

	Interstate Commission for Juveniles	Opinion Number: 03-2011	Page Number: 1
<p align="center">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>			
Description: Pleas and abeyance cases for non-adjudicated juveniles		Dated: May 26, 2011 Revised: March 1, 2020 ¹	

Background:

Pursuant to ICJ Rule 9-101(3)¹, 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 of the ICJ provides definitions, including:

(H) “Juvenile” means: 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;

¹ 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.

	Interstate Commission for Juveniles	Opinion Number: 03-2011	Page Number: 2
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- (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.

ICJ Rule 1-101 provides definitions, including:

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 4-101(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 a juvenile who is eligible for transfer under this Compact to relocate 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.

	Interstate Commission for Juveniles	Opinion Number: 03-2011	Page Number: 3
<p align="center">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>			
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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.

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. Clearly, this constitutes “supervision” as defined by the ICJ Rules.

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 5-101(1) requires that a **“receiving state will assume the duties of supervision over any juvenile, and in exercise of those duties will be governed by the same standards of supervision that prevail 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 ICJ Rule 5-101(3) and the required progress reports under ICJ Rule 5-101(4). Reporting instructions would be required as called for under ICJ Rule 4-103(1) (or ICJ Rule 4-104(5), for a juvenile not categorized as a sex offender). Any fees incurred for treatment could be imposed on the sending state as authorized under ICJ Rule 5-101(5). Home evaluations are required to be conducted in compliance with ICJ Rule 4-102(4). Collection of restitution, fines and other costs would be

	Interstate Commission for Juveniles	Opinion Number: 03-2011	Page Number: 4
<p align="center">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>			
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treated as permitted or required under ICJ Rule 5-101(7) – (8). The travel and transfer of the offender to a subsequent receiving state is subject to ICJ Rules 8-101 and 4-103. The closing of such a case would be governed by ICJ Rule 5-104 and, if necessary, the juvenile could be ‘retaken’ by pursuant to the requirements of Rules 5-103.

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 and 5 of the ICJ Rules.

