

 Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters	Dated: December 11, 2014	
Description: ICJ Authority in Cases where Approval of Supervision May Result in Violation of Court Orders	Revised: April 1, 2024 ¹	

Background:

Pursuant to Commission Rule 9-101(3)¹, a West Region subgroup, consisting of Idaho, Montana, Nevada, and Oregon, is requesting an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issue:

The ICJ Rules require the receiving state ICJ Office to indicate “Supervision approved” or “Supervision denied” on each *Form VIII, Home Evaluation Report*. ICJ Rule 4-104(5) requires acceptance when a juvenile has no legal guardian remaining in the sending state and the juvenile has a legal guardian residing in the receiving state. The ICJ Rules do not indicate whether state ICJ Offices should consider the legal ramifications for the youth, parent, victim, and receiving state. However, in some cases the resulting transfer of supervision may violate the other court orders or conditions placed on the youth. The states in this workgroup are unwilling to sign off as approving supervision with a parent/legal guardian that would put the youth in violation of their court orders.

The West Region subgroup is requesting a legal opinion on the following:

Under the current rules, can a receiving state legitimately accept supervision when the intended transfer of supervision violates no contact orders or other court ordered conditions of supervision?

Applicable Compact Provisions and Rules:

Article I of the ICJ provides, in relevant part, that:

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

¹ This Advisory Opinion has been revised to reflect ICJ Rules in effect April 1, 2024. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

	Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 2
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- (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; and
- (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected . . .

ICJ Rule 1-101 provides, in relevant part:

Supervision: the oversight exercised by authorities of a sending or receiving state over a juvenile for a period of time determined by a court or appropriate authority, during which time the juvenile is required to report to or be monitored by appropriate authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the juvenile.

Rule 4-104 provides, in relevant part:

(4) Supervision shall be accepted unless the home evaluation reveals that the proposed residence is unsuitable or that the juvenile is not in substantial compliance with the terms and conditions of supervision required by the sending or receiving state. Supervision shall also be accepted as provided in Rule 4-104(5). When supervision is not recommended, the Form VIII Home Evaluation Report shall include a detailed justification to include why the proposed residence is not safe and/or suitable.

(5) Supervision shall be accepted when a juvenile has no legal guardian remaining in the sending state and the juvenile does have a legal guardian residing in the receiving state.

Analysis and Conclusions:

The West Region subgroup is understandably concerned about the potential for endangering the safety of a victim if a juvenile delinquent is transferred from a sending state to a receiving state when no custodial parent or legal guardian resides in the sending state, but such a parent or guardian does reside in the receiving state. Admittedly, there could be situations in which a

	Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 3
<p style="text-align: center;">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>		<p style="text-align: right;">Dated: December 11, 2014</p> <p style="text-align: right;">Revised: April 1, 2024¹</p>	
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supervision transfer violates existing ‘no contact’ orders or other legal requirements involving a previous victim, such as a sibling or other family member. However, ICJ Rule 4-104(5) also recognizes the rights of a legal guardian, which must be considered in the determination of whether or not a proposed transfer of supervision is suitable or legally authorized.

The question posed directly addresses a possible dichotomy created by the language of the existing provisions of ICJ Rule 4-104. Can a receiving state legitimately accept supervision when the intended residence violates a ‘no contact order’ or other court ordered conditions of supervision? Clearly, neither the provisions of the ICJ, nor the ICJ Rules contemplate, or should be interpreted to allow such a result.

Article I of the ICJ provides in Sections A and B that:

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

- (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; and
- (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected. . .

Moreover, ICJ Rule 1-101 clearly defines “Supervision” to mean the oversight exercised by the authorities of the sending and receiving states, during which time the juvenile is required to report or be monitored by appropriate authorities **and to comply with regulations and conditions as determined by a court or appropriate authority (emphasis supplied).**

Based upon the plain meaning of both the above referenced provisions of the ICJ and the ICJ Rules, it is clear that a receiving state is not authorized to violate court ordered conditions of supervision. Article I (A) of the Compact expressly requires that compact officials “ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision . . . in the receiving state **as ordered by the adjudicating judge or parole authority in the sending state” (emphasis supplied).** As the Supreme Court has explained concerning the proper approach to

 Interstate Commission for Juveniles	Opinion Number: 04-2014	Page Number: 4
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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 (1997) (internal quotation marks omitted).

It is equally clear that under Article I (B) of the Compact, officials in Compact Member States are also unequivocally required to “adequately protect” the public safety interests of the citizens, “including the victims of juvenile offenders.” (emphasis supplied). It is axiomatic that administrative rules, such as the above ICJ Rule, promulgated by an administrative agency, such as the Interstate Commission for Juveniles, cannot exceed the delegated authority granted to it by the statute. See *Federal Power Commission v. Texaco, Inc.*, 417 U.S. 380, 394 (1974) (“It, [the applicable statute], does not authorize the Commission to set at naught an explicit provision of the Act.”) *Id.* at p. 394.

Summary:

In summary, based upon the terms of the Compact, the above referenced Compact provisions, ICJ Rules and the legal authorities cited herein, that ICJ Rule 4-104(5) does not authorize a receiving state to violate ‘no contact’ orders or other court ordered conditions of the adjudicating judge or parole authority in the sending state.