

Interstate Commission for Juveniles



Memorandum

Date: July 6, 2020

To: MaryLee Underwood, Executive Director

From: Rick Masters, General Counsel, ICJ

Re: Request for Interpretation of applicability of ICJ Rules 6-101 and 6-105 to non-voluntary return of a non-delinquent and non-dependent juvenile victim of human trafficking

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (“Interbranch Commission”), Commissioner Wendy Lautsbaugh has requested an interpretation of ICJ Rules and policies as they apply to non-delinquent and non-dependent juveniles who are victims of human trafficking. Specifically, the Interbranch Commission has requested an opinion as to whether ICJ Rules 6-101 and 6-105 mandate the non-voluntary return of a non-delinquent and non-dependent juvenile victim of human trafficking to her/his home state even if returning the juvenile is not in the juvenile’s best interest. Next, the Interbranch Commission has asked whether ICJ Rules apply to juveniles who become victims of interstate human trafficking who leave their home states after being induced to leave, kidnapped, “sold,” or “given” to traffickers by family members or caretakers. Both questions are addressed in this Memorandum.

As you are aware, the Interstate Compact for Juveniles (ICJ) has been adopted by all 50 states, the District of Columbia, and the US Virgin Islands 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](#). Thus, 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 that has requested their return. 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 Interstate Commission’s [Bench Book for Judges and Court Personnel](#), Chapter 1.

The Interbranch Commission previously raised the question of how the best interest of the child should be assessed and protected. 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. Thus, ICJ Rule 6-105(1) requires the holding state to notify the home state of any concerns about abuse and neglect; and ICJ Rules 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 relevant information.

A victim of human trafficking who is also a juvenile who has left their home state and has run away, absconded, or escaped from supervision must be returned pursuant to ICJ Rule 6-101.

Concerns regarding abuse or neglect must be reported to the home/demanding state pursuant to ICJ Rule 6-105, which also requires the holding state's ICJ Office to notify the home/demanding ICJ Office of the suspected abuse or neglect, which clearly would include victimization resulting from sex trafficking.

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." 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).

Next, the Interbranch Commission asked whether ICJ Rules apply to juveniles who become victims of interstate human trafficking who leave their home states after being induced to leave, kidnapped, "sold," or "given" to traffickers by family members or caretakers. To address this question, it is critical to note that the application of the Compact is not based upon the juvenile's status as a victim of human trafficking or how the trafficking was initiated. Instead, application of the Compact depends upon whether the juvenile is otherwise subject to the Compact.

While the Interstate Commission has the authority to promulgate rules, it must act consistently with the provisions of the ICJ statute which delegates the authority to do so. If a rule exceeds the statutory authority granted to the Commission, such a rule is unenforceable as an *ultra vires* rule. See *U.S. v. Lopez*, 514 U.S. 549, 567 (1995). ICJ, Article I clearly provides that compacting states "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."

Moreover, Art. I provides that it is the purpose of the Compact, "through joint and cooperative action among the compacting states to: (A) 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. . . (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense in the state requesting their return."

Based upon the above ICJ statutory and rule provisions, the ICJ is clearly intended to apply to juveniles who have left their home state and have run away, absconded, or escaped from supervision, including those juveniles who are also victims of human trafficking who have "left their home state and have run away, absconded, or escaped from supervision or control or have been accused of an offense in the state requesting their return."

The ICJ statutory definition of "juvenile" includes "accused delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders and non-offenders." ICJ Rule 1-101 defines "non-offender" as "a person in need of supervision who has not been accused or adjudicated a status offender or delinquent." This category of "non-offenders" includes runaways. Furthermore, 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."

While the above definitions are broad, there is no specific reference to juveniles who have been induced to leave, forcibly removed, kidnapped, “sold,” or “given” to traffickers by family members/caretakers, and then taken by traffickers to other states. Nonetheless, Art. I of the ICJ states that “The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.”

Therefore, the Compact clearly applies to juveniles who have runaway, absconded, or escaped from supervision or control or committed an offense in a state requesting their return who are also victims of human trafficking, regardless of how the trafficking was initiated. However, the Compact would not apply to human trafficking victims who are not otherwise subject to the Compact, including some who were induced to leave, forcibly removed, kidnapped, “sold,” or “given” to traffickers by family members/caregivers.