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Juvenile Delinquents and Federal Criminal Law: The Federal Juvenile Delinquency Act and Related Matters

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Summary

Juvenile offenders of federal criminal law are primarily the responsibility of state juvenile court authorities. The Federal Juvenile Delinquency Act permits federal delinquency proceedings where state courts cannot or will not accept jurisdiction. In the more serious of these cases, the juvenile offender may be transferred for trial as an adult in federal court.

The Act applies to those charged before the age of 21 with a breach of federal criminal law occurring before they reached the age of 18. Given the law enforcement predominance of state officials and the fact that a violation of federal law will ordinarily support the assertion of state juvenile court jurisdiction, most such offenders never come in contact with federal authorities. Many of those who do are returned to state officials to be processed through the state court system.

The United States Attorney, however, may elect federal proceedings if the state courts are unwilling or unable to assume jurisdiction, or the state has no adequate treatment plans, or the juvenile is charged with a crime of violence or with drug trafficking. A juvenile may be transferred for trial as adult only at his or her insistence or pursuant to a court transfer of a juvenile, 15 years of age or older, charged with drug trafficking or a crime of violence.

Federal juvenile delinquency proceedings require neither grand jury indictment, public trial, nor trial by jury. The constitutional rights available to juveniles at delinquency proceedings are otherwise much like those found in adult criminal trials.

Juveniles found delinquent may be released under suspended sentence, placed on probation, ordered to pay restitution and/or sentenced to the custody of the Attorney General for detention. The period of detention, if any, may not exceed the term which might be imposed upon an adult offender for the same misconduct.

This report provides an overview of the history of federal juvenile delinquency law, current federal law, and the stages of juvenile adjudications. A survey noting the circumstances under which state law permits juveniles may be tried as adults under state law and a selected legal bibliography are appended.

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Introduction

Juvenile offenders of federal criminal law are primarily the responsibility of state juvenile court authorities. The Federal Juvenile Delinquency Act permits federal delinquency proceedings when state courts cannot or will not accept jurisdiction or in the case of a limited number of crimes when there is a substantial federal interest. In the more serious of these cases, the juvenile offender may be transferred for trial as an adult. The rise in serious juvenile crime, the contraction of state juvenile court jurisdiction, and the expansion of federal criminal law have all contributed to the increased prevalence of the federal delinquency proceedings described here.

History of Federal Delinquency Law

In early America, the law held that a child, until the age of 7, lacked the maturity necessary to be held criminally responsible. Thereafter, incapacity was rebuttably presumed until the child reached the age of 14, by which time acquisition of the intellectual capability to entertain criminal intent was assumed.¹ A child found capable of the requisite intent was subject to trial and punishment as an adult; other children were set free.

In the early twentieth century, the states established juvenile court systems so that children accused of conduct that would be criminal in an adult might be processed apart from the criminal justice system in an environment more closely

¹ “Under the age of seven years, indeed, it seems that no circumstances of mischievous discretion can be admitted to overthrow the strong presumption of innocence which is raised by an age so tender. During the interval between seven and fourteen, the infant is *prima facie* supposed to be destitute of criminal design; but this presumption diminishes as the age increases, and even during this interval of youth, may be repelled by positive evidence of vicious intention. For a tenderness of years will not excuse a maturity in crime; . . . since the power of contracting guilt is measured rather by the strength of the delinquent’s understanding, than by days and years. Thus, children of thirteen, eight, and ten years of age, have been executed for capital offenses, because they respectively manifested a consciousness of guilt, and a mischievous discretion or cunning. After the age of fourteen, an infant is on the same footing with those of the maturest years.” 3 CHITTY, A PRACTICAL TREATISE ON CRIMINAL LAW 724 (3d Am.ed. 1836); *accord*, 1 BISHOP, COMMENTARIES ON THE CRIMINAL LAW §368 (7th ed. 1886); PERKINS & BOYCE, CRIMINAL LAW 936-39 (3d ed. 1982).

attuned to their rehabilitative needs. By 1930, only the federal government continued to uniformly treat children, charged with a crime, as adults.² The Attorney General recommended, and Congress agreed, that the disparity should be adjusted by authorizing the Department of Justice to return juveniles charged with violating federal law to the juvenile authorities of their home state.³

This solution suffered two unfortunate limitations. It did not account for juveniles charged with capital crimes. State law ordinarily excluded capital offenses from the jurisdiction of its juvenile courts. Second, state juvenile courts had no jurisdiction over juveniles who lived, and whose misconduct occurred upon, Indian reservations or military installations over which the state had no legislative jurisdiction.

Congress addressed these shortcomings with the Federal Juvenile Delinquency Act of 1938.⁴ State juvenile proceedings remained the preferred alternative, but the Attorney General might instead elect to proceed against a juvenile as an adult, and federal juvenile proceedings became possible should both parties agree.⁵ Although supplemented in 1950 by the Federal Youth Corrections Act which afforded federal juvenile offenders tried as adults the prospect of special rehabilitative opportunities,⁶ the Act remained essentially unchanged for over thirty-five years.

In 1974, Congress substantially revised the Act,⁷ in order “to provide basic procedural rights to juveniles who come under federal jurisdiction and to bring federal procedures up to the standards set by various model acts, many state codes

² “The creation and development of the juvenile court in the American States has been made possible by a line plainly drawn between child and adult in the State law. The child offender is generally dealt with on a noncriminal basis and has been protected from prosecution and conviction for crime. The State has come to regard him as its ward. It has assumed guardianship over him. It has undertaken to safeguard, train, and educate rather than to punish him. It has substituted social for penal methods; the concept of juvenile delinquency for that of crime. The clear distinction, however, has never been made in the Federal law. The child approaches the courts of the United States on the same footing as the adult. The concept of juvenile delinquency is unknown to the Federal Penal Code.” NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT [(WICKERSHAM COMMISSION)], REPORT ON THE CHILD OFFENDER IN THE FEDERAL SYSTEM OF JUSTICE, 2 (1931).

³ The Attorney General also pointed out that (1) most of the cases involved interstate joyriding, an offense for which juvenile court treatment was thought particularly appropriate; (2) “[t]here [were] not enough juveniles brought into the Federal courts to justify the establishment of juvenile courts by act of Congress;” and (3) “federal penal institutions are not adequately equipped to deal with this class of juvenile delinquency.” H.R.Rep.No. 958, 72d Cong., 1st Sess. 2, accompanying the bill enacted as 47 Stat. 301 (1932), as amended, 18 U.S.C. 5001.

⁴ 52 Stat. 764 (1938), 18 U.S.C. 921 to 927 (1940 ed.).

⁵ 52 Stat. 765 (1938), 18 U.S.C. 922 (1940 ed.).

⁶ 64 Stat. 1086 (1950), 18 U.S.C. 5005 to 5026 (1952 ed.).

⁷ 88 Stat. 1133 (1974), 18 U.S.C. 5031 to 5042 (1976 ed.).

and court decisions.”⁸ Crimes punishable by death or life imprisonment (primarily murder, kidnapping and rape at the time) were made subject to the federal juvenile treatment for the first time.⁹ The Attorney General lost the unbridled discretion to determine whether children, accused of federal crimes, should be tried as adults in federal criminal proceedings. The Attorney General was authorized, however, to petition the federal juvenile court to transfer, for trial as an adult, any 16 or 17 year old accused of a crime which carried a maximum penalty of death, life imprisonment, or imprisonment for ten years or more.¹⁰

Congress made the final major adjustments ten years later with changes that emphasized that at least some of the juveniles who commit serious crimes merited punishment as adults. The Sentencing Reform Act of 1984 not only repealed the Federal Youth Corrections and the juvenile parole provisions,¹¹ but it extended the range of the court’s dispositional authority and modified the list of crimes for which and the age at which a juvenile may be transferred for trial as an adult.¹²

Overview of Existing Federal Law

The continuing basic premise of federal juvenile law is that juvenile matters, even those arising under federal law, should be handled by state authorities whenever possible.¹³ The remote second preference of federal law is treatment of the juvenile

⁸ S.Rep.No. 1011, 93d Cong., 2d Sess. 19 (1974).

⁹ 88 Stat. 1133-134 (1974), 18 U.S.C. 5031, 5032 (1976 ed.). At the time, the Supreme Court decision in *Furman v. Georgia*, 408 U.S. 238 (1972), had recently declared unconstitutional the procedure under which the vast majority of state and federal capital punishment statutes operated. It was not until two years later that *Woodson v. North Carolina*, 428 U.S. 280 (1976) and *Gregg v. Georgia*, 428 U.S. 153 (1976), gave some clue as to what procedures, if any, would pass constitutional muster. The federal statutes which called for the death penalty continued in force, however, as long they provided for a constitutionally permissible alternative penalty.

¹⁰ 88 Stat. 1134 (1974), 18 U.S.C. 5032 (1976 ed.).

¹¹ 98 Stat. 2027, 2014 (1984).

¹² 18 U.S.C. 5037, 5032 (discussed below). Thus far at least, the courts have declined to read into this history a Congressional intent to repudiate rehabilitation as a sentencing consideration under section 5037, *United States v. Patrick*, 359 F.3d 3, 10-11 (1st Cir. 2004); *United States v. Juvenile*, 347 F.3d 778, 786-87 (9th Cir. 2003); *each citing, United States v. R.L.C.*, 503 U.S. 291, 298 (1992)(op. of Souter, J.).

¹³ 18 U.S.C. 5032 (“A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the

under the federal delinquency provisions.¹⁴ In a limited, but growing, number of instances involving drugs or violence, federal law permits the trial of juveniles as adults in federal court.¹⁵

Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

“If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. . .”).

¹⁴ 18 U.S.C. 5032 (“ . . . If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below”).

Federal juvenile delinquency proceedings involve roughly 200 juveniles a year, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, STATISTICAL TABLES FOR THE FEDERAL JUDICIARY, Table D-2, 64 (Dec. 2003), compared to the more 1.6 million juveniles involved in state delinquency cases, STATISTICAL BRIEFING BOOK, at www.ojjdp.ncjrs.org (visited on Oct. 16, 2004). Because a majority of the federal cases have historically arisen in areas beyond state jurisdiction, i.e., primarily Indian country, the majority of federal delinquency proceedings involve Native Americans, *see, The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles*, 84 MINNESOTA LAW REVIEW 473 (1999).

¹⁵ 18 U.S.C. 5032 (“ . . . A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), or section 922(x) of this title, or in section 924(b), (g), or (h) of this title, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), ‘thirteen’ shall be substituted for ‘fifteen’ and ‘thirteenth’ shall be substituted for ‘fifteenth’. Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial

For purposes of the Federal Juvenile Delinquency Act in its present form, a juvenile is an individual, under 21 years of age when the information is filed, alleged to have violated federal criminal law before reaching the age of 18.¹⁶ The Act reaches neither individuals after they turn 21 nor conduct committed after they turn 18,¹⁷ but federal authorities may prosecute as an adult any individual whose active participation in a conspiracy or racketeering enterprise bridges his or her eighteenth birthday.¹⁸

Federal Juvenile Offenders in State Proceedings

Criminal investigation and prosecution is first and foremost the domain of state and local officials, and conduct which violates federal criminal law is usually contrary to state law as well.¹⁹ While state crimes are the most common basis for

risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1) (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution . . .”).

¹⁶ “For purposes of this chapter, a ‘juvenile’ is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and ‘juvenile delinquency’ is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult or a violation of such a person of section 922(x)[relating to unlawful possession of a handgun or handgun ammunition by a juvenile].” 18 U.S.C. 5031.

¹⁷ *United States v. Ramirez*, 297 F.3d 185, 191-92 (2d Cir. 2002); *United States v. Male Juvenile (Pierre Y.)*, 280 F.3d 1008, 1017 (9th Cir. 2002); *United States v. Doerr*, 886 F.2d 944, 969-70 (7th Cir. 1989).

¹⁸ *United States v. Soto-Beniquez*, 356 F.3d 1, 23-4 (1st Cir. 2003); *United States v. Burns*, 298 F.3d 523, 537 (6th Cir. 2002); *United States v. Peters*, 283 F.3d 300, 309 (5th Cir. 2002); *United States v. Delatorre*, 157 F.3d 1205, 1209-211 (10th Cir. 1998); *United States v. Thomas*, 114 F.3d 228, 238 (D.C.Cir. 1997); *United States v. Wong*, 40 F.3d 1347, 1365-366 (2d Cir. 1994); *United States v. Cruz*, 805 F.2d 1464, 1476 (11th Cir. 1976); for a more extensive discussion of questions presented by crimes that straddle the jurisdictional age lines see, *Conspiratorial Children? The Intersection of the Federal Juvenile Delinquency Act and Federal Conspiracy Law*, 74 BOSTON UNIVERSITY LAW REVIEW 859 (1994).

¹⁹ For example, the federal Controlled Substances Act, 21 U.S.C. 801 - 889, has a state equivalent in every jurisdiction, see e.g., Ala.Code §§20-2-1 to 20-2-93; Alaska Stat. 11.71.010 to 11.71.900; Ariz.Rev.Stat. Ann. §§13-3401 to 13-3416; Ark.Code §§5-64-101 to 5-64-1005; and robbery of a federal insured bank, 18 U.S.C. 2113, and murder of a federal law enforcement officer, 18 U.S.C. 1114, will almost always be contrary to the state robbery and murder statutes in the state in which the offenses occur, see e.g., Cal.Pen.Code §§187 to 189 (homicide); Colo.Rev.Stat. §§18-3-101 to 18-3-107 (homicide); Conn.Gen. Stat. Ann. §§53a-54a to 53a-58a (homicide); Del.Code tit.11 §§631 to 641 (homicide); Fla.

state juvenile court jurisdiction, many state juvenile courts enjoy delinquency jurisdiction based upon a violation of federal law.²⁰ Thus an individual under 18 who violates federal criminal law can move through the state juvenile delinquency system without ever coming into contact with federal authorities.

Contractions in state juvenile court jurisdiction, however, make this less likely than was once the case. Many states now define juvenile court jurisdiction more narrowly than federal law either in terms of age or crime or both.²¹ Some also permit the adult criminal trial of a juvenile either through the exercise of concurrent jurisdiction, a waiver of jurisdiction, or a transfer under circumstances the federal courts could not.

Arrest and Arraignment

A juvenile taken into federal custody for violation of federal law must be advised of his or her legal rights immediately and the juvenile's parents or guardian must be notified immediately.²² The courts have held that since federal custody activates the statute's requirements, the obligations only begin after a juvenile, initially detained by state, local or tribal officials, is turned over to federal authorities,²³ and may be excused when the juvenile contributes to reasonable but unsuccessful notification efforts.²⁴ The juvenile must also be brought before a

Stat. Ann. §812.13 (robbery); Ga. Code §§16-8-40, 16-8-41 (robbery); Hawaii Rev. Stat. §§708-840 to 708-842 (robbery); Idaho Code §§18-6501 to 18-6503 (robbery).

²⁰ Ala. Code §12-15-1 ("When used in this chapter, the following words and phrases shall have the following meanings . . . Delinquent Act. An act committed by a child that is designated a violation, misdemeanor, or felony offense under the law of this state . . . or under federal law . . ."); see also, Ariz. Rev. Stat. Ann. §8-201; Cal. Wel. & Inst. Code §602; Colo. Rev. Stat. §19-2-104; Conn. Gen. Stat. Ann. §46b-120; Del. Code Ann. tit. 10, §1009; Fla. Stat. Ann. §985.03; Ga. Code Ann. §15-11-2; Hawaii Rev. Stat. §571-11; Idaho Code §20-505; Ill. Comp. Stat. Ann. ch. 705 §405/5-105; Iowa Code §232.2; La. Child. Code art. 804; Mich. Comp. Laws Ann. §712A.2; Minn. Stat. Ann. §260B.007; Miss. Code §43-21-105; N.D. Cent. Code §27-20-02; Ohio Rev. Code §2152.02; Okla. Stat. Ann. tit. 10 §7301-1.3; Ore. Rev. Stat. §419C.005; Pa. Stat. Ann. tit. 42 §6302; R.I. Gen. Laws §14-1-3; S.D. Cod. Laws §26-8C-2; Tenn. Code Ann. §37-1-102; Tex. Fam. Code Ann. §51.03; Utah Code Ann. §78-3a-104; Vt. Stat. Ann. tit. 33 §5502; Va. Code §16.1-228; Wash. Rev. Code Ann. §13.40.020; Wis. Stat. Ann. §938.02.

²¹ A state by state breakdown is appended.

²² 18 U.S.C. 5033.

²³ *United States v. Doe*, 366 F.3d 1068, 1070-75 (9th Cir. 2004); *United States v. Kerr*, 120 F.3d 239, 241-42 (11th Cir. 1997); *cf.*, *United States v. Doe*, 226 F.3d 672, 679 (6th Cir. 2000).

²⁴ *United States v. Burrous*, 147 F.3d 111, 115-16 (2^d Cir. 1998). The case law otherwise construing the advice and notification portions of section 5033 comes largely from the Ninth Circuit and provides that:

1. the word "immediate" means the same for both advice and notifications purposes, *United States v. Doe (Rudolfo R.)*, 219 F.3d 1009, 1014-15 (9th Cir. 2000);

2. advice given 4 hours after arrest and notification given 3½ hours after arrest have not been given immediately, *United States v. Juvenile (RRA-A)*, 229 F.3d 737, 744 (9th Cir.

magistrate for arraignment “forthwith.”²⁵

Once before the magistrate, the juvenile is entitled to the assistance of counsel and to have counsel appointed in the case of indigence.²⁶ The magistrate may also appoint a guardian ad litem, and, after a hearing before counsel, order the juvenile detained to guarantee subsequent court appearances or for the safety of the juvenile or anyone else.²⁷

A juvenile under federal detention is entitled to a delinquency hearing within 30 days or to have the information charging his or her delinquency dismissed with prejudice unless he or she has contributed or consented to the delay or unless dismissal with prejudice would be contrary to the interests of justice.²⁸ This speedy trial requirement runs from the time the juvenile was taken into federal custody

2000); *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014;

3. notice given within close to an hour after arrests had been given immediately, *United States v. Female Juvenile (Wendy G.)*, 255 F.3d 761, 765 (9th Cir. 2001);

4. parental notification must include advice as to the juvenile’s rights, *United States v. Juvenile (RRA-A)*, 229 F.3d at 747; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1017-18; *United States v. Female Juvenile (Wendy G.)*, 255 F.3d at 767-77;

5. parental notification may be accomplished through the good offices of the appropriate foreign consulate when the juvenile’s parents reside outside of the United States, *United States v. Juvenile (RRA-A)*, 229 F.3d at 744; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014;

6. convictions or delinquency determinations must be overturned if they are tainted by violations of section 5033 so egregious as to violate due process, *United States v. Juvenile (RRA-A)*, 229 F.3d at 744; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014; and

7. less egregious but prejudicial violations of section 5033 require that any resulting incriminating statements be suppressed, *United States v. Juvenile (RRA-A)*, 229 F.3d at 744; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014; *but see, United States v. Doe*, 226 F.3d 672, 678-80 (6th Cir. 2000) (violation does not per se require suppression of resulting confession whose admissibility should be judged by considering the totality of the circumstances).

²⁵ 18 U.S.C. 5033. At night, on weekends, or at other times when a magistrate is not immediately available, arraignment may be within a time reasonable under the circumstances, *United States v. Doe*, 701 F.2d 819, 823-24 (9th Cir. 1983)(delay between 11 at night and arraignment in the morning two days later was reasonable in light of unavailability of a magistrate and the officer’s press of official business), *United States v. Doe (Rudolfo R.)*, 219 F.3d 1009, 1015-16 (9th Cir. 2000)(a thirty-one hour delay in the absence of extenuating circumstances was not reasonable); *United States v. Doe*, 862 F.2d 766, 780 (9th Cir. 1988)(36 hour delay was unreasonable); *United States v. DeMarce*, 513 F.2d 755, 757-58 (10th Cir. 1975)(80 hour delay unreasonable even if some of delay fell on a weekend); *United States v. Nash*, 620 F.Supp. 1439, 1444 (S.D.N.Y. 1985)(7-9 hour delay on a weekday unreasonable even without proof bad faith).

²⁶ 18 U.S.C. 5034.

²⁷ 18 U.S.C. 5034. The Supreme Court has upheld state juvenile pre-trial detention, *Schall v. Martin*, 467 U.S. 253 (1984), and adult federal pre-trial detention, *United States v. Salerno*, 481 U.S. 739 (1987).

²⁸ 18 U.S.C. 5036.

pending judicial proceedings,²⁹ but does not attach to any period of state detention;³⁰ to any period during which the juvenile was being held for purposes other than the pendency of delinquency proceedings;³¹ to time when the juvenile is not being detained;³² to delays attributable to the juvenile's deception;³³ to the period between admission or guilty plea and sentencing;³⁴ nor to the period for which a continuance has been granted at the juvenile's behest.³⁵ Time spent on the government's appeal is excludable in the interest of justice,³⁶ as is time spent litigating the government's transfer motions,³⁷ but not when the juvenile was being unlawfully detained at the time of government's motion.³⁸

Initial Stages of Federal Adjudication

Federal law permits federal proceedings against a federal juvenile offender when there is no realistic state alternative or when the juvenile is accused of a serious federal crime. The government must certify that it has elected a federal forum. The certificate must assert that either:

- (1) the state courts are unwilling or unable to proceed against the juvenile for the misconduct in question; or
- (2) the juvenile programs of the state are unavailable or inadequate; or
- (3) the offense is a drug dealing or drug smuggling violation, possession of an undetectable firearm, or felony and crime of violence and that a substantial federal interests exists warranting the exercise of federal jurisdiction.³⁹

²⁹ *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 34 (1st Cir. 2004); *United States v. Wong*, 40 F.3d at 1371; *United States v. Romulus*, 949 F.2d 713, 715 (4th Cir. 1991); *United States v. Doe*, 882 F.2d 926, 927-28 (5th Cir. 1989).

³⁰ *United States v. Eric B.*, 86 F.3d 869, 873 (9th Cir. 1996); *United States v. Three Male Juveniles*, 49 F.3d 158, 1063 (5th Cir. 1995); *United States v. Doe*, 642 F.2d 1206, 1207-208 (10th Cir. 1981).

³¹ *United States v. Juvenile Male*, 74 F.3d 526, 528-29 (4th Cir. 1996).

³² *United States v. Cuomo*, 525 F.2d 1285, 1290 (5th Cir. 1976)(released to parents under restrictive bail conditions); *United States v. Doe*, 149 F.3d 945, 949-50 (9th Cir. 1998) (released to half-way house pending trial).

³³ *United States v. Doe*, 49 F.3d 859, 865-66 (2d Cir. 1995).

³⁴ *United States v. Juvenile Male*, 939 F.2d 321, 324 (6th Cir. 1991).

³⁵ *United States v. Doe*, 226 F. 3d 672, 681 (6th Cir. 2000).

³⁶ *United States v. Doe*, 94 F.2d 532, 535-36 (9th Cir. 1996).

³⁷ *United States v. A.R.*, 203 F.3d 955, 963-64 (6th Cir. 2000); *United States v. Sealed Juvenile I*, 192 F.3d 488, 491-92 (5th Cir. 1999); *United States v. Wong*, 40 F.3d at 1371; *United States v. Romulus*, 949 F.2d at 716.

³⁸ *United States v. Female Juvenile*, A.F.S., 377 F.3d at 37-8.

³⁹ "A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney

The statute calls for certification by the Attorney General, but the authority has been redelegated to the various United States Attorneys.⁴⁰ A facially adequate certification is generally thought to be beyond judicial review in the absence of evidence of bad faith.⁴¹ In the absence of a definition of “crime of violence” for certification purposes within section 5032 or within 5031 which supplies definitions of general application for the chapter, courts have relied on the definitions in 18 U.S.C. 16⁴² and 18 U.S.C. 924(c)(3)(B).⁴³

General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.” 18 U.S.C. 5032 ¶1.

⁴⁰ 28 C.F.R. §0.57; *United States v. Sealed Juvenile 1 (S.J.)*, 225 F.3d 507, 509 (5th Cir. 2000); *United States v. Juvenile (W.J.B.)*, 228 F.3d 987, 989 n.2 (9th Cir. 2000); *United States v. White*, 139 F.3d 998, 1000 (4th Cir. 1998).

⁴¹ *United States v. F.S.J.*, 265 F.3d 764, 768 (9th Cir. 2001); *United States v. Smith*, 178 F.3d 22, 25 (1st Cir. 1999); *United States v. Vacier*, 515 F.2d 1378, 1380 (2d Cir. 1975); *Impounded (Juvenile R.G.)*, 117 F.3d 730, 733-35 (1st Cir. 1997); *United States v. Juvenile No.1*, 118 F.3d 298, 304-5 (5th Cir. 1997); *United States v. Doe*, 226 F.3d 672, 676-78 (6th Cir. 2000); *United States v. Jarrett*, 133 F.3d 519, 538 (7th Cir. 1998); *United States v. Juvenile Male J.A.J.*, 134 F.3d 905, 906-7 (8th Cir. 1998); *United States v. I.D.P.*, 102 F.3d 507, 511 (11th Cir. 1996); *In re Sealed Case*, 131 F.3d 208, 211-14 (D.C.Cir. 1997); *contra*, *United States v. Juvenile Male No.1*, 86 F.3d 1314, 1320-323 (4th Cir. 1996); *see also*, *Judicial Review & the Policy of Federal Abstention: A Juvenile’s Right to Ensure the Existence of a “Substantial Federal Interest,”* 98 MICHIGAN LAW REVIEW 1007 (2000).

Certification is jurisdictional, however, so that certification by an Assistant United States Attorney without evidence of the United States Attorney’s approval is insufficient, *United States v. Sealed Juvenile 1 (S.J.)*, 225 F.3d 507, 509 (5th Cir. 2000); *United States v. Doe (M.F.)*, 98 F.3d 459, 460-61 (9th Cir. 1996); *United States v. Angelo D.*, 88 F.3d 856, 859-60 (10th Cir. 1996)(certification by principal assistant authorized by the United States Attorney to act for him in his absence); *United States v. F.S.J.*, 265 F.3d 764, 768 (9th Cir. 2001)(same). The government, however, need not certify the want of, or willingness to exercise, tribal as well as state jurisdiction, *United States v. Male Juvenile (Pierre Y)*, 280 F.3d at 1014-16.

⁴² *United States v. Doe*, 49 F.3d 859, 865-66 (2d Cir. 1995); *United States v. Baker*, 10 F.3d 1374, 1393 (9th Cir. 1993)(“The term ‘crime of violence’ means — (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense,” 18 U.S.C. 16).

⁴³ *United States v. Juvenile Male*, 118 F.3d 1344, 1350 (9th Cir. 1997)(“the term ‘crime of violence’ means an offense that is a felony and — (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense,” 18 U.S.C. 924(c)(3)).

If the government decides against federal proceedings, the juvenile must either be released or, under the appropriate conditions, turned over to state authorities.⁴⁴ Otherwise the government files an information and a statement of the juvenile's past record with the district court to begin federal proceedings.⁴⁵ In such cases it may prosecute a juvenile as an adult only if the child insists, or pursuant to a juvenile court transfer.⁴⁶

Transfers

There are two types of transfers, mandatory and discretionary. A transfer is mandatory in the case of a violent felony, drug trafficking, drug smuggling, or arson, allegedly committed by a juvenile 16 years of age or older who has previously been found to have committed comparable misconduct.⁴⁷ Similar offenses may trigger a

⁴⁴ “Whenever any person under twenty-one years of age has been arrested, charged with the commission of an offense punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it appears that such person has committed an offense or is a delinquent under the laws of any State or of the District of Columbia which can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State or of the District of Columbia, and that it will be to the best interests of the United States and of the juvenile offender, the United States attorney of the district in which such person has been arrested may forego his prosecution and surrender him as herein provided, unless such surrender is precluded under section 5032 of this title.

“The United States marshal of such district upon written order of the United States attorney shall convey such person to such State or the District of Columbia, or, if already therein, to any other part thereof and deliver him into the custody of the proper authority thereof.

“Before any person is conveyed from one State to another or from or to the District of Columbia under this section, he shall signify his willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of such State or the District of Columbia, to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 3182 of this title.

“The expense incident to the transportation of any such person, as herein authorized, shall be paid from the appropriation ‘Salaries, Fees, and Expenses, United States Marshals.’” 18 U.S.C. 5001.

⁴⁵ 18 U.S.C. 5032 ¶10 (“A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable”). Historically, most courts considered receipt of any prior record jurisdictional, *Impounded (Juvenile I.H., Jr.)*, 120 F.3d 457, 460 (3d Cir. 1997); *United States v. Wong*, 40 F.3d at 1369-370; *United States v. Parker*, 956 F.2d 169, 170 (8th Cir. 1992); *contra*, *United States v. Doe*, 366 F.3d 1069, 1075-77 (9th Cir. 2004)(finding current language less mandatory than was previously the case).

⁴⁶ 18 U.S.C. 5032.

⁴⁷ “. . . [A] juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of

discretionary transfer if the juvenile is 15 or older regardless of his or her prior record; discretionary transfers are also possible for juveniles 13 or older in some cases of assault, homicide or robbery.⁴⁸ The government's petition is a prerequisite

another may be used in committing the offense, or would be an offense described in section 32 [relating to the destruction of aircraft and aircraft facilities], 81 [relating to arson in the special maritime and territorial jurisdiction of the United States], 844(d), (e), (f), (h), (i) [relating to various explosives offenses], or 2275 [relating to arson on ships of American registry] of this title, subsection (b)(1), (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act [relating to illicit drug trafficking], or section 1002(a), 1003, 1009, or 1010(b)(1), (2), (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3)) [relating to illicit drug smuggling], and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution. . . ." 18 U.S.C. 5032 ¶4.

As the language suggests, the prior felony "conviction" may be either a conviction as an adult or a finding of delinquency based on conduct that would be felonious if committed by an adult, *United States v. J.J.B.*, 104 F.3d 630, 636-37 (4th Cir. 1997); *United States v. Juvenile Male #1*, 47 F.3d 68, 69 (2d Cir. 1995); *United States v. David H.*, 29 F.3d 489, 492-93 (9th Cir. 1994). In either case, the courts will look to the elements of the prior felony, rather than the particulars of the actual misconduct involved, to determine whether the prior offense should be considered violent for transfer purposes, *United States v. M.C.E.*, 232 F.3d 1252, 1255 (9th Cir. 2000); *United States v. A.F.F.*, 144 F.Supp.2d 809, 814 (E.D.Mich. 2001). While conspiracy to violate the Controlled Substances Act sections listed in 18 U.S.C. 5032 will not alone support a transfer, *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 368-69 (D.C.Cir. 1990), conspiracy to commit a violent felony necessarily involves the threat or substantial risk of physical force and consequently may trigger a transfer, *United States v. Juvenile Male*, 923 F.2d 614, 618-19 (8th Cir. 1991); see also, *United States v. Doe*, 49 F.3d 859, 866 (2d Cir. 1995) (RICO conspiracy to commit Hobbs Act robberies constitutes a crime of violence for juvenile transfer purposes); *United States v. Juvenile Male (R.B.)*, 118 F.3d 1344, 1350 (9th Cir. 1997) (same).

The Ninth Circuit has rejected contentions that mandatory transfers constitute an unconstitutional denial of either due process or equal protection, *United States v. Juvenile*, 228 F.3d 987, 990 (9th Cir. 2000), and absent a denial of the effective assistance of counsel, questions of the constitutionality of the underlying prior conviction or determination may not be raised at the transfer hearing, *United States v. M.C.E.*, 232 F.3d 1252, 1257 (9th Cir. 2000).

⁴⁸ "... [W]ith respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the best interest of justice. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c) [relating to assaults within the special maritime and territorial jurisdiction of the United States], 1111 [relating to murder within the special maritime and territorial jurisdiction], 1113 [relating to attempted murder or manslaughter within the special maritime and territorial jurisdiction], or, if the juvenile possessed a firearm during the offense, section 2111 [relating to robbery within the special maritime and territorial jurisdiction], 2113 [relating to bank robbery], 2241(a), or

for either a mandatory or discretionary transfer.⁴⁹ proceedings can begin with the government's petition to the court.

The court's discretionary transfer determination must include consideration of statutory offender criteria.⁵⁰ There is no requirement that the factors be given equal weight as long as the court documents its consideration of each,⁵¹ but may accord particular serious offenses greater weight than the other factors.⁵² When the transfer is discretionary, juvenile adjudication is presumed appropriate,⁵³ unless the

2241(c)[relating to rape within the special maritime and territorial jurisdiction of the United States], 'thirteen' shall be substituted for 'fifteen' and 'thirteenth' shall be substituted for 'fifteenth'. Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to the criminal jurisdiction. . . ." 18 U.S.C. 5032 ¶4.

⁴⁹ *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 32 (1st Cir. 2004); *United States v. Juvenile Male No. 1*, 47 F.3d 68, 609 (2d Cir. 1995).

⁵⁰ "Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer." 18 U.S.C. 5032 ¶5.

A juvenile's statements "prior to or during a transfer hearing" may not be admitted in subsequent criminal proceedings, 18 U.S.C. 5032 ¶8, and consequently a juvenile may be required to submit to a psychiatric examination in connection with the hearing and the court may base its transfer determinations on the results without intruding upon the juvenile's Fifth Amendment privilege against self-incrimination, *United States v. Mitchell H.*, 182 F.3d 1034, 1035-36 (9th Cir. 1999); *United States v. A.R.*, 38 F.3d 699, 703 (3d Cir. 1994).

⁵¹ *United States v. Anthony Y.*, 172 F.3d 1249, 1253 (10th Cir. 1999); *United States v. Wilson*, 149 F.3d 610, 614 (7th Cir. 1998); *United States v. Juvenile JG*, 139 F.3d 584, 586-87 (8th Cir. 1998); *United States v. Juvenile No.1 (J.R.P.)*, 118 F.3d 298, 307 (5th Cir. 1997); *United States v. Doe*, 109 F.3d 626, 628 (9th Cir. 1997); *United States v. Wellington*, 102 F.3d 499, 506 (11th Cir. 1996); *United States v. Nelson*, 90 F.3d 636, 640 (2d Cir. 1996); *United States v. Juvenile Male*, 40 F.3d 841, 845-46 (6th Cir. 1994); *United States v. A.R.*, 38 F.3d 699, 705 (3d Cir. 1994).

⁵² *United States v. Juvenile Male MC*, 322 F.3d 482, 485 (8th Cir. 2002); *United States v. Ramirez*, 297 F.3d at 193.

⁵³ *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 32 (1st Cir. 2004); *United States v. Ramirez*, 297 F.3d 185, 192 (2d Cir. 2002); *United States v. Anthony Y.*, 172 F.3d 1249, 1252 (10th Cir. 1999); *United States v. A.R.*, 203 F.3d 955, 961 (6th Cir. 2000); *United States v. Juvenile Male #1*, 47 F.3d 68, 71 (2d Cir. 1996); *United States v. A.R.*, 38 F.3d 699,

government can establish its case for a transfer by a preponderance of the evidence.⁵⁴ The court's determination of whether transfer is appropriate is immediately appealable under an abuse of discretion standard.⁵⁵

Delinquency Hearings

In the absence or failure of a government transfer motion and unless the juvenile insists on an adult trial, a hearing is held on the government's information charging delinquency, conducted "at any time and place within the district, in chambers or otherwise."⁵⁶ Neither grand jury indictment⁵⁷ nor a jury trial are constitutionally required.⁵⁸ On the other hand, the Constitution demands many of the other features of an adult criminal trial including: "notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross examination, proof beyond a reasonable doubt and double jeopardy,"⁵⁹ and the Fourth Amendment exclusionary rule.⁶⁰

706 (3d Cir. 1994).

⁵⁴ *United States v. Female Juvenile*, A.F.S., 377 F.3d at 32; *United States v. Ramirez*, 297 F.3d at 192; *United States v. Anthony Y.*, 172 F.3d at 1252; *United States v. I.D.P.*, 102 F.3d 507, 513 (11th Cir. 1996); *United States v. T.F.F.*, 55 F.3d 1118, 1122 (2d Cir. 1995); *United States v. Juvenile Male No.1*, 86 F.3d 1314, 1323 (4th Cir. 1996); *United States v. A.R.*, 38 F.3d 699, 703 (3d Cir. 1994); *United States v. Parker*, 956 F.2d 169, 171 (8th Cir. 1992).

⁵⁵ *United States v. Ramirez*, 297 F.3d at 192-93; *United States v. Juvenile (W.J.B.)*, 228 F.3d 987, 988 (9th Cir. 2000); *United States v. Leon D.M.*, 132 F.3d 583, 587-88 (10th Cir. 1997); *United States v. Juvenile No.1 (J.R.P.)*, 118 F.3d 298, 302 (5th Cir. 1997); *United States v. Wellington*, 102 F.3d 499, 503 (11th Cir. 1996); *United States v. J.J.K.*, 76 F.3d 870, 871-72 (7th Cir. 1996); *United States v. One Juvenile Male*, 40 F.3d 841, 844 (6th Cir. 1994); *United States v. A.R.*, 38 F.3d 699, 701 (3d Cir. 1994); *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 367-68 (D.C.Cir. 1990); *United States v. Smith*, 851 F.2d 706, 708 (4th Cir. 1988); *United States v. A.W.J.*, 804 F.2d 492, 492-93 (8th Cir. 1986).

⁵⁶ 18 U.S.C. 5032 ¶3. District courts have discretion to regulate access to juvenile proceedings on a case by case basis, *United States v. A.D.*, 28 F.3d 1353, 1359-362 (3d Cir. 1994); *United States v. Three Juveniles*, 61 F.3d 86, 92 (1st Cir. 1995).

⁵⁷ *United States v. Juvenile (W.J.B.)*, 228 F.3d 987, 990 (9th Cir. 2000); *United States v. Welch*, 15 F.3d 1202, 1208-209 n.9 (1st Cir. 1993); *United States v. Hill*, 538 F.2d 1072, 1076 (4th Cir. 1976); *United States v. Indian Boy X*, 565 F.2d 585, 595 (9th Cir. 1977).

⁵⁸ *McKeiver v. Pennsylvania*, 403 U.S. 528 (1975); *United States v. Male Juvenile (Pierre Y.)*, 280 F.3d at 1021; *United States v. Welch*, 15 F.3d at 1208-209 n.9; *United States v. Juvenile Male C.L.O.*, 77 F.3d 1075, 1077 (8th Cir. 1996). Nor is a jury required in the juvenile transfer hearing, *United States v. Miguel*, 338 F.3d 995, 1004 (9th Cir. 2003).

⁵⁹ *Schall v. Martin*, 467 U.S. 253, 263 (1984), citing, *In re Gault*, 387 U.S.1, 31-57 (1967); *In re Winship*, 397 U.S. 358 (1970); and *Breed v. Jones*, 421 U.S. 519 (1971); see also, *United States v. Doe*, 226 F.3d 672, 680 (6th Cir. 2000)(proof beyond a reasonable doubt).

⁶⁰ *United States v. Doe*, 801 F.Supp. 1562, 1567 (E.D.Tex. 1992).

Dispositional Hearings

Upon a finding of delinquency, the court schedules either a sentencing hearing or a hearing in anticipation of a commitment for examination prior to sentencing.⁶¹ At sentencing, the court may dispose of a juvenile delinquency case by suspending sentence, by ordering restitution or probation, or by committing the juvenile to the custody of the Attorney General for detention.⁶²

Detention is limited to not more than 5 years in cases involving serious felonies and juveniles 18 years of age or older; the maximum for 18 to 21 year olds involved in less serious offenses is the lesser of 3 years or the sentence an adult would receive for the same conduct.⁶³ Juveniles under 18 face a maximum term of detention equal to the lesser of the time before they reach 21 or the sentence an adult would receive for the same conduct.⁶⁴ All juveniles are subject to the same good time rules that govern adult cases.⁶⁵ A juvenile sentenced to detention may also be sentenced to a term of juvenile delinquent supervision to be served following the juveniles release from detention.⁶⁶ A juvenile's sentence of post release supervision may be modified

⁶¹ “If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile or his attorney. The agency shall make a complete study of his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time.” 18 U.S.C. 5037.

⁶² 18 U.S.C. 5037.

⁶³ 18 U.S.C. 5037(c)(2). For purposes of section 5037, the age in question is the age of the juvenile at the time of sentencing, *United States v. Leon*, 365 F.3d 750, 752-53 (9th Cir. 2004).

⁶⁴ 18 U.S.C. 5037(c)(1). Thus, while strictly speaking the United States Sentencing Guidelines does govern juvenile disposition, U.S.S.G. §1B1.12, they may influence the result since disposition is colored by adult sentencing considerations. The maximum sentence an adult would receive may be determined using the sentencing guidelines and the statutory maximum rather than merely by reference to the statutory maximum, *United States v. R.L.C.*, 503 U.S. 291 (1992), but this also permits consideration of any ground for upward departure, *United States v. Juvenile PWM*, 121 F.3d 382, 384 (8th Cir. 1997), citing, *R.L.C.* 503 U.S. at 307; *United States v. A.J.*, 190 F.3d 873, 874-76 (8th Cir. 1999). Where federal law applies state law, sentencing under comparable state law may provide guidance, *e.g.*, *United States v. Male Juvenile (Pierre Y.)*, 280 F.3d at 1025.

⁶⁵ 18 U.S.C. 5037(c)(2), 3624.

⁶⁶ 18 U.S.C. 5037(d)(“(1) The court, in ordering a term of official detention, may include the requirement that the juvenile be placed on a term of juvenile delinquent supervision after official detention. (2) The term of juvenile delinquent supervision that may be ordered for a juvenile found to be a juvenile delinquent may not extend – (A) in the case of a juvenile

or revoked under much the same terms as an adult sentence of supervised release.⁶⁷ Once the court has opted for restitution, the rules governing adult restitution likewise apply.⁶⁸ The permissible terms of juvenile probation track those established for juvenile detention, but otherwise juvenile probation follows the path of its adult

who is less than 18 years old, a term that extends beyond the date when the juvenile becomes 21 years old; or (B) in the case of a juvenile who is between 18 and 21 years old, a term that extends beyond the maximum term of official detention set forth in section 5037(c)(2) (A) and (B), less the term of official detention ordered. (3) The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on juvenile delinquent supervision . . .”).

⁶⁷ 18 U.S.C. 5037(d)(“ . . . (4) The court may modify, reduce, or enlarge the conditions of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision after a dispositional hearing and after consideration of the provisions of section 3563 regarding the initial setting of the conditions of probation.

“(5) If the juvenile violates a condition of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 18, revoke the term of supervision and order a term of official detention. The term of official detention which is authorized upon revocation of juvenile delinquent supervision shall not exceed the term authorized in section 5037(c)(2)(A) and (B), less any term of official detention previously ordered. The application of sections 5037(c)(2) (A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years old shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday.

“(6) When a term of juvenile delinquent supervision is revoked and the juvenile is committed to official detention, the court may include a requirement that the juvenile be placed on a term of juvenile delinquent supervision. Any term of juvenile delinquent supervision ordered following revocation for a juvenile who is over the age of 21 years old at the time of the revocation proceeding shall be in accordance with the provisions of section 5037(d)(1), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of juvenile delinquent supervision may continue beyond the juvenile's 26th birthday, and in any other case, no term of juvenile delinquent supervision may continue beyond the juvenile's 24th birthday”).

The provisions relating to post release supervision were added in 2002 and do not apply retroactively to cases involving earlier misconduct, *United States v. JWT*, 368 F.3d 994, 996-97 (8th Cir. 2004).

⁶⁸ 18 U.S.C. 5037(a)(“ . . . In addition, the court may enter an order of restitution pursuant to section 3556. . .); *United States v. Patrick V.*, 359 F.3d at 9.

statutory counterpart.⁶⁹

Juvenile Records and Conditions of Custody

One of the hallmarks of the Federal Juvenile Delinquency Act is its effort to shield juveniles from some of the harsh consequences of exposure to the criminal justice system. Before and after arrest, before and after conviction, it refuses to allow juveniles to be interspersed with adults who are awaiting trial for or have been convicted of criminal offenses.⁷⁰ In the same spirit, ordinarily federal juvenile records are sealed for all purposes other than judicial inquiries, law enforcement needs, juvenile treatment requirements, employment in a position raising national security concerns, and disposition questions from victims.⁷¹

Juveniles Tried as Adults

Juveniles transferred for trial as adults in federal court are essentially treated as adults, with few distinctions afforded or required because of their age. Even the sentence guidelines instruct sentencing judges that an offender's youth is not ordinarily a permissible ground for reduction of the otherwise application sentencing

⁶⁹ “The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend – (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of – (A) the date when the juvenile becomes twenty-one years old; or (B) the maximum term that would be authorized by section 3561(b) if the juvenile had been tried and convicted as an adult [5 years except for infractions which carry a 1 year maximum]; or

“(2) in the case of a juvenile who is between eighteen and twenty-one years old, the lesser of – (A) three years; or (B) the maximum term that would be authorized by section 3561(b) if the juvenile had been tried and convicted as an adult.

“The provisions dealing with probation [for adults] set forth in sections 3564, 3564, and 3565 [relating to the conditions, running and revocation of probation respectively] are applicable to an order placing a juvenile on probation.” 18 U.S.C. 5037(b).

⁷⁰ 18 U.S.C. 5035 (“ . . . The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. . . .”); 18 U.S.C. 5039 (“No juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges. . . .”).

The United States has long encouraged the states to adhere to a similar principle, 42 U.S.C. 5633(a)(13)(state plan requirements for Juvenile Justice and Delinquency Prevention formula grants).

⁷¹ 18 U.S.C. 5038. Section 5038 does not render otherwise admissible evidence of juvenile proceedings inadmissible in criminal proceedings, *United States v. Jefferson*, 215 F.3d 820, 824-25 (8th Cir. 2000). Moreover, in response to media requests the court will balance the competing interests which weigh heavily in fact of confidentiality, *In re Washington Post Motion*, 247 F.Supp.2d 761, 762-64 (D.Md. 2003)(unsealing some records but refusing to open others where the juvenile had been charged as an adult in another jurisdiction).

guideline range.⁷² The most obvious exception to this general rule is that the death penalty may not be imposed as punishment for a crime committed by a juvenile.⁷³

Appendices

I. JURISDICTIONAL AGE FOR STATE JUVENILE COURTS AS WELL AS AGE AND CRIMES THAT TRIGGER TRANSFERS OR WAIVERS OF JUVENILE COURT JURISDICTION

Alabama: (Under 18) Ala. Code §§12-15-1, 12-15-30, 12-15-34.1

The juvenile court has no jurisdiction (1) over juveniles previous convicted as adults on charges of which the juvenile court has no jurisdiction, or (2) over juveniles who when 16 years of age or older are alleged to have committed a capital offense, a class A felony, a felony involving use of a deadly weapon, a felony one of whose elements is causing death or serious injury, a involving the use of a dangerous weapon against a person in authority (police officer, teacher, etc), or drug trafficking.

Waiver or transfer of juvenile court jurisdiction: 14 or older, any crime, Ala. Code §12-15-34

Alaska: (Under 18) Alaska Stat. §§47.12.020, 47.12.030

The juvenile court has no jurisdiction over juveniles who when 16 years of age or older are alleged to have committed an unclassified felony (e.g., murder, manslaughter, rape), a class A felony (e.g. first degree kidnaping, first degree robbery, first degree assault), first degree arson, or a class B felony involving the use of deadly weapon by a juvenile previously convicted (or adjudged delinquent) of a crime against an individual involving the use of a deadly weapon).

Waiver or transfer of juvenile court jurisdiction: any age, any crime, Alaska Stat. §47.12.100

Arizona: (Under 18) Ariz.Rev.Stat.Ann. §§8-201, 8-202, 13-501

Juveniles 15 years of age or older *must* be tried as adults for 1st or 2d degree murder, forcible sexual assault, armed robbery, a violent felony, being a chronic felony offender (a juvenile previously convicted of a felony dangerous to children or

⁷² “Age (*including youth*) is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range. Age may be a reason to impose a sentence below the applicable guideline range when the offender is elderly and infirm and where a form of punishment such as home confinement might to equally efficient as and less costly than incarceration. Physical condition, which may be related to age, is addressed in §5H1.4 (Physical Condition, Including drug or Alcohol Dependence or Abuse),” 18 U.S.S.G. §5H1.1(emphasis added); *United States v. Caldwell*, 219 F.3d 1186, 1192-193 (10th Cir. 2000); *United States v. Wong*, 40 F.3d at 1382 (2d Cir. 1994); *United States v. Talk*, 13 F.3d 369, 371 (10th Cir. 1993).

⁷³ “A defendant who has been found guilty of [a capital offense] shall be sentenced to death if . . . it is determined that imposition of a sentence of death is justified, *except that no person may be sentenced to death who was less than 18 years of age at the time of the offense*,” 18 U.S.C. 3591(a)(emphasis added).

involving infliction of serious physical injury or the use of dangerous weapon); juveniles 14 years of age or older *may* be tried as adults for any class 1 or 2 felony; any class 3 felony involving a violation of homicide, assault, kidnaping, sexual offense, burglary, property damage or arson laws; or any class 3, 4, 5 or 6 felony involving an intent to seriously injure

Waiver or transfer of juvenile court jurisdiction: any felony, any age, Ariz.Rev.Stat.Ann. §8-327

Arkansas: (Under 18) Ark.Code §§9-27-303, 9-27-306, 9-27-318

The juvenile and criminal courts have concurrent jurisdiction over juveniles who (1) when 14 years of age or older are alleged to have committed murder, kidnaping, aggravated robbery, rape, first degree battery, or a terroristic act, or (2) when 16 years of age or older are alleged to have committed a felony

Waiver or transfer of juvenile court jurisdiction: juveniles 14 years of age or older when they are alleged to have committed (1) second degree murder, second degree battery, handgun possession, aggravated assault, driveby shooting, commission of a felony while armed with a firearm, street gang recruiting, criminal use of prohibited weapons, first or second degree escape; or (2) attempt or conspiracy to commit murder, kidnaping, aggravated robbery, rape, first degree battery, or first or second degree escape; or (3) within the previous 2 years been found delinquent on the basis of at least 3 felonies, Ark.Code Ann. §9-27-318

California: (Under 18) Cal.Wel. & Inst. Code §602, 707

Juveniles charged with various sex crimes committed under circumstances listed in the One Strike Law (Penal Code 667.61(d),(e)) or murder, purported committed when they were 14 or older must be tried as adults. Prosecutors may invoke concurrent criminal court jurisdiction in the case of a juvenile: (1) 14 or older at the time of the offense, charged with (a) a crime punishable by death or life imprisonment, (b) use of a firearm in the commission of a felony, or (c) one of 30 serious violent felonies (kidnaping, rape, robbery, arson, burglary, etc.) (i) after a previous delinquency finding based on one of the 30, or (ii) relating to gang activity, or (iii) as a hate crime, or (iv) against an elderly victim; or (2) 16 or older at the time offense, and (a) charged with one of the 30 serious violent felonies, or (b) previously found delinquent and charged with (i) a felony against a elderly victim, (ii) a hate crime felony, or (iii) a gang related offense

Waiver or transfer of juvenile court jurisdiction: 14 or older, one of the 30 serious violent felonies; 16 or older, (1) any felony having previously found delinquent on the basis of two or more felonies committed when 14 or older; or (2) any offense not one of the 30 serious violent felonies, Cal.Wel.& Inst.Code §707

Colorado: (Under 18) Colo.Rev.Stat. §§19-1-103, 19-1-104, 19-2-103, 19-2-104, 19-2-517

The juvenile and criminal courts have concurrent jurisdiction over juveniles who (A) when 14 years of age or older are alleged to have committed (1) a class 1 or class 2 felony (murder, rape, kidnaping), or (2) a violent felony or a firearms offense other than simple possession, or a felony while armed with a firearm, or (3) a felony having previously been transferred and convicted as an adult; or (B) when 16 years of age or older are alleged to have committed a class 3 felony having within 2 years been found delinquent based upon a felony.

Waiver or transfer of juvenile court jurisdiction: 14 or older, any felony; or 12 or older, any class 1 or class 2 felony, or any violent felony, Colo.Rev.Stat. §19-2-518

Connecticut: (Under 16) Conn.Gen.Stat.Ann. §46b-120

Waiver or transfer of juvenile court jurisdiction: mandatory: 14 or older, capital felony or an A or B felony (prosecutors may petition criminal court to proceed in juvenile court in the case of B felonies);

discretionary: 14 or older, C or D felony, Conn.Gen.Stat.Ann. §§46b-127

Delaware: (Under 18) Del.Code tit.10 §§901, 921, 922

The juvenile court has no jurisdiction over a juvenile alleged to have committed a murder, rape or kidnapping or have attempted to do so

Waiver or transfer of juvenile court jurisdiction: 16 or older, manslaughter, first or second degree robbery, first degree burglary, first degree arson; or 16 or older (if previously adjudged delinquent), first degree conspiracy, first degree assault, or trafficking in controlled substances; or 15 or older (if committed while an escapee), any felony, Del.Code tit.10 §§1009, 1010

Florida: (Under 18) Fla.Stat.Ann. §§985.03, 985.201, 985.225

Juveniles indicted for a crime punishable by death or life imprisonment are tried as adults

Waiver or transfer of juvenile court jurisdiction; mandatory: 14 or older, a juvenile who is alleged to have (A) committed a violent crime against a person having previously been found delinquent for committing, attempting to commit or conspiring to commit murder, sexual battery, armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary involving an assault or battery; or (B) committed a felony having previously been adjudicated delinquent on the bases of felonies on 3 occasions (including one or more involving possession of a firearm or violence against a persons);

discretionary: 14 or older, any crime, Fla.Stat.Ann. 985.226

Georgia: (Under 17) Ga.Code Ann. §§15-11-2, 15-11-28

The juvenile courts have jurisdiction over juveniles 13 or over – alleged to have committed murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery or armed robbery with a firearm – only if transferred for extraordinary cause from the courts with general adult criminal jurisdiction; otherwise they enjoy concurrent jurisdiction with respect to juveniles alleged to have committed an offense punishable by death or life imprisonment; and exclusive jurisdiction over other juveniles in other delinquency cases

Waiver or transfer of juvenile court jurisdiction: mandatory: 14 or older, a juvenile who is alleged to have committed murder, voluntary manslaughter, aggravated assault, or aggravated battery; discretionary: 15 or older, any crime; 13 or older alleged to have committed aggravated battery resulting in injury or a crime punishable by death or life imprisonment, Ga. Code Ann. §15-11-30.2

Hawaii: (Under 18) Hawaii Rev.Stat. §571-11

Waiver or transfer of juvenile court jurisdiction: any age, first or second degree murder or attempted murder; 14 or older, felony resulting in serious bodily injury, a class A felony, felony by a juvenile previously found delinquent for commission of a felony; any 16 or older, any felony, Hawaii Rev.Stat. §571-22

Idaho: (Under 18) Idaho Code §§20-502, 20-505, 20-509

Juveniles, 14 years of age or older, must be tried as adults if charged with the commission of, or assault with intent to commit, murder, attempted murder, robbery, rape, or sodomy; mayhem; or drug dealing near a school or park

Waiver or transfer of juvenile court jurisdiction: under 14: commission of, or assault with intent to commit, murder, attempted murder, robbery, rape, or sodomy; mayhem; or drug dealing near a school or park; 14 or older: any other crime, Idaho Code §20-508, 20-509

Illinois: (Under 17) Ill.Comp.Stat.Ann. ch.705 §§405/5-105, 405/5-120, 405/5-130

Unless the prosecutor elects to proceed in juvenile court on the basis of a lesser included offense, juvenile courts have no jurisdiction over juveniles (1) of any age who have previously been convicted as adults; or (2) who when 13 years of age or older are alleged to have committed first degree murder during the course of an aggravated sexual assault, sexual assault, or aggravated kidnaping; or (3) who when 15 years of age or older are alleged to have committed first degree murder, aggravated sexual assault, aggravated battery with a firearm in a school zone, armed robbery with a firearm, carjacking committed with a firearm, drug trafficking in a school zone, possession of various prohibited weapons or aggravated kidnaping, escape or bail jumping

Waiver or transfer of juvenile court jurisdiction: mandatory: 15 or older; (1) a forcible felony in furtherance of criminal gang activity by a juvenile previously found delinquent on the basis of a felony, or (2) a felony in furtherance of criminal gang activity by a juvenile previously found delinquent on the basis of a forcible felony, or (3) an offense which would be presumptive grounds for a transfer by a juvenile previously found delinquent on the basis of a forcible felony, or (4) discharging a firearm within a school zone

presumptive: 15 or older; class X felony, aggravated discharge of a firearm, armed firearm violence in furtherance of drug trafficking or a gang-related class 1 or 2 felony, or armed violence involving a machine gun

discretionary: 13 or older, any crime, Ill.Comp.Stat.Ann. ch.705 §405/5-805

Indiana: (Under 18) Ind.Code Ann. §§31-30-1-1, 31-30-1-4, 31-37-2-1

The juvenile court has no jurisdiction over a juvenile alleged (when 16 or older) to have committed murder, kidnaping, rape, sodomy, armed robbery, robbery resulting in bodily injury, carjacking, criminal gang activity or intimidation, carrying a handgun without a license, handgun offenses involving children, dealing in sawed-off shotguns, or dealing in controlled substances

Waiver or transfer of juvenile court jurisdiction: any age, any felony (with a prior adult conviction); 10 or older, murder; 14 or older, any crime committed in a heinous or aggravated manner as part of a pattern of delinquent activity; 16 or older, any Class A or B felony, controlled substance felony, involuntary manslaughter or reckless homicide, Ind.Code Ann. §§31-30-3-2 to 31-30-3-6

Iowa: (Under 18) Iowa Code Ann. §§232.2, 232.8

The juvenile court has no jurisdiction over a juvenile who when 16 years of age or older is alleged to have committed a weapons offense or a forcible felony unless jurisdiction is waived by the criminal court

Waiver or transfer of juvenile court jurisdiction: 14 or older, any crime, Iowa Code Ann. §232.45

Kansas: (Under 18) Kan.Stat.Ann. §38-1602

The juvenile courts have no jurisdiction over juveniles who have previously been convicted as adult or of aggravated juvenile delinquency

Waiver or transfer of juvenile court jurisdiction: any age, any felony after having been previously convicted or adjudicated delinquent for felonious misconduct; 14 or older, any offgrid offense (1st degree murder), “person felony” with a severity level of 1 through 6 (i.e., a serious felony against a person such as aggravated arson, aggravated burglary, rape, manslaughter, kidnaping), drug trafficking, offense committed while armed with a firearm, n individual, (Class A and B felonies); 16 or older (other crimes), Kan.Stat.Ann. §38-1636

Kentucky: (Under 18) Ky.Rev.Stat. §§600.020, 610.010

Waiver or transfer of juvenile court jurisdiction: any age, any crime; mandatory: (upon motion of the prosecutor) – an 14 or older (murder, A and B felonies, felony committed while armed with a gun); 16 or older © and D felonies) Ky.Rev.Stat. §635.020

Louisiana: (Under 17) La.Child.Code arts. 116, 303, 305

The juvenile courts have no jurisdiction over juveniles who when 15 years of age or older are alleged to have committed murder, attempted murder, manslaughter, rape, kidnaping, burglary, armed robbery, battery, assault with a firearm, or a second or subsequent drug dealing offense

Waiver or transfer of juvenile court jurisdiction: 14 or older; murder, rape, armed robbery, aggravated assault with a firearm, kidnaping, La.Child.Code art. 857

Maine: (Under 18) Me.Rev.Stat.Ann. ch.15 §§3003, 3101

Waiver or transfer of juvenile court jurisdiction: any age, murder, class A, B or C felonies, Me.Rev.Stat.Ann. ch.15 §3101

Maryland: (Under 18) Md.Cts. & Jud.Proc.Code Ann. §§3-8A-01, 3-8A-03

The juvenile courts have no jurisdiction over juveniles (1) who when 14 years of age or older are alleged to have committed a crime punishable by death or life imprisonment; (2) who when 16 years of age or older are alleged to have committed a kidnaping, manslaughter, mayhem, rape, armed robbery, drug trafficking, carjacking, firearms offenses, or attempts to commit murder, rape, or robbery; or (3) alleged to have committed a felony having previously been convicted of a felony as an adult

Waiver or transfer of juvenile court jurisdiction: any age, crime punishable by death or life imprisonment; 15 or older, any other crime, Md.Cts. & Jud.Proc.Code §3-8A-06

Massachusetts: (Under 17) Mass.Gen.Laws Ann. ch.119 §§52, 54

The juvenile and criminal courts have concurrent jurisdiction over juveniles who when 14 years of age or older (1) are alleged to have committed an offense involving the infliction of serious bodily harm or a firearms offense, or (2) having previously been found delinquent are alleged to have committed a felony

Michigan: (Under 17) Mich.Comp.Laws Ann. §712A.2

At the election of the prosecutor, juvenile and criminal courts have concurrent jurisdiction over juveniles who when 14 years of age or older are alleged to have committed, or attempted or conspired to commit, or solicited the commission of:

arson, murder, kidnaping, rape, armed robbery, breaking and entering while armed with a dangerous weapon, escape, drug trafficking, or assault with intent to commit murder, maim or robbery

Waiver or transfer of juvenile court jurisdiction: 14 or older, any felony, Mich.Comp.Laws Ann. §712A.4

Minnesota: (Under 18) Minn.Stat.Ann. §§260B.007, 260.111

The juvenile courts have no jurisdiction over juveniles who when 16 years of age or older are alleged to have committed murder

Waiver or transfer of juvenile court jurisdiction: 14 or older, any felony, Minn.Stat.Ann. §260B.125

Mississippi: (Under 18) Miss.Code §§43-21-105, 43-21-151

The juvenile courts have no jurisdiction over juveniles alleged to have committed a crime punishable by death or life imprisonment or a firearm felony

Waiver or transfer of juvenile court jurisdiction: 13 or older, any crime, Miss.Code §43-21-157

Missouri: (Under 17) Mo.Ann.Stat. §§211.021, 211.031

Waiver or transfer of juvenile court jurisdiction: 12 or older, any felony, Mo.Ann.Stat. §211.071

Montana: (Under 18) Mont.Code Ann. §§41-5-103, 41-5-203

Waiver or transfer of juvenile court jurisdiction: 12 or older (rape, murder, attempted murder, or assault on a peace officer); 16 or older (commission or attempted commission of manslaughter, arson, assault, robbery, burglary, kidnaping, drug dealing, explosives offenses, escape, gang recruitment), Mont.Code Ann. §41-5-206

Nebraska: (Under 18) Neb.Rev.Stat. §§43-245, 43-247

Juvenile and criminal courts have concurrent felony jurisdiction over juveniles

Nevada: (Under 18) Nev.Rev.Stat. §§62A.030, 62B.330

Juveniles courts have no jurisdiction over juveniles alleged to committed (1) murder or attempted murder; or (2) any crime, having previously been convicted for a criminal offense; or (3) a dangerous felony in a school or on a school bus resulting in a death or substantial injury; or (4) who when 16 years of age or older and, having previously been adjudged delinquent in connection with a felony, are alleged have committed a sexual assault involving the use or threat of force or violence or an offense or attempted offense involving the use of deadly weapon)

Waiver or transfer of juvenile court jurisdiction: 14 or older, any felony, Nev.Rev.Stat. §62B.390

New Hampshire: (Under 17) N.H.Rev.Stat.Ann. §§169-B:2, 169-B:3

Waiver or transfer of juvenile court jurisdiction: any age, any felony, N.H.Rev.Stat.Ann. §169-B:24

New Jersey: (Under 18) N.J.Stat.Ann. §§2A:4A-22; 2A:4A-23

Waiver or transfer of juvenile court jurisdiction: 14 or older (murder, robbery, rape, kidnaping, arson, violent crime, drug dealing, car theft, 2d delinquency finding), N.J.Stat.Ann. 2A:4A-26

New Mexico: (Under 18) N.M.Stat.Ann. §§32A-1-4, 32A-1-8, 32A-2-3 Juvenile courts have no jurisdiction over (a serious youthful offender) a juvenile who when 15 years of age or older is alleged to have committed first degree murder

Waiver or transfer of juvenile court jurisdiction: None, but “youthful offenders” are subject to more severe dispositional alternatives than are “delinquent offenders;” youthful offenders include juveniles (1) who when 14 years of age or older have been found to have committed second degree murder, assault with intent to commit a violent felony, driveby shooting, explosives offenses, kidnaping, battery, rape, robbery, arson; (2) who when 14 years of age or older and, having with 3 years had 3 separate felony adjudications, have been found to have committed a felony; or (3) who when 14 years of age committed first degree murder, N.M.Stat.Ann. §§32A-2-3, 32A-2-20

New York: (Under 16) N.Y.Fam.Law §§301.2, 302.1; N.Y.Crim.Pro.Law 725.00; N.Y.Pen. Law §30.00

Juvenile courts have exclusive jurisdiction to determine delinquency; delinquency is limited to those under 16 years of age who (1) by operation of the infancy defense may not be subject to criminal prosecution or (2) over whose conduct jurisdiction has been removed from the criminal courts; the infancy defense is unavailable to juveniles (i.e. those under 16) who when 13 years of age or older are alleged to have committed murder, or who when 14 years of age or older are alleged to have committed first degree kidnaping, first and second degree arson, first degree assault, first degree manslaughter, first degree rape, first degree sodomy, aggravated sexual abuse, first and second degree burglary, first and second degree robbery, attempted murder or kidnaping, or possession of a firearm in a school zone, but adult criminal courts may remove cases involving such juveniles to the juvenile courts

North Carolina: (Under 16) N.C.Gen.Stat. §§7B-1501, 7B-1601

Waiver or transfer of juvenile court jurisdiction: 13 or older, any felony (transfer is required for Class A felonies), N.C.Gen.Stat. §7B-2200

North Dakota: (Under 18) N.D.Cent.Code §§27-20-02, 27-20-03

Waiver or transfer of juvenile court jurisdiction: mandatory: 14 or older, murder, attempted murder, gross sexual imposition, attempted gross sexual imposition, or major drug trafficking;

discretionary: 14 or older, any other crime, N.D.Cent.Code §27-20-34

Ohio: (Under 18) Ohio Rev.Code §§2151.01.1, 2151.23, 2152.02

Waiver or transfer of juvenile court jurisdiction: mandatory: 16 or older, murder or attempted murder (category 1 offense); 16 or older, (if committed while armed or previously found delinquent for a category 2 offense): voluntary manslaughter, rape, arson, armed robbery, or burglary (category 2 offenses); 14 or older, murder or attempted murder (if previous found delinquent for a category 1 or 2 offense); discretionary: 14 or older, any other felony, Ohio Rev.Code 2152.10

Oklahoma: (Under 18) Okla.Stat.Ann. tit.10 §§7303-4.3, 7306-1.1

Juvenile courts have no jurisdiction over juveniles (1) who when 13 years of age or older are alleged to have committed murder, or (2) who when 16 of age or older are alleged to have committed manslaughter, kidnaping, rape, armed robbery, burglary, assault, arson, sodomy, driveby shooting, witness intimidation, or drug dealing

Waiver or transfer of juvenile court jurisdiction: any age, any felony, Okla.Stat.Ann. tit.10 §7303-4.3

Oregon: (Under 18) Ore.Rev.Stat. §419C.005

Juveniles charged with murder, attempted murder, conspiracy to murder, manslaughter, assault, kidnaping, rape, sodomy, child molestation, robbery, arson, sexual exploitation of a child, or compelling prostitution purported committed when 15 older are tried as adults, Ore.Rev.Stat. §137.707

Waiver or transfer of juvenile court jurisdiction: 15 or older, any crime; under 15, murder, first degree rape, first degree sodomy, first degree unlawful sexual penetration, Ore.Rev.Stat. §§419C.349, 419C.352

Pennsylvania: (Under 18) Pa.Stat.Ann. tit.42 §6302, 6322, 6355

Juvenile courts have no jurisdiction over juveniles (1) alleged to have committed murder, or (2) who when 15 years of age or older are alleged to have used a dangerous weapon to commit, attempt to commit, conspire to commit, or solicit the commission of: rape, deviate sexual intercourse, aggravated assault, robbery, aggravated indecent assault, kidnaping, voluntary manslaughter, (3) who when 15 years of age or older are alleged to have committed one of the offenses listed in (2) having previously been found delinquent or convicted for commission of an offense from the list)

Waiver or transfer of juvenile court jurisdiction: 14 or older, any crime, Pa.Stat.Ann. tit.42 §6355

Rhode Island: (Under 18) R.I.Gen.Laws §§14-1-3, 14-1-5

Juvenile court has no jurisdiction over juveniles 17 or older when there is probable cause to believe they have committed murder, rape or assault with intent to murder

Waiver or transfer of juvenile court jurisdiction: any age, crimes punishable by life imprisonment; 16 or older (all other felonies), R.I.Gen.Laws §14-1-7

South Carolina: (Under 17) S.C.Code §20-7-400, 20-7-6605

Prosecutors may elect between the concurrent jurisdiction of the juvenile and criminal courts over juveniles who when 16 years of age or older are alleged to have committed an A,B,C or D felony or a felony punishable by a maximum of imprisonment for 15 years or more

Waiver or transfer of juvenile court jurisdiction: 14 or older (Class A, B, C, or D felony or a felony punishable by imprisonment for a maximum of 15 years or more); 16 or older (Class E or F felony or a felony punishable by imprisonment for a maximum of 10 years or less), S.C.Code §20-7-7605

South Dakota: (Under 18) S.D.Comp.Laws §§26-7A-1, 26-8C-2, 26-11-3.1

Juveniles 16 or older and charged with commission for class A, B, 1 or 2 felonies must be tried as adults unless transferred to juvenile court

Waiver or transfer of juvenile court jurisdiction: any age, any felony, S.D.Comp.Laws §26-11-4

Tennessee: (Under 18) Tenn.Code Ann. §§37-1-102, 37-1-103

Waiver or transfer of juvenile court jurisdiction: any age (commission or attempted commission of murder, rape, robbery, kidnaping); 16 or older (other crimes), Tenn.Code Ann. §37-1-134

Texas: (Under 17) Tex.Fam.Code. §§51.02 to 51.04

Waiver or transfer of juvenile court jurisdiction: 14 or older (capital felony or aggravated controlled substance felony or first degree felony); 15 or older (second or third degree felony), Tex.Fam.Code. §54.02

Utah: (Under 18) Utah Code Ann. §§78-3a-103, 78-3a-104, 78-3a-601

Juvenile courts have no jurisdiction over a juvenile who when 16 or older is alleged to have committed (1) a murder or (2) aggravated murder, or (3) a felony having previously been incarcerated for misconduct

Waiver or transfer of juvenile court jurisdiction: any age, any felony, Utah Code Ann. §78-3a-603

Vermont: (Under 16) Vt.Stat.Ann. tit.33 §§5502, 5503

Waiver or transfer of juvenile court jurisdiction: 10 to 14 (arson causing death, assault, robbery, murder, manslaughter, kidnaping, maiming, rape, burglary); 14 to 16 (juvenile and criminal courts have concurrent jurisdiction over all crimes upon which waiver may be based for juveniles under 14), Vt.Stat.Ann. tit.33 §§5505, 5506

Virginia: (Under 18), Va.Code §§16.1-228, 16.1-241

Juvenile court jurisdiction is limited to conducting a preliminary hearing in any case alleging murder or malicious wounding when the juvenile was 14 or older or, at the prosecutor's election, in any case alleging kidnaping, poisoning, rape, robbery, sodomy or carjacking when the juvenile was 14 or older

Waiver or transfer of juvenile court jurisdiction: 14 or older, any felony, Va.Code §§16.1-269.1, 16.1-241

Washington: (Under 18) Wash.Rev.Code Ann. §§13.04.011, 13.04.030, 13.40.020

Juvenile courts have no jurisdiction over juveniles 16 or older and alleged to have committed (1) serious violent felonies (murder, assault, kidnaping, rape, or assault of a child), (2) violent felonies (class A felony, manslaughter, arson, extortion, robbery) by juveniles armed with a gun or with a prior serious violent felony or two or more prior violent felonies or three or more class A or B felonies), or (3) armed robbery, rape of a child, driveby shooting, or (if previously found delinquent on the basis of a crime) burglary

Waiver or transfer of juvenile court jurisdiction: 15 or older (class A felony or attempt or conspiracy to commit a class A felony); 17 (assault, extortion, child molestation, kidnaping, robbery), Wash.Rev.Code Ann. §13.40.110

West Virginia: (Under 18) W.Va.Code §§49-5-1, 49-5-2

Waiver or transfer of juvenile court jurisdiction: mandatory: (1) 14 or older, murder, armed robbery, kidnaping, arson or rape, (2) 14 or older alleged to have committed a violent felony having previously been found delinquent on the basis of a violent felony, (3) 14 or older alleged to have committed a felony having twice previously been found delinquent on the basis of a felony; discretionary: (1) any age, drug trafficking, (2) under 14 when transfer would be mandatory if juvenile had been 14 or older when alleged misconduct occurred, (3) 14 or older, (a) any violent felony, (b) any felony having previously been found to delinquent on the basis of a felony, or (c) any felony while armed with a gun, W.Va.Code §49-5-10

Wisconsin: (Under 18) Wis.Stat.Ann. §§938.02, 938.12, 938.183

Juvenile courts have no jurisdiction over juveniles (1) alleged to have committed an assault while confinement, or (2) when 10 years of age or older are alleged to have committed murder or attempted murder, or (3) have previously been convicted as adults

Waiver or transfer of juvenile court jurisdiction: 14 or older (murder, manslaughter, rape, kidnaping, burglary, or felony committed on behalf of a criminal gang); 15 or older (other crimes), Wis.Stat.Ann. §938.18

Wyoming: (Under 18) Wyo.Stat. §§14-1-101, 14-6-201, 14-6-203

Juvenile court has exclusive jurisdiction over cases involving juveniles under 13 alleged to have committed a felony or a misdemeanor punishable by imprisonment for 6 months or more); otherwise juvenile and criminal courts have concurrent jurisdiction although cases must be begin in juvenile court except where the juvenile is 17 or older, or was 14 or older and is alleged to have committed a violent felony or is alleged to have committed a felony and has twice previously been found delinquent on the basis of felonious misconduct

Waiver or transfer of juvenile court jurisdiction: any age, any crime, Wyo.Stat. §§14-1-101, 14-6-237

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