	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2011</b>	<b>Page Number: 1</b>
<b>ICJ Advisory Opinion</b>			
<b>Issued by:</b> <b>Executive Director: Ashley H. Lippert</b> <b>Chief Legal Counsel: Richard L. Masters</b>			
<b>Description:</b>	Determining which juveniles the new ICJ applies		<b>Dated:</b> May 26, 2011 <b>Amended:</b> January 26, 2012

### **Background:**

Pursuant to Commission Rule 8-101(3), a request has been made by the State of Hawaii concerning whether states may place juveniles in private residential treatment facilities in another state under the provisions of ICJ or must these cases be ‘referred’ to the ICPC? Hawaii also asks whether states are permitted to place juveniles in public institutions for treatment in another state under the ICJ or must these cases be ‘referred’ to the ICPC.

Historically, the ICJ applied to the transfer or return of juveniles under court supervision for offenses which if committed by an adult would be classified as a crime or for offenses constituting a violation of other state laws, such as truancy cases, which are not classified as crimes but nonetheless result in referral to a court in the sending state. Additionally, the ICJ serves as the legal mechanism under which juveniles who have runaway from their state of residence may be returned. A different Compact, the Interstate Compact for the Placement of Children (‘ICPC’), applies to the interstate placement of children across state lines to a parent, relative or for foster care or adoption and has typically been involved in placements of juveniles in residential treatment facilities, even where a juvenile has been adjudicated delinquent. In such cases, concurrent jurisdiction of both Compacts may arise.

### **Issues:**


The issues which Hawaii asks to be addressed in this advisory opinion are as follows:

Does the Interstate Compact for Juveniles (‘ICJ’) apply to the interstate transfer of supervision of delinquent juveniles, under juvenile jurisdiction in Hawaii, who are placed in a private residential treatment program? <sup>1</sup>

Does the ICJ apply to the interstate transfer of supervision of delinquent juveniles, under juvenile jurisdiction in Hawaii, who are placed in public institutions?

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<sup>1</sup> Based upon the amendment to ICJ Rule 4-101 §2(f)(1) effective March 1, 2012, juveniles placed in residential treatment facilities are not eligible for transfer or return of supervision under the terms of the compact. As a result, ICJ Advisory Opinion 02-2011 is superseded to the extent of any conflict with the ICJ Rule 4-101 §(2)(f)(1).

	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2011</b>	<b>Page Number: 2</b>
<b>ICJ Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director: Ashley H. Lippert</b> <b>Chief Legal Counsel: Richard L. Masters</b>			
<b>Description:</b> Determining which juveniles the new ICJ applies		<b>Dated:</b> May 26, 2011 <b>Amended:</b> January 26, 2012	

### **Applicable Statutes or Regulations**

Article II, §H. of the ICJ defines a '*juvenile*' as "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;
- (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 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 the transfer of supervision of a juvenile eligible for transfer except as provided by the Compact and these rules. . ."*

ICJ Rule 4-101, §3 provides in relevant part:

*"All cases being transferred to another state are pursuant to the ICJ except cases involving concurrent jurisdiction under the Interstate Compact on the Placement of Children, known as ICPC."*

	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2011</b>	<b>Page Number: 3</b>
<p align="center"> <b>ICJ Advisory Opinion</b>  <b>Issued by:</b>  <b>Executive Director: Ashley H. Lippert</b>  <b>Chief Legal Counsel: Richard L. Masters</b> </p>			
<b>Description:</b> Determining which juveniles the new ICJ applies		<b>Dated:</b> May 26, 2011 <b>Amended:</b> January 26, 2012	

**Analysis and Conclusion:**

In the opinion request Hawaii states “This particular case is only a delinquency case, it does not have a concurrent dependency case.” Hawaii has also correctly indicated that there is no ICJ statute or rule prohibiting the transfer of supervision of a ‘juvenile’ as defined by the ICJ based upon the type of facility into which such juvenile is placed. <sup>1</sup>

As referenced above, the ICJ specifically defines the meaning of juvenile for the purpose of determining those subject to the Compact and its administrative rules. The Hawaii case, out of which this inquiry arises, is specifically identified as a ‘delinquency case’ under Hawaii law. Article II, §H expressly states that both ‘accused delinquents’ and ‘adjudicated delinquents’ are included in the definition of ‘juvenile’ under the ICJ. Consistent with the Compact definition of the term ‘juvenile,’ ICJ Rule 4-101 concerning processing referrals of juveniles under the ICJ expressly provides in §1 that:


*"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."*

Moreover, without exception, ICJ Rule 4-101, §2 requires that:

*"No state shall permit the transfer of supervision of a juvenile eligible for transfer except as provided by the Compact and these rules. . ."*

Based upon the foregoing definition contained in the Compact statute and the applicable ICJ Rules, it seems clear that the transfer of the supervision of a ‘juvenile’ under the juvenile jurisdiction of the State of Hawaii, as the sending state, if otherwise eligible for transfer, may properly be subject to transfer under the ICJ.

However, since ICJ Rule 4-101, §3, provides an exception in cases where there is **concurrent jurisdiction** with ICPC, in cases where the juvenile is placed in a residential treatment facility<sup>1</sup>, even in the absence of a concurrent dependency case, the nexus with the purpose of the ICPC to ensure protection and adequate services would also be sufficient to ‘trigger’ the concurrent jurisdiction of ICPC, even though the jurisdiction and interest of the

	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2011</b>	<b>Page Number: 4</b>
<b>ICJ Advisory Opinion</b>			
<b>Issued by:</b> <b>Executive Director: Ashley H. Lippert</b> <b>Chief Legal Counsel: Richard L. Masters</b>			
<b>Description:</b> Determining which juveniles the new ICJ applies	<b>Dated:</b> May 26, 2011 <b>Amended:</b> January 26, 2012		

ICJ in adequate supervision of the delinquent juvenile and protection of the public would also apply per the above analysis.<sup>2</sup>

No exception to the application of the ICJ is made in either the Compact definition of juvenile in Article II, §H, or the provisions of ICJ Rule 4-101, §1 or §2 based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility<sup>3</sup>. However, the interest of the sending and receiving states to ensure protection and adequate care is a sufficient basis to activate the concurrent jurisdiction provision under §3, particularly when the placement involves a private residential facility.<sup>4</sup>


While the ICJ Commission has the discretion to further clarify the manner in which the concurrent jurisdiction of ICJ is exercised through the promulgation of additional rules or rule amendments it has not yet chosen to do so. The pending Memorandum of Understanding (“MOU”) being negotiated by and between the respective governing bodies of both the ICJ and the ICPC may also lead to further clarification of the nature and extent of the involvement of each Compact with respect to such cases.

Until further clarification through the ICJ Rules, the intent of the above referenced Compact and rule provisions seems clear from the plain meaning of the language used to make the Compact applicable to delinquent “juveniles who are under the ‘juvenile jurisdiction in the sending state.’” As the U.S. Supreme Court recently reaffirmed, “Applying ‘settled principles of statutory construction,’ we must first determine whether the statutory text is plain and unambiguous and . . . [i]f it is, we must apply the statute according to its terms.” *Carcieri v. Salazar*, 555 U.S. ----, ----, 129 S.Ct. 1058, 1063-1064, 172 L.Ed.2d 791 (2009); See also *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992). While placement into a private residential facility<sup>1</sup> may also trigger the concurrent jurisdiction of the ICPC, this should not defeat the legitimate interests of the ICJ in public safety and rehabilitation, which when deemed necessary may also include the imposition of reporting to probation or parole officers, progress reports and other appropriate means of supervision of such juveniles.

<sup>2</sup> ICJ Rule 4-101 §3 was amended effective April 1, 2014 to clarify that although juveniles placed in residential treatment facilities are not eligible for transfer or return of supervision under the terms of the compact and current rules, concurrent jurisdiction of both ICJ and ICPC is not precluded in other cases involving juveniles placed pursuant to ICJ who are also subject to placement and supervision under the ICPC.

<sup>3</sup> See FN 2 above

<sup>4</sup> See FN 2 above

	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number: 02-2011</b>	<b>Page Number: 5</b>
<b>ICJ Advisory Opinion</b> <b>Issued by:</b> <b>Executive Director: Ashley H. Lippert</b> <b>Chief Legal Counsel: Richard L. Masters</b>			
<b>Description:</b> Determining which juveniles the new ICJ applies		<b>Dated:</b> May 26, 2011 <b>Amended:</b> January 26, 2012	

**Summary:**

In summary, the ICJ applies to the interstate transfer of supervision of delinquent juveniles, who are under juvenile jurisdiction in Hawaii, whether placed in a public institution or a private residential treatment program<sup>1</sup>. There is no explicit exception to the application of the ICJ is made in either the Compact definition of juvenile in Article II, §H, or the provisions of ICJ Rule 4-101, §1 or §2 based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility<sup>1</sup>. However, the interests of the sending and receiving states to ensure protection and adequate care for such juveniles is sufficient to activate the concurrent jurisdiction provision under §3 where the placement involves a private residential treatment facility<sup>1</sup>. Notwithstanding such joint jurisdiction, this should not defeat the legitimate interests of the ICJ in public safety and rehabilitation, which when deemed necessary may also include the imposition of requirements such as reporting to probation or parole officers, progress reports, and other appropriate means of supervision of such juveniles.