



INTERSTATE COMMISSION FOR JUVENILES

*Serving Juveniles While Protecting Communities*

## Temporary Secure Detention of Non-Adjudicated Juvenile Runaways

October 2013

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.

In Rule 1-101, the Compact defines "Runaway" as "a child under the juvenile jurisdictional age limit established by the state, who has run away from his/her place of residence, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody." 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. While the federal Juvenile Justice and Delinquency Prevention Act (JJDP) generally prohibits placing status offenders in custody, the relevant provisions of the reauthorization of the JJDP, 42 U.S.C. §5633(a), clearly provide an exemption for secure detention for out-of-state runaway youth held under the ICJ.

As stated in guidance received from OJJDP, 42 U.S.C. 5633(a), by its language, creates an exemption to the deinstitutionalization of status offenders and permits detention of "*juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;*" See 42 U.S.C. 5633(a)(11)(A)(iii). Moreover, there is no specific time frame set forth in the above provision. Section 42 U.S.C. 5633(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.

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. ----, ----, 129 S.Ct. 1058, 1063-1064, 172 L.Ed.2d 791 (2009); See also Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-254 (1992).

The literal language of 42 U.S.C. 5633(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 secure detention for out-of-state runaway youth.

However, compact offices should also take note of the concerns previously expressed by OJJDP and the Coalition for Juvenile Justice ("CJJ"). One concern is the proposed Valid Court Order ("VCO") exemption 'phase out' and the growing trend, verified by the current efforts of CJJ to eliminate such exemptions. This suggests that alternatives to secure detention and correctional placements need to be identified for status offenders, including runaways, as this aspect of juvenile compact administration is considered going forward. See

*Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration, Coalition for Juvenile Justice, 2013*

According to CJJ, “. . . judges and courts face complex challenges as a result of laws that allow youth, by virtue of their minor status, to be charged in juvenile court for “status offenses,” i.e., actions that are not illegal at the age of adulthood, including curfew violations, possession of alcohol and tobacco, running away and truancy.” CJJ, in its recent monograph, also reports that:

“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.”

With respect to the Valid Court Order exception, which is similar to that provided for the ICJ, the CJJ brief notes that, “While the DSO prohibition against locked detention of status offenders has stood since 1974, since 1984 the valid court order (VCO) exception to the DSO core requirement has allowed detention of adjudicated status offenders, under certain conditions, if they violate a VCO or direct order from the court. These orders can be as general as “stop running away from home” or “attend school regularly.” Almost half of the U.S. states and territories prohibit use of the VCO exception in statute or do not actively utilize the exception. In 30 states where the exception is used, it is typically used by a single court or a small number of judges, at times to excess.”

Interestingly, while the above referenced CJJ study mentions ‘running away’ as an example of the status offenses which should not be a basis for detention of juveniles, no reference is made to either interstate runaways or the ICJ. Presumably, this was not an oversight because the above referenced exception to the relevant provision of the JJDPa found at 42 U.S.C. §5633(a) 11(A) iii expressly references “**juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State**” (emphasis added).

Notwithstanding the fact that the “ICJ exemption,” has not been specifically mentioned, it seems prudent to provide CJJ and other stakeholders, such as the National Council of Juvenile and Family Court Judges (“NCJFCJ”), with statistical data showing the numbers of interstate runaways and the limited options for effecting the apprehension and safe return of such juveniles to the custody of their parents or guardians in another state. Case studies and anecdotal accounts by Judges from various jurisdictions about the widespread and inherent difficulties to accomplish the safe return of an interstate runaway without the use of some form of secure detention should be highlighted. Frequently this is due to factors such as the lack of availability of alternative facilities at the time of recovery or apprehension of these youth who are often found ‘after hours’ when such facilities or programs are either closed or have no space for such runaways.

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).

Additionally, the proposed reauthorization of the JJDPa currently before Congress should be reviewed and consideration given to providing input to relevant legislative committees to insure that the ICJ exemption is preserved and the public policy served by doing so adequately explained.

Finally, compact offices should be actively involved in opposing any local efforts in State Courts to eliminate the responsible use of secure detention for the limited purpose of apprehending and the safe return of interstate runaways as well as making appropriate recommendations to members of Congress from each State concerning this important aspect of the administration of the ICJ.