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<p>ICJ Advisory Opinion  <b>Issued by:</b>  <b>Executive Director: Ashley H. Lippert</b>  <b>Chief Legal Counsel: Richard L. Masters</b></p>			
<b>Description:</b> Issuing a travel permit for a juvenile subject to a delinquency petition but is not yet adjudicated.		<b>Dated:</b> July 26, 2012 <b>Amended:</b> April 1, 2013	

**Background:**

Pursuant to Commission Rule 8-101(3)<sup>2</sup>, the state of Wisconsin has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

**Issues:**

Is a travel permit required to be issued, pursuant to ICJ Rule 5-102<sup>2</sup> for transfer of a juvenile sex offender from Wisconsin to Minnesota who is the subject of a delinquency petition, but who has not been adjudicated? <sup>1</sup>

Once the juvenile is adjudicated delinquent, can the juvenile be allowed to return to Minnesota with his family while Wisconsin makes its request for transfer of supervision of the youth to Minnesota?

**Applicable Compact Provisions and Rules:**

Rule 1-101 provides as follows:


“Juvenile: a person defined as a juvenile in any member state or by the rules of the Interstate Commission, including accused juvenile delinquents, adjudicated delinquents, accused status offenders, adjudicated status offenders, non-offenders, non-adjudicated juveniles, and non-delinquent juveniles.”

Rule 4-103(1) provides:

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<sup>1</sup> Based upon the amendment to ICJ Rule 5-102 effective April 1, 2013, travel permits are required for juveniles who travel out-of-state for more than 24 consecutive hours and who have committed or the adjudicated offense or case circumstances include sex-related offenses, violent offenses resulting in personal injury or death, offenses committed with a weapon, state committed juveniles, juveniles testing placement, juveniles returning to the sending state, or juveniles transferring to a subsequent state. As a result, ICJ Advisory Opinion 04-2012 is superseded to the extent of any conflict with the ICJ Rule 5-102.

<sup>2</sup> Amendments to ICJ Rules effective April 1, 2014 relocated Rule 5-102 to Rule 8-101 and Rule 8-101 to Rule 9-101. As a result, Advisory Opinion 04-2012 is superseded to the extent of rule amendments effective April 1, 2014.

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“When transferring a juvenile sex offender, the sending state shall not allow the juvenile to transfer to the receiving state until the sending state’s request for transfer of supervision has been approved, or reporting instructions have been issued by the receiving state unless Rule 4-103(2) is applicable.

Rule 5-102(2)<sup>2</sup> provides in relevant part as follows:

“The purpose of this section is for the protection of the public. Travel permits shall be mandatory in following instances:

“2. Travel Permits shall be issued for visits that exceed forty-eight (48) hours. Travel Permits shall contain instructions requiring the juvenile, who is subject to the terms of the ICJ, to return to the sending state.

**Analysis and Conclusions:**


In its request for an advisory opinion the State of Wisconsin describes the following situation:

“In Wisconsin, one of our counties is in the process of adjudicating a Minnesota youth delinquent for a sex offense. The youth has never lived in Wisconsin and has no ties to our state; Wisconsin just happens to be the place where he allegedly committed his sex offense. My issues:

The youth and his family have been traveling between Minnesota and Wisconsin during the delinquency proceedings. No travel permit has been issued for any of these interstate trips because he has not been adjudicated yet, so he’s not under the Compact. Is this correct?

Once the youth is adjudicated delinquent, everyone is expecting that he will return to Minnesota with his family, and Wisconsin will begin the process to request courtesy supervision of the youth by Minnesota. Are we running afoul of ICJ Rule 4-103(1) by allowing him to return to the state where he lives before that state has done a home investigation and accepted courtesy supervision?”

The term ‘juvenile’ is defined in the compact and the ICJ Rules and explicitly includes “**accused juvenile delinquents,**” as well as **adjudicated delinquents.** Since Wisconsin is “in the process of adjudicating a Minnesota youth delinquent for a sex offense,” it is crystal clear, based upon

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the definition of ‘juvenile,’ that even prior to being adjudicated delinquent as a sex offender, such a youth is “subject to the terms of the ICJ” as contemplated by both the Compact and ICJ Rule 1-101. Moreover, ICJ Rule 5-102(2)<sup>2</sup> requires, with regard to a **“juvenile who is subject to the terms of the ICJ,”** that a travel permit **“shall be issued for visits that exceed forty-eight (48) hours.”** The purpose clause of Rule 5-102 emphasizes that this section **“is for the protection of the public”** and that **“Travel permits shall be mandatory in the following instances. . .”**

Accordingly, the foregoing rules do not permit a juvenile such as the juvenile in question, who is an “accused juvenile delinquent” to travel from one state to the other for visits exceeding forty-eight hours without a travel permit.

It is equally clear that Rule 4-103(1) prohibits the transfer of a juvenile to the receiving state **“until the sending state’s request for supervision has been approved, or reporting instructions have been issued by the receiving state** unless Rule 4-103(2) is applicable.” Based upon the definition of ‘juvenile,’ as provided in both the ICJ and ICJ Rule 1-101 as well as the requirements of Rule 4-103(1), once the youth in question has been adjudicated delinquent as a sex offender, in the absence of either an approval of a transfer request or reporting instructions, allowing such a juvenile to return to Minnesota violates both the Compact and the foregoing ICJ Rules.

As the Supreme Court has explained concerning the proper approach to interpretation of statutes or related regulations, “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.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (internal quotation marks omitted).

### Summary:

Accordingly, as to the first question, Rule 5-102(2) does not permit a juvenile who is an “accused juvenile delinquent” to travel from one state to the other for visits exceeding forty-eight hours without a travel permit.

Secondly, based upon the definition of ‘juvenile’ as provided in both the ICJ and ICJ Rule 1-101, as well as the requirements of Rule 4-103 (1), once the juvenile in question has been adjudicated



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delinquent as a sex offender, in the absence of either an approval of a transfer request or reporting instructions, allowing such juvenile to return to Minnesota violates both the Compact and the foregoing ICJ Rules.