 Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 1
<p style="text-align: center;">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>		
Description: Approving ‘placement’ or ‘supervision’ and ICJ authority in cases where placement may violate court orders.	Dated: December 11, 2014	

Background:

Pursuant to Commission Rule 9-101(3), a West Region subgroup, consisting of Idaho, Montana, Nevada, and Oregon, is requesting an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue(s):

Issues:

The language of the Interstate Compact for Juveniles uses the terms “placement” and “transfer” (of supervision). Most notably, this occurs on the home evaluation (ICJ Form VIII), which currently requires the receiving state to approve or deny **placement**. However, Rule Section 400 is titled “Transfer of Supervision.”

The rules require a receiving state to sign off as approving or denying placement on the Form VIII Home Evaluation. Rule 4-104(4), requires a receiving state to accept supervision in all cases where there is a custodial parent/legal guardian residing in the receiving state and no parent/legal guardian remains in the sending state, with no consideration of the legal ramifications for the youth, parent, victim, and receiving state when the resulting placement violates the youth’s court orders. The states in this workgroup are unwilling to sign off as approving a placement with a parent/legal guardian that would put the youth in violation of his/her court orders.


The West Region subgroup is requesting a legal opinion on the following:

1. Does the Interstate Compact for Juveniles provide states with the authority to approve or deny placement or is the authority limited to accepting or denying the transfer of supervision?
2. Under the current rules, can a receiving state legitimately accept supervision when the intended placement violates no contact orders or other court ordered conditions of supervision?

Applicable Compact Provisions and Rules:

Article I of the ICJ provides in Sections A and B that:

*Amendments to the ICJ Rules effective February 1, 2016 impacted rules referenced in this Advisory Opinion. As a result, Advisory Opinion 04-2014 is superseded to the extent of rule amendments effective February 1, 2016.

 Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 2
<p style="text-align: center;">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>		
Description: Approving ‘placement’ or ‘supervision’ and ICJ authority in cases where placement may violate court orders.	Dated: December 11, 2014	

“It is the purpose of this compact, through means of 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; and
- (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;”

ICJ Rule 1-101 in relevant part provides as follows:

“Supervision: the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile.”


ICJ Rule 4-104(4) provides as follows:

“Supervision may be denied when the home evaluation reveals that the proposed placement is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state, except when a juvenile has no custodial parent or legal guardian remaining in the sending state and the juvenile does have a custodial parent or legal guardian residing in the receiving state.”

Analysis and Conclusions:

The opinion request assumes that the Interstate Compact for Juveniles (‘ICJ’) and the ICJ Rules make a legal distinction between the terms ‘transfer of supervision’ and ‘placement’ of a juvenile for purposes of interpreting and applying ICJ Rule 4-104(4). The West Region subgroup is understandably concerned about the potential for endangering the safety of a victim if a juvenile delinquent is transferred from a sending state to a receiving state when no custodial parent or legal guardian resides in the sending state, but such a parent or guardian does reside in the receiving state. Admittedly, there could be situations in which a supervision transfer violates existing ‘no contact’ orders or other legal requirements involving a previous victim, such as a

*Amendments to the ICJ Rules effective February 1, 2016 impacted rules referenced in this Advisory Opinion. As a result, Advisory Opinion 04-2014 is superseded to the extent of rule amendments effective February 1, 2016.

	Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 3
<p>ICJ Advisory Opinion</p> <p>Issued by:</p> <p>Executive Director: Ashley H. Lippert</p> <p>Chief Legal Counsel: Richard L. Masters</p>			
<p>Description:</p> <p>Approving ‘placement’ or ‘supervision’ and ICJ authority in cases where placement may violate court orders.</p>		<p>Dated:</p> <p>December 11, 2014</p>	

sibling, or other family member. However, ICJ Rule 4-104(4) also recognizes the rights of a custodial parent or legal guardian, which must be considered in the determination of whether or not a proposed transfer of supervision is suitable or legally authorized.

While the West Region divides its opinion request into two subparts, the first question is erroneously premised on the proposition that the ICJ differentiates between the authority to approve or deny placement and the authority to accept or deny the transfer of supervision. Neither the terms of the Compact nor ICJ Rules make such a legal distinction. However, the second question directly addresses a possible dichotomy created by the language of the existing provisions of ICJ Rule 4-101(4), namely, can a receiving state legitimately accept supervision when the intended placement violates ‘no contact orders’ or other court ordered conditions of supervision? Clearly, neither the provisions of the ICJ, nor the ICJ Rules contemplate, or should be interpreted to allow such a result.

Article I of the ICJ provides in Sections A and B that:


It is the purpose of this compact, through means of 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; and
- (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

Moreover, ICJ Rule 1-101 clearly defines ‘Supervision’ to mean the oversight exercised by the authorities of the sending and receiving states, during which time the juvenile is required to report or be monitored by appropriate authorities **and to comply with regulations and conditions as determined by a court or appropriate authority. (emphasis supplied).**

Based upon the plain meaning of both the above referenced provisions of the ICJ and the ICJ Rules, it is clear that a receiving state is not authorized to violate court ordered conditions of supervision. Article I, Section A of the Compact expressly requires that compact officials “ensure that the adjudicated juveniles and status offenders subject to this compact are provided

*Amendments to the ICJ Rules effective February 1, 2016 impacted rules referenced in this Advisory Opinion. As a result, Advisory Opinion 04-2014 is superseded to the extent of rule amendments effective February 1, 2016.

 Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 4
<p align="center">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>		
Description: Approving ‘placement’ or ‘supervision’ and ICJ authority in cases where placement may violate court orders.	Dated: December 11, 2014	

adequate supervision . . . in the receiving state **as ordered by the adjudicating judge or parole authority in the sending state.” (emphasis supplied).** As the Supreme Court has explained concerning the proper approach to interpretation of statutes or related regulations, “Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning . . . [O]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (*internal quotation marks omitted*).

It is equally clear that under Article I, Section B of the Compact, officials in compact member states are also unequivocally required to **“adequately protect”** the public safety interests of the citizens, **“including the victims of juvenile offenders.” (emphasis supplied).** It is axiomatic that administrative rules, such as the above ICJ Rule, promulgated by an administrative agency, such as the Interstate Commission for Juveniles, cannot exceed the delegated authority granted to it by the statute. See *Federal Power Commission v. Texaco, Inc.*, 417 U.S. 380, 394 (1974) (“It, [the applicable statute], does not authorize the Commission to set at naught an explicit provision of the Act.”) *Id.* at p. 394.

Summary:

In summary, based upon the terms of the Compact, the above referenced Compact provisions, ICJ Rules and the legal authorities cited herein, that ICJ Rule 4-104(4) does not authorize a receiving state to violate ‘no contact’ orders or other court ordered conditions of the adjudicating judge or parole authority in the sending state.

*Amendments to the ICJ Rules effective February 1, 2016 impacted rules referenced in this Advisory Opinion. As a result, Advisory Opinion 04-2014 is superseded to the extent of rule amendments effective February 1, 2016.