

	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2019</b>	<b>Page Number: 1</b>
<b>ICJ Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director: MaryLee Underwood</b> <b>Chief Legal Counsel: Richard L. Masters</b>		<b>Dated:</b> March 28, 2019	
<b>Description:</b> State's obligation to inform juvenile that s/he may not be returned to home state and whether the Form III may be withdrawn	<b>Revised:</b> March 1, 2020 <sup>1</sup>		

### **Background:**

The State of Maine requested a formal advisory opinion regarding whether a demanding or holding state has an obligation to ensure a youth is aware that (s)he may not be returned to their home state when asking for them to sign the Form III. Secondly, does a youth have a right to withdraw the Form III if (s)he learns that they won't be returning to their home state?

### **Issues:**

1. Does the demanding state or holding state have an obligation to ensure the youth is aware that (s)he may not be returned to their home state when asking for them to sign the Form III? The reason for this question is because Maine had no intention of returning this youth back to our State, but rather have him transferred to another treatment facility in a different state. If the youth was aware of this, (s)he may not have agreed to sign the Form III.
2. Does a youth have a right to withdraw their Form III if the juvenile learns that (s)he will not be returning to the juvenile's home state? Again, in the case we are discussing here, the youth was told he would be returning to Maine. Ultimately, he was returned to Maine, but not until after several attempts to place him in another treatment program.

### **Applicable Compact Provisions and Rules:**

RULE 6-102, regarding Voluntary Return of Runaways, Probation/Parole Absconders, Escapees or Accused Delinquents and Accused Status Offender, provides:

“(5) At a court hearing (physical or electronic), the court in the holding state shall inform the juvenile of his/her due process rights and may use the ICJ Juvenile Rights Form. The court may elect to appoint counsel or guardian ad litem to represent the juvenile.”

### **Analysis and Conclusions:**

There is no affirmative requirement under the applicable ICJ Rules (6-102) to inform the youth that a return may be to a treatment facility rather than the home state. However, the court, at a hearing on the matter, has the duty to inform the juvenile of his/her due process rights under ICJ Rule 6-102 (5). Consistent with that process, it seems consistent that the juvenile should at least

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<sup>1</sup> This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2020. The previously published opinion is available upon request from [ICJadmin@juvenilecompact.org](mailto:ICJadmin@juvenilecompact.org).

	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2019</b>	<b>Page Number: 2</b>
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be put on notice that he/she may be returned to a treatment facility rather than the home state. If the juvenile refuses to sign the Form III then the procedures for a Non-Voluntary Return could be applied under ICJ Rule 6-103 for Non-Voluntary Returns.

Based upon the fact that a juvenile is entitled to be informed of his/her due process rights under ICJ Rule 6-102 (5), it is consistent that a juvenile who learns that he/she will not be returned to the home state should be afforded the opportunity to withdraw their consent to voluntary return under ICJ Rule 6-102. In that case, the procedures under ICJ Rule 6-103 could be applied.

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