



INTERSTATE COMMISSION FOR JUVENILES

Serving Juveniles While Protecting Communities

Temporary Secure Detention of Non-Adjudicated Juvenile Runaways

Issued: September 2013

Revised: March 2020

The ICJ Executive Committee requested the following legal analysis to ensure courts and other agencies are aware of ICJ's requirements and rules. This analysis will serve as a resource to document the circumstances under which a non-adjudicated juvenile may permissibly be detained under the ICJ as a recognized exception to the Juvenile Justice and Delinquency Prevention Act (JJDP) and the continued need for this exemption to be maintained.

Analysis of Relevant Law

ICJ Rule 1-101 defines "Runaways" as "persons within the juvenile jurisdictional age limit established by the home state who (1) have voluntarily left their residence without permission of their legal guardian or custodial agency or (2) refuse to return to their residence as directed by their legal guardian or custodial agency but who may or may not have been adjudicated." Pursuant to ICJ Rules 6-101, 6-102, and 6-103, a non-delinquent runaway may be securely detained to allow such juvenile to be safely returned to a parent or guardian having custody of the youth.

Despite the clear language of the ICJ Rules, controversies sometimes arise regarding secure detention because the federal Juvenile Justice and Delinquency Prevention Act (JJDP) generally prohibits placing status offenders in custody. The JJDP's deinstitutionalization of status offenders (DSO) requirement provides that youth charged with status offenses, and abused and neglected youth involved with the dependency courts, may not be placed in secure detention or locked confinement, except under very limited circumstances. As described in JJDP, 34 U.S.C. 11133 (a) 11(A)(i), the JJDP clearly provides an exemption for secure detention for out-of-state runaway youth held under the ICJ.

The JJDP expressly creates an exemption to the deinstitutionalization of status offenders and permits detention of "*a juvenile who is held in accordance with the Interstate Compact on Juveniles as enacted by the State;*" see 34 U.S.C. 11133(a)(11)(A)(III). Moreover, there is no specific time frame set forth in the above provision. Section 34 U.S.C. 11133(a)(11)(A)(III) clearly allows such detention as long as the juvenile is being "held in accordance with the Interstate Compact on Juveniles." This includes the duly authorized administrative rules promulgated under the authority of the ICJ. The Commission's understanding has been affirmed by guidance provided by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which is available upon request from the Commission's National Office.

A cardinal rule of statutory construction begins with the assumption that in the absence of a special definition in the text of the statute or regulation, "the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Assn. v. South Coast Air Quality Management Dist.*, 541 U.S. 246, 252, 124 S.Ct. 1756, 158 L.Ed.2d 529 (2004). As the U.S. Supreme Court recently reaffirmed, "Applying "settled principles of statutory construction," "we must first determine whether the statutory text is plain and unambiguous," and "[i]f it is, we must apply the statute according to its terms." *Carcieri v. Salazar*, 555 U.S. 379, (2009); See also *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

The literal language of 34 U.S.C. 11133 (a)(11)(A)(III) contains no conditions or limitations on the exemption other than the juveniles are "held in accordance with the Interstate Compact on Juveniles as enacted by the State." Therefore, any State which has enacted the ICJ is permitted to utilize secure detention for out-of-state runaway youth. As of 2019, all 50 states, the District of Columbia, and the U.S. Virgin Islands have enacted the ICJ.

Additional Practice Concerns

Even though the JJDPA was reauthorized in 2018 with the ICJ exception intact, deinstitutionalization of status offenders has been a significant trend throughout the United States since the JJDPA was first authorized in 1974. As described by the Coalition for Juvenile Justice (CJJ),

“Placing children and youth who commit status offenses in locked detention jeopardizes their safety and well-being. Too often, detained youth are held in overcrowded, understaffed facilities—environments that can exacerbate unmet needs and breed social tension or even violence. Yet, of the estimated 150,700 status offense cases annually petitioned to the courts, nationwide, nearly 10 percent are placed in locked confinement at some stage between referral to court and disposition. In addition, nearly 20 percent of non-delinquent youth, including status offenders, charged with technical violations of court orders and non-offending youth detained for ‘protective custody,’ are placed in living units with youth who have killed someone.”¹

In addition to CJJ, related efforts have been supported by OJJDP, the National Council of Juvenile and Family Court Judges, the Annie E. Casey Foundation (Juvenile Detention Alternatives Initiative), and many more.

As state and local authorities work toward deinstitutionalization of status offenders, it may be increasingly important to work to address concerns regarding secure detention of out-of-state runaways. It may be prudent to share statistical data regarding interstate runaways and the limited options for effecting the safe return of such juveniles. Particular emphasis should be placed upon the need to balance the possible risk to the juvenile’s safety by secure detention in an appropriate facility against the even greater safety risk of allowing such a juvenile to remain ‘on the streets’ as a runaway or in the company or custody of adults or others who present an imminent threat to the child’s physical and emotional well-being (such as those who might involve these youth in prostitution or drug abuse).

¹Coalition for Juvenile Justice. (2012) *Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration of Non-Delinquent Youth*. Washington, D.C.