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|  Interstate Commission for Juveniles | Opinion Number: 05-2012 | Page Number: 1 |
| ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters | | |
| Description: Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California but who do not qualify for transfer under the ICPC, may be transferred under the ICJ? | Dated: July 26, 2012 | |

Background:

Pursuant to Commission Rule 8-101(3), the State of Hawaii and the West Region of ICJ has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:

Effective March 1, 2012, ICJ Rule 4-101(2)(f) prohibits the placement of minors in residential facilities through ICJ. Since its implementation, Hawaii has experienced problems with this rule and asks for guidance on how to proceed with these residential placements.

Whether minors adjudicated juvenile delinquents in Hawaii and referred to residential treatment programs in Utah and California, but who do not qualify for transfer under the ICPC, may be transferred under the ICJ?


Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals with special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety as well as the safety of the community. In cases such as this, where supervision is necessary, but ICPC does not provide, are they eligible for supervision via ICJ.

There are liability issues if we as a state, know we are sending an individual who needs supervision, and are not providing the necessary supervision. It seems that we have mandates

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|--|--|------------------------------------|---------------------------|
|  | Interstate Commission for Juveniles | Opinion Number: 05-2012 | Page Number: 2 |
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but no appropriate vehicle to meet the mandate. Your guidance on how states are to proceed in cases where ICPC is not appropriate is appreciated.

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.”

ICJ Rule 4-101 (2) (f) (1) provides in relevant part as follow:

“A juvenile shall be eligible for transfer under the ICJ if the following conditions are met:

- f. 1. Will reside with a parent, legal guardian, relative, non-relative or independently, excluding residential facilities;


Analysis and Conclusions:

In its request for an advisory opinion the State of Hawaii and the West Region states as follows:

Case #1:

Minor was referred to the Benchmark Residential Treatment Program in Utah. Case was transferred via ICPC. ICPC denied the transfer as the program was determined to be a "psychiatric hospital". In cases where ICPC denies or in cases where the minors do not qualify due to age restrictions, are the cases then eligible for transfer through ICJ?

The above referenced section of 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in ‘residential facilities.’ This rule amendment was made by the Interstate Commission in the wake of Advisory Opinion 2-2011 which pointed out that under neither the provisions of the Compact nor the previous language of this rule, was there

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|--|--|------------------------------------|---------------------------|
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an exception to the application of the ICJ “based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility.”

However, at the following Annual Meeting of the Commission, this specific subsection was amended as stated above with the intent to clarify that delinquent juveniles placed in residential treatment facilities are excluded. Thus, the minor referred to in Case #1 is now not eligible for transfer through ICJ because of the referral to the residential treatment program in Utah.


Case #2:

Minor was adjudicated for numerous counts of Sexual Assault I, is low functioning, and deaf. Minor is being sent to a residential treatment program in California that is able to work with deaf individuals special needs. Minor is being sent via ICPC; however, ICPC does not provide any supervision of minors. Minor is a possible danger to the community and needs supervision to ensure his safety as well as the safety of the community. In cases such as this, where supervision is necessary but ICPC does not provide, are they eligible for supervision via ICJ.

As in Case #1, the above referenced section of 4-101(2)(f)(1) explicitly excludes from eligibility for transfer under the ICJ, a juvenile who will reside in ‘residential facilities.’ This rule amendment was made by the Interstate Commission in the wake of Advisory Opinion 2-2011 which pointed out that under neither the provisions of the Compact nor the previous language of this rule, was there an exception to the application of the ICJ “based upon whether the delinquent juvenile whose supervision is transferred is placed in a public or private treatment facility.”¹

However, at the following Annual Meeting of the Commission this specific subsection was amended as stated above with the intent to clarify that delinquent juveniles placed in residential

¹ 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.

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|--|------------------------------------|---------------------------|
|  Interstate Commission for Juveniles | Opinion Number: 05-2012 | Page Number: 4 |
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treatment facilities are excluded. Thus, the minor referred to in Case #2 is not now eligible for transfer through ICJ because of the referral to the residential treatment program in California.²

The Interstate Commission for Juveniles and the Association of Administrators of the Interstate Compact for the Placement of Children have entered into a Memorandum of Understanding for the purpose of ‘clarifying issues and resolving confusion’ in the handling of cases under both Compacts. While it is unclear whether the problems being encountered in the cases described above can be resolved under the MOU, they certainly appear to raise questions about the “**best plan of action regarding public safety and what is in the best interest and safety of the child or juvenile**” and whether it may be necessary “**to modify rules, regulations, procedures or forms**” in order to address these cases which are among the stated purposes of the MOU.

² See FN 1 above