under the ICJ. This analysis will serve as a resource to analyze the circumstances, if any, under which an ICJ supervision case can be transferred from a sending state to a receiving state pursuant to the ICJ.

I. **A Transfer of Jurisdiction Over an ICJ Case Exceeds the Scope of Permissible Authority of the Commission**

Separation of powers, as established in the U.S. Constitution, is a fundamental concept in American law. Because of separation of powers, it is a fundamental axiom of administrative law that a rule or regulation or policy cannot exceed the scope of authority delegated by the legislative body to the agency which promulgates the rule or regulation. See Bowen v. Georgetown University, 488 U.S. 204, 208 (1988).

The Purpose of the ICJ is set forth in Article I and provides that:

“The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.”

By adopting the foregoing purpose statement, the legislative bodies of all Compact states have established that the transfer of supervision is one of the primary purposes of the ICJ and delegated the authority to establish rules controlling the transfer of supervision to the Commission. Conversely, the purpose statement does not include any reference to the transfer of jurisdiction. Therefore, transfer of the jurisdiction of an ICJ supervision case is beyond the scope of permissible authority granted to the Commission by ICJ, because such a rule would contradict the existing language of the compact statute.

Consequently, it is important to distinguish between the concepts of interstate supervision, which is transferrable, and jurisdiction which is not transferrable. The jurisdiction of a case, including the authority to alter the terms and conditions of supervision, remains with the court of the sending state. Similarly, violations of the conditions of supervision must be handled by the courts of the sending state upon notice from the receiving state, unless a violation constitutes a new offense under the laws of the receiving state. If the receiving state decides to prosecute on the new offense, only then would the receiving state have jurisdiction.

Thus, the fundamental nature of jurisdiction in the original matter remains the same. The sending state retains jurisdiction regarding the original matter, and the receiving state acts as an agent for the sending state in relation to the supervision of the juvenile. Any attempt

to alter the fundamental relationship between sending and receiving states under the ICJ would be invalid and subject to judicial challenge because it would violate exceed the scope of authority delegated

II. A Transfer of Jurisdiction Under the ICJ is in Direct Conflict with ICJ Rules, Advisory Opinions and Case Law

A transfer of jurisdiction of an ICJ supervision case is also in conflict with existing ICJ rules and advisory opinions issued by the Commission interpreting the meaning and application of the compact and ICJ administrative rules in this regard, as well as settled law in a number of compact member states. The transfer of supervision of a juvenile offender under the Compact and ICJ rules, as presently conceived, like the Interstate Compact for Adult Offender Supervision (ICAOS), does not deprive the sending state of jurisdiction over the offender. See, e.g., Scott v. Virginia, 676 S.E.2d 343, 347 (Va. App. 2009); State v. Lemoine, 831 P.2d 1345 (Kan. Ct. App. 1992).

While the receiving state exercises jurisdiction over the offender for purposes of supervision, the sending state retains jurisdiction over the offender for purposes of probation or parole revocation. See, Advisory Opinion 3-2008 Id. (sending state retains jurisdiction to revoke probation; transfer of the duties of visitation and supervision over probationers does not explicitly mean a complete transfer of jurisdiction). In an analogous case, one court interpreting the Interstate Parole and Probation Compact, the precursor to the ICAOS, held that:

Under the Interstate Parole and Probation Compact, * * * [a] receiving state assumed the duties of visitation and supervision over defendant. Florida Administrative Code Rule 23-4.001 provides an effective, businesslike method for permitting persons under supervision to leave one state and take up residence in another state with assurance that they will be supervised in the receiving state and can be returned to the sending state in case of sufficient violation. One of the functions of the receiving state is to properly report all violators to the original sending state, with appropriate recommendations. (Citations omitted)

Kolovrat v. State, 574 So. 2d 294, 296 (Fla. Dist. Ct. App. 1991). Neither the ICJ nor ICJ rules gives a receiving state the authority to revoke the probation or parole imposed by authorities in a sending state. See Scott v. Virginia supra. at p. 347; See also Peppers v. State, 696 So. 2d 444 (Fla. Dist. Ct. App. 1997). A receiving state may, independent of the sending state, initiate criminal proceedings against offenders who commit crimes while in the state. See, e.g., 5-103(3);

“The sending state has sole authority to discharge/terminate supervision of its juveniles. . .” See ICJ Rule 5-104 (1). Thus, the decision of the sending state to retake a juvenile shall be conclusive and not reviewable within the receiving state. See, Crady v. Cranfill, 371 S.W.2d 640 (Ky. Ct. App. 1963) (“. . . a sending state retains authority over offender through the retaking provisions; it is inappropriate for the courts of a receiving state to arrogate to themselves the determination of whether a sending state has forfeited its right to retake offenders under parole from that state”).

Under the common law of agency, when a person or entity is legally authorized by a contract (including the terms of an interstate compact) to act for another, a legal relationship is created

referred to as an “agency,” in which the “agent” acts for the “principal” to perform all lawful duties which the principal is authorized to carry out. This *agency* concept is also inherent in the arrest and detention of offenders and juvenile in a receiving state where again the relationship between officials in a sending state and officials in a receiving state has been defined by courts as an ***agency relationship***.

Courts recognize that in supervising out-of-state offenders the ***receiving state is acting on behalf of and as an agent of the sending state***. See, State v. Hill, 334 N.W.2d 746 (Iowa 1983) (trial court committed error in admitting out-of-state offender to bail as status of the offender was not controlled by the domestic law of Iowa but rather by the Interstate Compact for Probation and Parole and the determinations of sending state authorities); State ex rel. Ohio Adult Parole Authority v. Coniglio, 610 N.E.2d 1196, 1198 (Ohio Ct. App. 1993) (“For purposes of determining appellee’s status in the present case, we believe that the Ohio authorities should be considered as agents of Pennsylvania, the sending state. As such, the Ohio authorities are bound by the decision of Pennsylvania with respect to whether the apprehended probationer should be considered for release on bond and the courts of Ohio should recognize that fact.”). In supervising out-of-state offenders, authorities in a receiving state are not acting exclusively as authorities of that state under the domestic law of that state, but are also acting as **agents** of the sending state and to a certain degree are controlled by the lawful decisions of sending state officials.

This agency principle in both the ICJ and ICAOS is more clearly explained in recent cases in which the legal relationship by and between sending and receiving states is described as follows: “Under the terms of the compact, the receiving state “will assume the duties of visitation and supervision over probationers or parolees of any sending state. Transfer of supervision under this statute is not a transfer of jurisdiction. . . Although the day-to-day monitoring of probationers becomes the duty of the receiving state, the sending state does not abdicate its responsibility.” See Keeney v. Caruthers, 861 N.E.2d 25 (Ind. App. 2007); Scott v. Virginia, 676 S.E.2d 343, 348 (Va. App. 2009).

The transfer of supervision under the ICJ is not a transfer of jurisdiction. Thus, supervision in the receiving state is a joint effort between the two states in support of the court’s dispositional order. See In re S.H., No. A128298, 2011 WL 2152062, at *5 (Cal. Ct. App. June 1, 2011) (“Article I of the ICJ provides that among its purposes was to ‘ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state *as ordered by the adjudicating judge or parole authority in the sending state* . . .”). While receiving states have limited discretion to reject a proposed transfer, this fact does not change the underlying nature of the relationship between the sending state and the receiving state. Because an agency relationship must be created by a contract in which the agent and principal have agreed to the applicability of the relationship to exist with regard to a supervision case eligible for the application of the compact, until the receiving state agrees in writing to assume supervision, the duty to supervise remains with the sending state. See ICJ RULES 4-1012 (INTERSTATE COMM’N FOR JUVENILES 2018); In re A.S.M., 325 P.3d 1251, 1255 (Mont. 2014)(requiring that ICJ application for transfer be approved prior to placement). Once the receiving state agrees to assume supervision, the sending state must, within five (5) business days prior to the juvenile’s departure, if the juvenile is not already residing in the receiving state, issue reporting instructions to the juvenile and provide written notification of the juvenile’s departure to the receiving state. ICJ RULES 4-104(5).

III. A Transfer of Jurisdiction Would Unconstitutionally Usurps Legislative Authority Over Judicial Jurisdiction

A 'jurisdictional transfer' would violate the well settled principle of constitutional law that only the legislature, within constitutional limits, has the authority to alter the jurisdiction of the courts. See Henderson v. State, 615 So.2d 406, 407-10 (Ala. 1993); Brown v. Metropolitan Transportation Authority, 717 F. Supp. 257, 258-61 (S.D.N.Y. 1989); Nielson v. Ford Motor Co., 681 N.E.2d 470 (Ohio 1996)(State Constitution gives courts the power to exercise whatever jurisdiction may be expressly granted to them by the legislature); Chenault v. Phillips, 914 S.W.2d 140, 141 (Texas 1996); Janes v. Continental Can Co., 920 P.2d 939 (Kansas 1996); State v. Verrier, 617 S.E.2d 675, 680 (North Carolina 2005); State v. Henley, 787 N.W.2d 350 (Wis. 2010); People v. McLaughlin, 606 N.E.2d 1357, (New York, 1992); In a somewhat analogous situation involving the complete transfer of jurisdiction of child placement proceedings under the Indian Child Welfare Act (ICWA) and its counterpart under a Minnesota state statute, the court held that the exclusive authority to determine whether the child placement proceeding concerning a native American child should be transferred from state court to tribal court was vested in Congress and the State legislature. See Cherokee Nation v. Nomura, 160 P.3d 967 (Okla. 2007); See also Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 36-37 (1989).

While the Commission has been delegated rulemaking authority by the member state legislatures, such delegation does not include the power to alter the jurisdiction of the courts. Judicial jurisdiction has been described as the "power of the court to decide a controversy" and as the above cases indicate, under the respective state constitutions only the legislature has the authority to determine the jurisdiction of the courts. See Pratts v. Hurley, 806 N.E.2d 992 (Ohio 2004).

No provision of the ICJ statute delegates to the Commission the power to unilaterally alter the jurisdiction of the courts in the sending or receiving states through the administrative rulemaking process. Moreover, even if such authority was asserted by the Commission, any attempt to do so in violation of the state constitutional limits imposed upon the legislature of any Compacting State would be "**ineffective**" and any "**duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission**" would "**remain in the Compacting State(s) and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegate by law in effect at the time this Compact becomes effective.**" See ICJ, Article XIII, §B.4.

IV. A Transfer of Jurisdiction under ICJ Unconstitutionally Would Usurp Legislative Authority to Regulate Sentencing

Finally, a 'jurisdictional transfer' would violate the constitutional prerogative that the legislature "is lodged with the power to define, classify and prescribe punishment for crimes committed within the state." See State v. Rush, 697 N.E.2d 634 (Ohio 1998); In re Vasquez, 705 N.E.2d 606 (Mass. 1999); State v. Scott, 961 P.2d 667 (Kan. 1998) (It is the legislature's prerogative to make policy decisions and specify punishments for crime); State v. Mitchell, 577 N.W.2d 481 (Minn. 1998) (In sentencing, legislature has power to define punishment for crimes, and courts are executor of legislative power); Shaffer v. State, 740 So.2d 273 (Miss. 1998) (Power to define crimes and prescribe punishments is legislative in nature and is

constitutionally vested in state legislature); Mullins v. Com., 956 S.W.2d 222 (Ky. App. 1997) (Legislature has power to designate what is a crime and sentences for violations thereof, and included therein is power to limit or prohibit probation or parole. Const. § 29); People in Interest of R.W.V., 942 P.2d 1317 (Colo. App. 1997) (Although sentencing traditionally is judicial function, it is not within sole province of judiciary; rather, the General Assembly has inherent powers to prescribe punishment for crimes and to limit court's sentencing authority); Riffe v. State, 675 N.E.2d 710 (Ind. App. 1996) (Legislature fixes penalties for crimes, and trial court's discretion in sentencing does not extend beyond limits prescribed by statute);

As the above cases make clear, the authority to alter the jurisdiction over juveniles of the courts is within the exclusive control of the respective state legislatures as is the power to determine what conduct constitutes a crime as well, as the appropriate punishment for it, including the exercise of discretion in sentencing. An attempt to transfer jurisdiction under the ICJ improperly seeks to transfer the authority from the sending state to the receiving state court's probation officers. It is clear that neither the power to alter or transfer the jurisdiction of the courts nor to alter or transfer the means of punishment, including the terms and conditions of any sentence imposed, have been delegated to the Commission by the terms of the Compact.