

	Interstate Commission for Juveniles	Opinion Number: 03-2011	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters			
Description: Pleas and Abeyance Cases for Non-Adjudicated Juveniles		Dated: May 26, 2011	

Background:

Pursuant to Commission Rule 8-101(3), a request has been made by the state of Colorado to address the following issue arising in the West Region of the ICJ Compact member states.

The case giving rise to this opinion request involves a “non-adjudicated” juvenile sex offender in Utah who was sentenced under a ‘plea and abeyance’ order and is seeking to transfer to another state but was ordered to report to the Attorney General’s office without any special conditions or a probation officer being assigned. However, as a sex offender the juvenile is required to participate in an appropriate treatment or counseling program and the failure to do so may result in the plea and abeyance order being set aside.

Issues:

Is a “non-adjudicated” juvenile sex offender sentenced under a plea and abeyance order and assigned to report to the Attorney General’s office without any special conditions or a probation officer, and who wishes to transfer to another state, subject to the jurisdiction of the ICJ?

Applicable Law and Rules:

Article II, §H of the ICJ defines a *‘juvenile’* as "any person defined as a juvenile in any member state of by the rules of the Interstate Commission," including:

- (1) Accused Delinquent - a person charged with an offense that, if committed by an adult, would be a criminal offense;
- (2) Adjudicated Delinquent - a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
- (3) Accused Status Offender - a person charged with an offense that would not be a criminal offense if committed by an adult;
- (4) Adjudicated Status Offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
- (5) Non-offender - a person in need of supervision who has not been accused or adjudicated a status offender or delinquent."

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ICJ Rule 1-101 defines the term “Non-Adjudicated Juveniles” as follows:

“All juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of supervision and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles.”

ICJ Rule 4-101, §1 provides:

"Each state that is a party to the ICJ shall process all referrals involving juveniles, for whom services have been requested, provided those juveniles are under juvenile jurisdiction in the sending state."

ICJ Rule 4-101, §2 provides:

"No state shall permit the transfer of supervision of a juvenile eligible for transfer except as provided by the Compact and these rules. . ."

Analysis and Conclusions:

Because the Interstate Compact for Juveniles (“ICJ”) is a contract between the states, its terms must be given their ordinary meaning and interpreted within the “four corners” of the document. Thus, the definition of the term ‘juvenile’ also defines the ‘universe’ of individuals subject to the revised ICJ. Additionally, this and other Compact terms are defined broadly to avoid an overly narrow reading or application of the provisions of the ICJ and its authorized rules. The Commission’s rules also have definitions, consistent with the Compact statute, which must also be examined in addition to the terms of the Compact.

The definitions of ‘Juvenile’ and ‘Non-offender’ in the text of the Compact clearly intend that juveniles who are “in need of supervision who have not been accused or adjudicated a status offender or delinquent” could be subject to the Compact, including a juvenile sex offender sentenced under a ‘plea and abeyance’ order, even though neither special conditions nor a probation officer have been assigned. The ICJ rules define “Non-Adjudicated Juveniles” to mean: “All juveniles who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of **supervision** and are eligible for services pursuant to the provisions of the Interstate Compact for Juveniles” (emphasis supplied).

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While the term ‘supervision’ is used in the text of the Compact and the ICJ rules, the term has not been defined. Therefore, recourse to the ordinary meaning of the word is necessary to properly interpret any such provisions using the term. Supervision is defined as ‘*the act of supervising*’ or ‘*to supervise*’ which means: **“to oversee, direct, or manage; superintend.”** While no probation officer has been assigned, the juvenile in question has been ordered to report to the Attorney General’s office for appropriate disposition and may be subject to the ICJ depending on the requirements of the sentencing order.

For example, a sex offender who is required to complete other terms and conditions such as a sex offender treatment or counseling program including any periodic reports required to be filed with the court or other agency, in addition to merely requiring the juvenile to comply with all laws, is not in actuality an ‘unsupervised juvenile’ As such the relocation of such juveniles under such sentences is subject to the jurisdiction of the Interstate Compact for Juveniles and applications for transfer should continue to be submitted and investigated as required under the Compact.

Once determined to be under supervision and transferred under the ICJ, Rule 4-104 requires that a **“receiving state will assume the duties of visitation and supervision over any juvenile, including juvenile sex offenders, and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevails for its own juveniles released on probation or parole.”** The language of this rule assumes that there will be some level of supervision in the receiving state. By definition this rule does not permit the receiving state to provide no supervision and, at a minimum, the rules of the Compact contemplate that such a juvenile will be under some supervision for the duration of the sentence under the plea and abeyance order imposed by the sending state.

Moreover, during such period the juvenile would be subject to enforcement of the required sex offender counseling or treatment program under Rule 4-104, §2 and the required progress reports under Rule 4-104, §3. Reporting instructions would be required as called for under Rule 5-101, §6. Any fees incurred for treatment could be imposed on the sending state as authorized under Rule 4-104, §5 and home evaluations are required to be conducted in compliance with Rule 4-104, §7 and collection of restitution, fines and other costs would be treated as permitted or required under Rule 4.104, §8 and the transfer of the offender to a subsequent receiving state and any requested return to the sending state would be subject to the provisions of Rules 4.110 and 4.111 respectively. The closing of such a case would be governed by Rule 4-106 and if necessary the juvenile could be ‘retaken’ by pursuant to the requirements of Rules 6-101 or Rule 6-103 if necessary.

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Summary

Under the Compact a “non-adjudicated” juvenile sex offender sentenced under a ‘plea and abeyance’ order, but assigned to report to the Attorney General’s office without any special conditions or a probation officer being assigned, and who seeks to transfer to another state is subject to the provisions of the ICJ, **if the order not only requires compliance with all laws but whose sentence also includes provisions which, for example, require completion of other terms and conditions such as a sex offender treatment or counseling modification program.** Such a juvenile is not in actuality an ‘unsupervised juvenile’ even though there are no special conditions or the assignment of a probation officer.

As such, the relocation of a juvenile under such a sentence is subject to the jurisdiction of the ICJ and applications for transfer of supervision should continue to be submitted and investigated as required under the Compact. Moreover, during the term of the sentencing order imposed by the sending state such a juvenile is subject to the rules of the Compact governing supervision of juveniles generally as provided in Chapters 4, 5, and 6 of the ICJ rules.

Eighth District Juvenile Court
FOR DUCHESNE COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of A person under the age of 18 years	Minutes, Findings, and Order
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Before Judge Scott N. Johnson on November 17, 2010

This case came before the Court for a hearing on the following:

~~Case Number 1040200, Jerry Stewart~~

- 1 - HARMFUL MATERIALS, OFFENDR <16 (Class B Misdemeanor) - Arraignment / Pretrial
- 2 - HARMFUL MATERIALS, OFFENDR <16 (Class B Misdemeanor) - Arraignment / Pretrial
- 3 - RAPE OF A CHILD UNDER 14 (First Degree Felony) - Arraignment / Pretrial
- 4 - SODOMY UPON CHILD-VICT.UNDR 14 (First Degree Felony) - Arraignment / Pretrial

MINUTES:

Present:

~~Jonathan A. Stewart, Attorney, Terry W. Stewart, Father, Joe Moynier, F O~~

All parties entitled to legal notification were legally served with notice or waived such notification.

An oral report and recommendation was given to the Court by ~~Jonathan A. Stewart~~

The Court addresses and accepts comments from all parties present.

Petition(s) is/are read.

All rights are explained including the right to trial, the right to have the state meet its burden of proof beyond a reasonable doubt, the right to confront the state's witnesses, the right to have witnesses compelled to appear, and the right to remain silent.

FINDINGS:

Based upon the minor's admission to allegation(s) 3 - RAPE OF A CHILD UNDER 14 the Court finds the allegation(s) to be true, further, the admission should be held in abeyance and the minor comes within the provisions of the Juvenile Court Act.

Based upon the admission to allegation(s) 1 - HARMFUL MATERIALS, OFFENDR <16, the Court finds the allegation(s) to be true and correct and ~~Jonathan A. Stewart~~ comes within the provisions of the Utah Juvenile Court Act.

[REDACTED]

The court finds that the admission was knowingly and voluntarily made. [REDACTED] has a reasonable understanding of the nature and elements of the crime.

Based upon the motion from [REDACTED]; the Court finds allegation(s) 2 - HARMFUL MATERIALS, OFFENDR <16 and 4 - SODOMY UPON CHILD-VICT.UNDR 14, should be dismissed.

ORDERS:

For allegation 001

[REDACTED] is to pay a fine in the amount of \$250.00 which includes applicable surcharge fees. This is due on or before date specified below. Amount is payable in payments.

[REDACTED] is to pay restitution. This amount shall be determined within 60 days. After that time the victim will need to seek restitution by other means.

[REDACTED] is committed to detention for 30 days. This order is hereby suspended upon compliance of the courts orders.

For allegation 003

The plea to allegation(s) 3 - RAPE OF A CHILD UNDER 14 is held in abeyance for a period of 2 years, subject to the terms and conditions set forth below. Upon the violation of any condition, the admission(s) may be entered upon the record and the juvenile sentenced accordingly. Any order to show cause based on a failure to comply may be served by mail at the last address provided to the Court. Upon compliance, the incident will be dismissed. The minor understands and waives his or her right to be sentenced within 30 days of the entry of this plea. The conditions of this agreement are that the Minor shall: not violate any laws or court orders and shall immediately inform the probation department or clerk of any violations; pay all ordered costs (or work all hours) in a timely manner; keep the Court informed of changes in mailing address. Subject to bi-monthly reviews.

The parents shall provide for and said minor shall complete a psychological evaluation and sexual assessment by a qualified Network of Juvenile's Offending Sexually (N.O.J.O.S.) Evaluator. If a psychiatric evaluation is recommended, the parents shall provide for and said minor shall complete a psychiatric evaluation by a qualified psychiatrist or medical doctor. The evaluators shall submit written reports and recommendations to the court by January 14, 2011. The parents shall provide for and said minor shall attend and satisfactorily complete such counseling and services as recommended by the evaluations with monthly written reports

[REDACTED]

submitted to the probation department until released from counseling or other services. A written report regarding counseling shall be submitted to the court forty-eight (48) hours prior to the next court review hearing.

Said minor is restrained from babysitting.

Said minor is restrained from having any contact or association with any child younger than himself/herself without proper and approved adult supervision.

Said minor is restrained from having any direct or indirect contact or communication with the victim.

[REDACTED] is to pay restitution. This amount shall be determined within 60 days. After that time the victim will need to seek restitution by other means.

[REDACTED] is to pay a Plea In Abeyance fee in the amount of \$100.00 which includes applicable surcharge fees. This is due on or before date specified below. Amount is payable in payments.

[REDACTED] is ordered to provide a DNA saliva specimen to a designated employee of this court within 120 days. [REDACTED] is ordered to pay a fee of \$100.00 for obtaining and processing a DNA sample. Fee is to be paid on or before date specified below. Amount is payable in payments.

This matter is set for further disposition on March 2, 2011 at 11:00 a.m. in Duchesne before [REDACTED]

Allegation(s) 2 - HARMFUL MATERIALS, OFFENDR <16 and 4 - SODOMY UPON CHILD-VICT.UNDR 14 is/are dismissed by plea negotiation.

The matter will be further reviewed on June 1, 2011 at 11:00 am in Duchesne.

[REDACTED] is to pay a total of \$450.00. This is due on or before April 28, 2011. Amount is payable in monthly payments of \$100.00, with the first payment due on December 30, 2010.

Failure to comply with the above order may result in your being found in contempt of court, the loss of your driver license, and/or forfeiture of any or all of your Utah State Income Tax Refund.

Copy of this court order is your personal notice to appear for the above hearing. You will not receive further notice.

[REDACTED]

You may have the right to appeal this matter to the Utah State Court of Appeals. Appeals must be filed within 30 days from the date of this order.

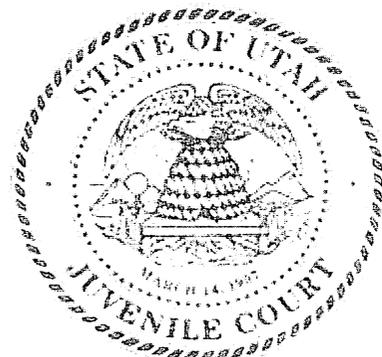
BY THE COURT

Digitally signed by

[REDACTED]

and filed on 11-17-2010

Scott N. Johansen, Judge



Recorded by D. Shepard

11:53:15

CC: [REDACTED]