



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1998

Mr. Steve Robinson
Executive Director
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

Letter Opinion No. 98-125

Re: Whether out-of-state juvenile adjudicated delinquent for a sexual offense and transferred to Texas for probation pursuant to Uniform Interstate Compact on Juveniles may be required to register as sex offender (RQ-1152)

Dear Mr. Robinson:

Texas is a party to the Uniform Interstate Compact on Juveniles ("ICJ" or "compact"), set out in Family Code chapter 60. Under Article VII of the compact, a party state (the "sending state") may allow a delinquent juvenile to reside in any other party state (the "receiving state") while on probation or parole. Fam. Code § 60.002, art. VII(a). The receiving state is obligated to accept the juvenile if the parent, guardian, or person entitled to legal custody of the juvenile resides or intends to reside in the receiving state. *Id.* Where the parent, guardian, or legal custodian is not a resident of the receiving state, the receiving state may, in its discretion, agree to accept the juvenile. *Id.* When a delinquent juvenile is transferred from one state to another, the party states agree "[t]hat each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole." *Id.* art. VII(b). In other words, a delinquent juvenile on probation or parole transferred to Texas from another state is subject to the same visitation and supervision standards for probation and parole that apply to Texas delinquent juveniles.

Your question arises from a fact situation in which a youth was adjudicated delinquent in California for conduct that would be considered indecency with a child in Texas. *See* Penal Code § 21.11 (defining offense of indecency with a child). California is a party to the compact. *See* Cal. Welf. & Inst. Code § 1300. You tell us that the youth was placed on probation in California and transferred to Texas pursuant to the ICJ, and that the youth's local probation officer wishes to require the youth to register as a sex offender pursuant to the Texas Sex Offender Registration Program, Code of Criminal Procedure chapter 62.

The Sex Offender Registration Program requires a person who has a "reportable conviction or adjudication" to register with the local law enforcement authority in any city or county where the person resides or intends to reside for more than seven days. Code Crim. Proc. art. 62.02. This law

applies to juveniles. See *In re B.G.M.*, 929 S.W.2d 604, 606 (Tex. App.--Texarkana 1996, no writ); Open Records Decision No. 645 (1996). A conviction for indecency with a child is listed as a "reportable conviction or adjudication," Code Crim. Proc. art. 62.01(5)(A), as is an adjudication of delinquent conduct for the same offense, *id.* art. 62.01(5)(G). Also listed as reportable is "a conviction under the laws of another state or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of" a Texas sexual offense. *Id.* art. 62.01(5)(I).

Because the Sex Offender Registration law states that an out-of-state *conviction* is reportable, you ask whether a youth who has an out-of-state *adjudication of delinquency*, which is not listed as reportable, can nevertheless be required by a juvenile probation officer, under the authority of the ICJ, to register as a sex offender.

We begin by affirming the premise that a youth adjudicated delinquent in another state for a sex offense is not required by Code of Criminal Procedure article 62.01 to register in Texas as a sex offender. The registration requirement for out-of-state offenders applies only to those who have been "convicted" of an offense. Juveniles are not "convicted" of crimes; they are adjudicated delinquent. See Fam. Code § 51.03. Although both a criminal conviction and an adjudication of delinquency involve a determination of responsibility for the commission of conduct that constitutes an offense, Texas law, California law, and we assume the laws of most or all other states, recognize this distinction between adult and juvenile proceedings. The Sex Offender Registration Program also recognizes this distinction, expressly stating that both convictions and adjudications of delinquency for sex offenses in Texas give rise to a duty to register. With respect to out-of-state sex offenses, however, the law states that out-of-state *convictions* are reportable, but gives no mention to out-of-state *adjudications*. Although the rationale of this result is not apparent to us, we find no indication that the legislature meant anything other than what it has said: juveniles adjudicated delinquent for sexual offenses under the laws of another state are not required by article 62.01 to register in Texas as sex offenders, even though Texas youths adjudicated delinquent for the same offenses must register.

We must now consider whether the terms of the Interstate Compact on Juveniles, which have the full effect of law in this state, allow Texas probation officers to impose the requirements of the Sex Offender Registration Program on out-of-state delinquent youth transferred to Texas. In doing so, we are instructed by the compact that "[i]n carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally." Fam. Code § 60.002, art. I.

Under the terms of the compact, a delinquent juvenile transferred to Texas is to be governed by the "same standards of visitation and supervision" that apply to Texas delinquent juveniles released on probation or parole. You appear to assume that this provision permits Texas juvenile probation officers to require out-of-state juvenile probationers to register as sex offenders since Texas youth must so register. We disagree with this assumption. The "same standards" provision of the ICJ applies only to the receiving state's exercise of the duties of supervision over the

probationer. Rules adopted by the Texas Youth Commission (“TYC”) provide: “The receiving state will determine the type and quality of supervision. Age and duration are determined by the sending state.” 37 T.A.C. § 117.9. And, under TYC rules, only the sending state can discharge a youth from probation. *Id.* § 117.9(g). It is apparent from the terms of the compact and TYC rules, and this office has held, that the sending state retains jurisdiction over the juvenile. *See* Attorney General Opinion DM-147 (1992) at 5. Thus the sending state retains the authority to set the terms and conditions of probation; the receiving state may only supervise the probation. One commentator explains: “The Compact authorizes only courtesy supervision by the receiving state of probation or parole that is structured and enforced by the sending state. Any amendments in the conditions of probation or parole must be made by the court or agency in the sending state that originally set the conditions.” Texas Juvenile Probation Commission, *Texas Juvenile Law* 306 (4th ed. May 1996).

Texas law recognizes this distinction between the setting of probation conditions and the supervision of compliance with those conditions. In Texas, a court may place a delinquent juvenile on probation “on such reasonable and lawful terms as *the court* may determine.” Fam. Code § 54.04(d)(1) (emphasis added). “If the child is placed on probation, the terms of probation shall be written in the order.” *Id.* § 54.04(f). One commentator has explained: “Basically, the conditions of probation require that the child obey the law, pay fines, restitution and fees (if so ordered), report to an officer regularly, obey jurisdictional requirements, obey parental authority, attend school or work regularly, and attend special programs which could benefit the probationer.” Rolando V. Del Carmen, *Texas Juvenile Law and Practice* 83 (1991). Some probation conditions are permitted or mandated by statute. *See, e.g.*, Fam. Code §§ 54.041 (restitution to victim), .042 (license suspension), .044 (community service), .046 (graffiti removal). If a child is placed on probation for conduct constituting a sexual offense, the court may require that the child attend psychological counseling sessions and submit to polygraph examinations to evaluate the child’s treatment progress. *Id.* § 54.0405. In the event of an ICJ transfer, the sending state sets these types of probation terms and conditions, while Texas law determines the “standards of visitation and supervision” applicable to the juvenile probationer.

In Texas, supervision of a juvenile probationer is administered by a juvenile probation officer. *See* Hum. Res. Code chs. 141, 142. Juvenile probation services are authorized to be provided “in response to an order issued by a juvenile court and under the court’s direction.” *Id.* § 142.001. “Traditionally, the two main functions of the juvenile probation officer have been as a personal counselor and as a broker of services, meaning serving as a link to the community services that the child and family need.” Del Carmen, *supra*, at 81. A juvenile probation officer may set reasonable requirements relating to supervision; however, the probation officer may not set or amend the terms and conditions of probation set by the court. *See K.K.B. v. State*, 609 S.W.2d 824, 825 (Tex. Civ. App.--Texarkana 1980, no writ). Likewise, in the event of a transfer pursuant to the ICJ, a Texas probation officer may not alter the probation conditions set by the sending state. Under the ICJ, Texas law applies only to the “standards” of probation supervision.

The compact does not define what is meant by “standards” of probation supervision. The Texas Juvenile Probation Commission, in an effort to improve and standardize statewide juvenile

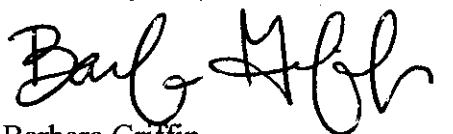
probation services, is directed to and has adopted “minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.” Hum. Res. Code § 141.042; *see* 37 T.A.C. ch. 341 (Texas Juvenile Probation Standards). It is not clear that these are the standards of probation supervision to which the compact refers. However, we believe that these standards, which involve the quality of the day-to-day provision of probation services, rather than setting of the terms and conditions of probation, are the type contemplated by the ICJ to be applied to out-of-state delinquent youth transferred pursuant to the compact.

In our view, the sex offender registration program is not a standard of probation supervision. Instead, a requirement to register as a sex offender is in the nature of a probation condition. *Cf.* 37 T.A.C. § 195.61 (listing sex offender registration as one of the required “terms and conditions” of adult parole); *id.* § 197.21 (listing sex offender registration as one of the required “terms and conditions” of adult mandatory supervision). Because only a court of the sending state may set the terms and conditions of probation, we conclude that a Texas juvenile probation officer may not require a delinquent juvenile transferred to Texas pursuant to the ICJ to register as a sex offender.¹

S U M M A R Y

A youth adjudicated delinquent in another state for a sex offense is not required by the Texas Sex Offender Registration Program, Code of Criminal Procedure chapter 62, to register in Texas as a sex offender. A juvenile probation officer may not require a delinquent juvenile transferred to Texas for probation supervision pursuant to the Uniform Interstate Compact on Juveniles to register as a sex offender.

Yours very truly,



Barbara Griffin
Assistant Attorney General
Opinion Committee

¹We do not mean to suggest that a juvenile probation officer may require sex offender registration in circumstances other than an ICJ transfer.