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 **Revised:** March 1, 2022[1]
Description: Can receiving state require sending state to provide revised Forms 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 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 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) and (5) provides:

> (4)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 or in the person with whom the juvenile resides.
>
> (5) When the change of residence includes a change in the person with whom the juvenile resides, the sending state may request additional information regarding the new

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residence. If the sending state does not support this change, they shall notify the receiving state and propose an alternative living arrangement or affect the return of the juvenile.

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 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 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 the Commission has published a "Best Practice on Intrastate Relations within the Receiving State" which implies that ICJ Rule 5-101(4) and (5) are controlling, it does not specifically address whether the receiving state can require the sending state to submit a new Form 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 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**

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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 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 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 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 VI indicates that a change in residence must be "authorized by the proper authorities in the receiving state." Through this longstanding provision of Form 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 or in the person with whom the juvenile resides***." Thus, if there has been a change in residence or a change in the person with whom the juvenile resides, 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.

Finally, effective March 1, 2022, ICJ Rule 5-101 was amended to clarify the requirements for each state when a change of residence occurs. Through the modification of subsection (4) and addition of subsection (5), the Commission clarified that such changes must be reported by the receiving state and addressed how sending states may respond. Because these amendments were made following the initial publication of this advisory opinion, they reiterate that it is not

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necessary for the sending state to resubmit the Form VI and/or Form IV when a juvenile makes an intra-state move after a transfer of supervision has been approved.

Summary:

The ICJ Rules, when interpreted in harmony with each other, do not require the sending state to submit a revised Form 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.

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