Interstate Commission for Juveniles	Opinion Number: 01-2020	Page Number: 1
ICJ Advisory Opinion **Issued by:** **Executive Director: MaryLee Underwood** **Chief Legal Counsel: Richard L. Masters**		**Dated:** March 1, 2020
Description: Can receiving state require sending state to provide revised Forms IA/VI and IV when a juvenile makes an intrastate move after transfer of supervision is approved?		

Background:

Pursuant to ICJ Rule 9-101(3), the U.S. Virgin Islands has requested an advisory opinion concerning the following issue:

Issues:

Can a receiving state require the sending state to provide revised Forms IA/VI and IV when a juvenile makes an intra-state move after a transfer of supervision under the ICJ is approved?

Applicable Compact Provisions and Rules:

ICJ Rule 4-102 (2)(a)(i) provides in relevant part:

"The sending state shall ensure the following referral is complete and forwarded to the receiving state forty-five (45) calendar days prior to the juvenile's anticipated arrival. The referral shall contain: Form IV Parole or Probation Investigation Request; Form IA/VI Application for Services and Waiver; and Order of Commitment."

ICJ Rule 5-101(1) provides in relevant part:

"After accepting supervision, the 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. . ."

ICJ Rule 5-101(4) provides in relevant part:

"The receiving state shall furnish written progress reports to the sending state on no less than a quarterly basis. Additional reports shall be sent in cases where there are concerns regarding the juvenile or there has been a change in residence."

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Analysis and Conclusions:

In its request for an advisory opinion the Virgin Islands states, "The Virgin Islands as the sending state in this situation, is being asked to re-submit Forms IA/VI and IV for each juvenile. The Virgin Islands' resolute position in this matter is that inasmuch as the receiving state has already accepted supervision, the Virgin Islands as a sending state, should not be required to re-submit a request for approval of supervision (Forms IA/VI & IV); including having to revisit the Court for a signature of approval. The Virgin Islands asserts that revisiting the Court could potentially engender the Court's concern and/or mistrust in the fidelity of the ICJ process and the nature of the supervision being provided, or put unnecessary strain on our already limited resources of time and personnel. Rather, this matter should be addressed by the receiving state on an intrastate level."

While there is an ICJ Commission's Best Practice on Intrastate Relations within the Receiving State which implies that ICJ Rule 5-101(4) is controlling, it does not specifically address whether the receiving state can require the sending state to submit a new Form IA/VI and/or Form IV.

The U.S. Supreme Court has made clear, "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." See *Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).* Moreover, as the U.S., Supreme Court has recently reaffirmed the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Utility Air Regulatory Group v. EPA 134 S. Ct. 2427 (2014); FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000)*

It is clear that the ICJ Rules require that Form IV and Form IA/VI are to be used by the sending state in order to complete a referral of an eligible juvenile, under ICJ Rule 4-102 (2)(a)(i). Equally apparent is the requirement that after supervision is accepted under the ICJ, the 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."** (emphasis supplied). See ICJ Rule 5-101(1). No provision of either the ICJ statute or ICJ Rules requires the "resubmission" of a Form IA/VI. The "statutory scheme" of the ICJ statute is to require the use of this form **only** as a pre-requisite for the transfer of a juvenile supervision case from a sending to a receiving state. Once transferred

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to the receiving state, it will assume the duties of supervision and will apply the same requirements used to supervise juveniles sentenced in the receiving state.

Consistent with these principles, it is inconsistent to **require** the 'resubmission of a Form IA/VI by a receiving state because the transfer of supervision is already complete and the responsibility for supervision of the juvenile has shifted to the receiving state, which is then obligated to apply the same standards of supervision which are applied to its own juveniles. Similarly, Form IV Parole or Probation Investigation Request is required pursuant to ICJ Rule 4-102 (2)(a)(i), in order to "ensure the following referral is complete."

Furthermore, the Form IA/VI indicates that a change in residence must be "authorized by the proper authorities in the receiving state." Through this longstanding provision of Form IA/VI, the Commission has authorized the receiving state to approve or not approve change in residence. Given that the receiving state should apply the same standards of supervision that which are applied to its own juveniles, the receiving state's internal protocol regarding changes of residence should be applied.

Additionally, ICJ Rule 5-101(4) specifically provides a mechanism for communications regarding changes in residence. It states: "***Additional reports shall be sent in cases where*** there are concerns regarding the juvenile or ***there has been a change in residence***." Thus, if there has been a change in residence, the change should be reported via an additional report, regardless of whether or not the receiving state approved the change. Given that the sending state retains jurisdiction, the sending state may exercise discretion in how to respond to the additional report.

Summary:
The ICJ rules, when interpreted in harmony with each other, do not require the sending state to submit a revised Form IA/VI and/or Form IV to the receiving state when a juvenile makes an intrastate move after a transfer of supervision has been approved. The receiving state is authorized to approve a change in residence and should send an additional report to provide information regarding the change to the sending state. The sending state retains jurisdiction and may exercise its discretion to determine the appropriate response.