

	Interstate Commission for Juveniles	Opinion Number: 05-2012	Page Number: 1
<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters </p>			
Description: Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?		Dated: July 26, 2012 Revised: March 14, 2018 ¹	

Background:

Pursuant to ICJ Rule 9-101(3)¹, the State of Hawaii and the West Region of ICJ have requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issues:

Issues:

Effective March 1, 2012, ICJ Rule 4-101(2)(f) essentially prohibits the placement of minors in residential facilities through ICJ. Since its implementation, Hawaii has experienced problems with this rule and asks for guidance on how to proceed with these residential placements.

Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California, but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals with special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety as well as the safety of the community. In cases such as this, where supervision is necessary, but ICPC does not provide, are they eligible for supervision via ICJ.

¹ This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

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There are liability issues if we as a state, know we are sending an individual who needs supervision, and are not providing the necessary supervision. It seems that we have mandates but no appropriate vehicle to meet the mandate. Your guidance on how states are to proceed in cases where ICPC is not appropriate is appreciated.

Applicable Compact Provisions and Rules:

ICJ Rule 1-101 provides as follows:

“Juvenile: any person defined as a juvenile in any member state or by the rules of the Interstate Commission.”

ICJ Rule 4-101(2) provides, in relevant part, as follow:

“A juvenile shall be eligible for transfer under the ICJ if the following conditions are met:

...

- f. i. Will reside with a parent, legal guardian, relative, non-relative or independently, excluding residential facilities;

ICJ Rule 4-101(3) provides:

“If a juvenile is placed pursuant to the ICJ and is also subject to the Interstate Compact on the Placement of Children (ICPC), placement and supervision through the ICPC would not be precluded.”

ICJ Rule 4-101(5) provides:

“A juvenile who is not eligible for transfer under this Compact is not subject to these rules.”

ICJ Rule 8-101(2) provides:

“Juveniles traveling to a residential facility for placement shall be excluded from this rule; however, states may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return for notification purposes.”

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Analysis and Conclusions:

In its request for an advisory opinion the State of Hawaii and the West Region states as follows:

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

The above referenced section of ICJ Rule 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in ‘residential facilities.’ Thus, the minor referred to in Case #1 is now not eligible for transfer through ICJ because of the referral to the residential treatment program in Utah. ICJ Rule 8-101, regarding Travel Permits, provides additional guidance by adding that “states may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return *for notification purposes*” (*emphasis provided*). Thus, even though juveniles traveling to a residential facility for placement are not eligible for transfer under ICJ, the ICJ still provides a vehicle for promoting public safety.

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals with additional special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety, as well as the safety of the community. In cases such as this, where supervision is necessary but ICPC does not provide, are they eligible for supervision via ICJ?

As in Case #1, the above referenced section of 4-101(2)(f)(i) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in ‘residential facilities.’ To promote public

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safety, Hawaii “may elect to use the Form VII Out-of-State Travel Permit and Agreement to Return for notification purposes,” pursuant to ICJ Rule 8-101(2). However, as set forth in ICJ Rule 4-101(5) “A juvenile who is not eligible for transfer under this Compact is not subject to these rules.” Therefore, supervision cannot be provided via ICJ.

Additional guidance regarding cases involving both ICJ and ICPC issues is available through the “Best Practice Guide for ICJ and ICPC Dual Jurisdiction Cases,” available at the ICJ website (www.juvenilecompact.org) or from the ICJ National Office. This resource was developed as a result of a Memorandum of Agreement between the Interstate Commission for Juveniles and the Association of Administrators of the Interstate Compact for the Placement of Children.