



INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

ICJ Returns, Human Trafficking, and Federal Authorities

Issued: May 2021

Interstate Compact for Juveniles Governs Return of Runaways

The Interstate Compact for Juveniles (ICJ) is a legislatively adopted contract developed for the express purpose of governing the interstate movement of juveniles, including “. . . return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; . . .” See [ICJ Article I](#). Therefore, the ICJ is the applicable body of law when a juvenile has left their home state and has run away, absconded, escaped from supervision, or been accused of an offense in another state which requests their return.

The ICJ has been adopted by all 50 states, the District of Columbia, and the U.S. Virgin Islands. Once a state legislature has enacted the Compact, its provisions bind all agencies, state officials, and citizens to terms of the Compact. Thus, application of ICJ is not discretionary, it is mandatory in all cases that fall within its subject matter. Further discussion of the legal implications of interstate Compacts is available in the Commission’s [Bench Book for Judges and Court Personnel](#), Chapter 1.

Holding State Does Not Determine Best Interest of the Child and Must Report Allegations of Abuse/Neglect to Home/Demanding State

Because the determination of the best interest of the juvenile is always a critical issue, the [ICJ Rules](#) are built upon the premise that authorities in the home state are in the best position to evaluate and promote the best interest of the juvenile. ICJ Rule 6-105(1) requires the holding state to notify the home state of any concerns about abuse and neglect. ICJ Rule 6-105(2) requires that, regardless of such concerns, the juvenile must be returned to the home state. These provisions are intended to ensure that determinations about best interest are made by authorities in the state with most access to information regarding relevant information.

The ICJ clearly applies when a juvenile who is involved in sex trafficking is also a juvenile whom has left their home state and has run away, absconded, or escaped from supervision. In such cases, the juvenile must be returned pursuant to [ICJ Rule 6-101](#). Moreover, concerns regarding abuse or neglect must be reported to the home/demanding state pursuant to [ICJ Rule 6-105](#). Furthermore, the holding state’s ICJ Office must notify the home/demanding state’s ICJ Office of the suspected abuse or neglect, which clearly would include victimization resulting from sex trafficking.

Further, the home/demanding state’s ICJ Office is also required to work with the appropriate authority and/or court of competent jurisdiction in the home/demanding state to affect the return of the juvenile. However, pursuant to [ICJ Rule 6-105\(2\)](#), “Allegations of abuse or neglect do not alleviate a state’s responsibility to return a juvenile within the time frames in accordance with the [ICJ] rules.” See [ICJ Rule 6-105\(2\)](#). States are also required to follow applicable procedures for reporting and investigating allegations of abuse or neglect of juveniles. See [ICJ Rule 6-105\(3\)](#).

Federal Laws Related to Human Trafficking

At the federal level, the Trafficking Victims Protection Act (TVPA) of 2000 created the first comprehensive federal law to address human trafficking. It is the national framework for the federal response to human trafficking, with a significant focus on the international dimension of the problem. First enacted in 2000, the law has been reauthorized and updated five times,

most recently in January 2019 with strong bipartisan support. In FY19, Congress appropriated \$250 million toward these efforts. The TVPA is based upon a three-pronged “3P” approach to fighting sex trafficking and labor trafficking: **Prevention** (through public awareness programs overseas and a State Department-led monitoring and sanctions program); **Protection** (through a new T-Visa and services for foreign national victims); and **Prosecution** (through new federal crimes).

As defined in the Trafficking Victims Protection Act (TVPA) of 2000, the legal definition of “severe forms of trafficking in persons” is:

- a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age. (See 22 USC § 7102 (9)(A), or
- b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See 22 USC § 7102 (9)(B).

Among the renewals or updates is the **Trafficking Victims Protection Reauthorization Act of 2017**, Public Law 115-427, 115th Congress (2019) which requires the U.S. Department of Homeland Security to develop victim screening protocols for local, state, and federal law enforcement to ensure officers are trained to recognize human trafficking victims and emphasizes enforcement by providing stronger identification, prosecution, and sentencing tools to law enforcement and prosecutors. The law also emphasizes the need for law enforcement to refer human trafficking victims to services instead of arresting, charging, or prosecuting them for offenses resulting from their victimization.

Responsibility for human trafficking is spread across federal agencies. The U.S. Department of Homeland Security (DHS) investigates the bulk of sex and labor trafficking cases involving foreign nationals, while the FBI takes the lead on investigating domestic minor sex trafficking cases. The Justice Department leads federal prosecutions and funds state and local law enforcement agencies to form human trafficking task forces. Social services, awareness-raising, and prevention activities are also funded by the U.S. Department of Health and Human Services (HHS). HHS also funds the U.S. National Human Trafficking Hotline.

The Preventing Sex Trafficking and Strengthening Families Act of 2014 is a comprehensive law addressing accountability and reporting of runaway and missing children in foster care. This legislation addresses the identification and protection of children and youth at risk of sex trafficking. Pursuant to the provisions of the Act:

- States must develop policies and procedures to identify, document, screen, and determine appropriate services for children under the child welfare agency’s care and supervision, who are victims of, or at risk of, sex trafficking. States, at their option, may develop these policies and procedures for all young adults under 26 regardless of foster care involvement. Effective within one year of enactment.
- State child welfare agencies must immediately report children in their care identified as sex trafficking victims to law enforcement. Effective within two years of enactment.
- State child welfare agencies must report the numbers of children in their care identified as sex trafficking victims to the U.S. Department of Health and Human Services (HHS). Effective within three years of enactment.

- HHS must report these numbers to Congress and make it publicly available. Effective within four years of enactment and each year thereafter.
- HHS must report to Congress annually on the number of child victims and on children who have run away from foster care including their risk of becoming sex trafficking victims—characteristics, potential factors associated with children running away from foster care, information on children’s experiences while absent from care and trends in the number of children reported as runaways in each fiscal year; state efforts to provide services and placements; and, state efforts to ensure children in foster care form and maintain long-lasting connections to caring adults. Effective within two years of enactment.
- Requires state child welfare agencies to report missing youth to law enforcement, within 24 hours, for entry into the National Crime Information Center and to the National Center for Missing and Exploited Children. Effective within two years of enactment.
- Requires child welfare agencies to develop and implement protocols to locate children who runaway or are missing from foster care, determine the child’s experiences while absent from care, develop screening to determine if the child is a sex trafficking victim, and report information to HHS; effective within one year of enactment.

ICJ Still Must Be Applied if Human Trafficking Victim is Runaway

Notwithstanding the multiple federal laws applicable to human trafficking, ICJ member states are not preempted from the application and enforcement of the Compact when a juvenile is also a victim of human trafficking. This is because the ICJ has congressional consent under the compact clause of the federal Constitution, See Art. I § 10 Cl. 3. As a consequence, congressional consent has the transformational effect of requiring that both the provisions of ICJ and the ICJ Rules be applied as the equivalent of federal law under the “law of the union doctrine.” See *Texas v. New Mexico*, 482 U.S. 124 (1987); *Cuyler v. Adams*, 449 U.S. 433 (1981); *Delaware River Comm’n v. Colburn*, 310 U.S. 419, 439 (1940). Therefore, even where there is “overlapping” jurisdiction of the ICJ and federal human trafficking laws, the ICJ is still enforceable.

However, it is important that both ICJ Offices and law enforcement officials with jurisdiction over human trafficking communicate with each other concerning the disposition of these cases in a manner which promotes the safety of the juveniles and protection of the public. The [Commission's website](#) contains information and recommendations for ICJ Offices in managing this population including the application of the ICJ and ICJ Rules. These include, a “[Best Practice Concerning Responding to Human Trafficking Victims Within ICJ](#)” and “[Key Concepts in Human Trafficking.](#)” which includes discussions related to reporting, investigations, and the use of multidisciplinary teams.

These resources emphasize that once a youth has been identified as a trafficking victim, the appropriate state or federal law enforcement agency should be notified. The ICJ Office should also be notified immediately and should educate law enforcement agencies concerning ICJ timelines which are applicable to returns under the ICJ Rules so that the investigations by other agencies are planned and carried out in a manner which does not conflict with those required under the ICJ.