



INTERSTATE COMPACT & NEW YORK FAMILY COURTS

WHAT JUDGES NEED TO KNOW

The Interstate Compact for Juveniles (ICJ) is the only legal means to transfer a juvenile's probation or parole supervision from one state to another and to return juvenile runaways.

The Interstate Commission for Juveniles is the governing body of the ICJ and is collectively formed by the Commissioners from each member state. All 50 states, Washington D.C. and the U.S. Virgin Islands are members of the Compact. The Commission works to preserve child welfare and promote public safety by providing enhanced accountability, enforcement, visibility and communication in the return of juveniles who have left their state of residence without permission, and in the cooperative supervision of delinquent juveniles who travel or relocate across state lines.

New York State Executive Law § 501-e sets forth the Compact. All courts and executive agencies must enforce the Compact and take all necessary actions to effectuate its purposes. The Commission promulgates rules to achieve ICJ goals. Such rules have the force and effect of federal law.

COMPACT TRANSFER ELIGIBILITY (SEE ICJ RULES 1-101; 4-101)

A juvenile (who is not being placed in a residential facility) shall be eligible for transfer if he/she meets the following criteria:

- Is classified as a juvenile in the sending state; and
- Is an adjudicated delinquent, adjudicated status offender, or has a deferred adjudication; and
- Is under the jurisdiction of the court or appropriate authority in the sending state; and
- Has a plan inclusive of relocating to another state for a period exceeding 90 consecutive days in any 12-month period; and
- Has more than 90 days remaining at the time the sending state submits the transfer request; and
- Will reside with a legal guardian, relative, non-relative or independently; or
- Is a full time student at an accredited secondary school, or accredited university, college or licensed specialized training program and can provide proof of acceptance and enrollment.

No state shall permit a juvenile who is eligible for transfer to relocate to another state except as provided by the ICJ.

Relocate: means to remain in another state for more than 90 consecutive days in any twelve 12-month period.

A request for transfer of supervision for the *sole* purpose of collecting restitution and/or court fines is not permitted.

REQUIREMENTS FOR TRANSFER OF JUVENILES OUT OF STATE (SEE ICJ RULES 1-101; 4-102; 4-104; 5-101; 8-101; ICJ Advisory Opinion # 02-2015)

The Probation Department in the sending state is responsible for submitting a complete referral packet containing the required ICJ forms and other documents to the receiving state for investigation.

The court shall assist probation with the completion of the ICJ Form IA/VI Application for Compact Services and Memorandum of Understanding and Waiver. This form must be signed by the juvenile, a witness and the judge prior to allowing the juvenile to leave the sending state. The juvenile should be directed to report to probation to complete the remaining ICJ forms.

When it is necessary for the juvenile probationer to proceed to the receiving state *prior* to receiving an official acceptance, the probation department must provide the juvenile with a travel permit for testing a proposed residence.

- The out-of-state travel and agreement to return form must be signed by the juvenile and the supervising officer in the sending state and must not provide permission to travel in excess of 90 calendar days. The probation department must send a copy of the travel permit to the receiving state through the Juvenile Interstate Data System *prior* to the juvenile's departure from the sending state.

A sending state must *not* allow a *juvenile sex offender* to proceed to a receiving state, until the sending state's request for transfer of supervision has been approved, or reporting instructions have been provided by the receiving state, unless the juvenile has no legal guardian remaining in the sending state. In this instance *only*, the sending state must determine if the circumstances of the juvenile's immediate transfer justifies the use of a travel permit and the appropriateness of the residence in the receiving state.

- If immediate transfer is necessary, the completed out-of-state travel and agreement form must be sent to the receiving state with justification for immediate placement prior to the juvenile's departure from the sending state.
- Receiving state must ensure compliance with local policies or laws when issuing reporting instructions. If the proposed residence is unsuitable, the receiving state may deny acceptance. Juvenile sex offenders must abide by registration laws in receiving state (i.e. felony or sex offender registration, notification or DNA testing).
- A juvenile sex offender who fails to register in the receiving state when required will be subject to the laws of the receiving state.
- The receiving state must advise the sending state of any sex offender registration requirements and/or reporting instructions the juvenile may have in the receiving state. The sending state maintains supervision responsibility

until the transfer is officially accepted by the receiving state. The receiving state has the authority to supervise the juvenile sex offender pursuant to reporting instructions.

Upon completion of the ICJ forms, the probation department will submit a referral packet to the receiving state requesting transfer of supervision.

- The receiving state shall, within 45 calendar days of receipt of the referral, forward to the sending state the home evaluation along with the final approval or disapproval of the request for transfer of supervision.
- The receiving state cannot deny supervision based solely on the juvenile's age or the offense. Supervision *may* be denied when the home evaluation reveals that the proposed residence is unsuitable, or if the juvenile is not in substantial compliance with the terms and conditions of supervision, *except* when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state.
- If transfer is denied, the sending state must arrange transportation for return of juvenile within five business days.
- Upon acceptance of supervision the receiving state must supervise the juvenile consistent with other similar juveniles under probation or parole supervision in the receiving state.
- At the time of acceptance or during supervision, a receiving state *may* impose any condition on a juvenile, if that condition would have been imposed on a similar juvenile in the receiving state.
- The sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on a juvenile.
- Both the sending state and the receiving state shall have the authority to enforce the terms of probation, which may include the imposition of detention time in the receiving state. Any costs incurred from any enforcement sanctions shall be the responsibility of the state seeking to impose such sanctions. Neither state may impose a supervision fee. The sending state determines the age of majority and length of supervision. The receiving state determines the level (degree) of supervision.

VIOLATIONS and RETAKING (SEE ICJ RULES 5-103; 7-103; 7-104; 7-105)

Upon request from the receiving state, the sending state must facilitate transportation arrangements for the return of a juvenile within five business days when:

- a legal guardian remains in the sending state and supervision in the receiving state fails as evidenced by:
 - A juvenile is no longer residing in the residence approved by the receiving state due to documented instances of violation of conditions of supervision; or
 - An alternative residence is determined to be in the best interest of the juvenile due to documented instances of violation of conditions of supervision and no viable alternatives exist in the receiving state; or
 - An immediate, serious threat to the health and safety of the juvenile and/or others in the residence or community is identified; and
 - The receiving state has documented efforts or interventions to redirect the behavior; or
- The juvenile is not residing with a legal guardian, and that person requests the juvenile be removed from his/her home, the sending state is unable to secure alternative living arrangements within five business days, and an extension of time has not been approved by the ICJ office of each state.
- A juvenile student transfer of supervision fails.

A duly accredited officer of a sending state *may* enter a receiving state and apprehend and retake any such juvenile on probation or parole. If this is not practical a warrant may be issued. Warrants issued under ICJ jurisdiction shall be entered in the National Crime Information Center (NCIC) *with a nationwide pickup radius with no bond amount set.*

The sending state must return the juvenile within five business days. This time period *may* be extended up to an additional five business days with the approval of both ICJ offices.

The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive and not reviewable within the receiving state. In those cases where the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency in the receiving state, the juvenile must not be returned without the consent of the receiving state *until discharged from prosecution, or other form of proceeding, imprisonment, detention, or supervision.*

If it is determined necessary to return a juvenile to the sending state and Form IA/VI has the appropriate signatures, no further court action is required in the receiving state. The ICJ pre-signed voluntary waiver satisfies the due process requirement for this return.

Where detention is required in the receiving state, the type of secure facility shall be determined by the laws regarding age of majority in the receiving state.

If a sending state is required to return a juvenile and fails to do so within 10 business days, a judicial hearing shall be provided in the holding/receiving state to hear the grounds for the juvenile's detention. The hearing shall determine whether the grounds submitted justify the continued detention of the juvenile subject to the provision of the ICJ. A juvenile may be discharged from detention to a legal guardian or his/her designee if the holding/receiving state's court determines that further detention is not appropriate.

For additional information on specialized rules governing the return of runaways, escapees, and absconders, please see the ICJ Bench Book.

http://juvenilecompact.org/Portals/5/library/legal/benchbook/Bench%20Book_Web.pdf

For more information, call the DCJS Interstate Compact Unit: (518) 485-2398