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

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SUMMARY

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

The federal Juvenile Delinquency Act (JDA) gives federal authorities three options when a juvenile violates federal criminal law. First, they can refer the juvenile to state authorities. Second, they can initiate federal delinquency proceedings. Third, if a case is retained in the federal system and involves a serious offense, they can petition the federal court to transfer the juvenile for trial as an adult. The JDA applies to those charged before the age of 21 with a breach of federal criminal law occurring before they reached the age of 18.

The JDA generally favors referring juveniles to state authorities, but it permits federal delinquency proceedings where state courts cannot or will not accept jurisdiction. Given the preference for state juvenile proceedings and the fact that a violation of federal law will ordinarily support the assertion of state juvenile court jurisdiction, most juveniles who violate federal criminal law 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.

Most juvenile delinquency cases that remain in the federal system have historically arisen in areas beyond state jurisdiction, primarily in Indian country. Thus, the majority of federal delinquency proceedings have involved Native Americans. Federal prosecutors may also elect to initiate 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.

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 detention. The period of detention, if any, may not exceed the term which might be imposed upon an adult offender for the same misconduct. The period of detention may be followed by a period of juvenile delinquent supervision, revocation of which in serious cases may result in detention until the individual is 26 years of age.

A U.S. district court may, and in some cases must, transfer a juvenile for criminal trial as an adult. A juvenile may also request a transfer to trial as an adult. Discretionary transfers come in two varieties. A court may transfer a juvenile who, when 13 years of age or older, is alleged to have committed aggravated assault, murder, attempted murder, armed robbery, or armed rape. A court may also transfer a juvenile who, when 15 years of age or older, is alleged to have committed drug trafficking or a violent felony. The court orders or denies the transfer petition after considering the seriousness of the offense, the age and maturity of the juvenile, the juvenile's prior delinquency record, the results of past rehabilitative efforts, and the availability of existing rehabilitative programs. A court must order a transfer when a juvenile has a prior comparable conviction or juvenile adjudication and is charged with committing a violent offense or a drug trafficking offense at the age of 16 or older.

This report begins with a brief discussion of the evolution of the treatment of juvenile criminal offenders in the United States. It then analyzes in detail the various provisions of the JDA.

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Juvenile offenders who violate federal criminal law are generally the responsibility of state juvenile court authorities.[1] The Federal Juvenile Delinquency Act (JDA) 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 federal delinquency proceedings, as described here.

Overview

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. The remote second preference of federal law is treatment of the juvenile under the federal delinquency provisions. Because many federal cases arise in areas beyond the reach of state authorities, i.e., primarily Indian country, the majority of federal delinquency proceedings have historically involved Native Americans. In a limited, but growing, number of instances involving drugs or violence, federal law permits the trial of juveniles as adults in federal court.

Under the JDA, a juvenile is an individual under 18 years of age, or an individual between 18 and 21 years of age alleged to have committed a federal offense when under 18 years of age. The Act does not apply to individuals over 21 years of age or to conduct committed after a person turns 18. Federal authorities, however, may prosecute as an adult any individual whose active participation in a conspiracy or racketeering enterprise bridges his or her eighteenth birthday. Once the federal courts have found a juvenile delinquent, however, a court that revokes a juvenile's delinquent supervised release may order the juvenile held until age 26.

Federal Juvenile Offenders in State Proceedings

Criminal investigation and prosecution is largely the domain of state and local governments, and conduct that violates federal criminal law is usually contrary to state law as well. For example, the federal Controlled Substances Act has a state equivalent in every jurisdiction, and robbery of a federal insured bank, or murder of a federal employee or law enforcement officer, will almost always be contrary to the state robbery and murder statutes in the state in which the offenses occur. Moreover, while state crimes are the most common basis for state juvenile court jurisdiction, many state juvenile courts enjoy delinquency jurisdiction based upon a violation of federal law. 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, in terms of age or crime or both. Some states also permit the adult criminal trial of a juvenile either through the exercise of concurrent jurisdiction or a waiver or transfer of jurisdiction under circumstances the federal courts could not.

[1] This report is an abridged version of CRS Report RL30822, *Juvenile Delinquents and Federal Criminal Law: The Federal Juvenile Delinquency Act and Related Matters*, by Charles Doyle, without the footnotes, quotations, attributions of authority, or appendixes found there.

In most instances, federal law favors dealing with juvenile offenders under state law. Federal juvenile proceedings are only possible if: relevant state courts are unable or unwilling to proceed; their juvenile programs are unavailable or inadequate; or the offense is a designated serious federal offense.

Arrest and Arraignment

The JDA, 18 U.S.C. § 5033, requires that a juvenile taken into federal custody for violating federal law must be advised of his or her legal rights immediately, and the juvenile's parents or guardian must be notified immediately. The courts have held that because federal custody activates the JDA requirements, these obligations only begin after a juvenile who was initially detained by state, local, or tribal officials is turned over to federal authorities. The notification requirement may be excused, however, when the juvenile frustrates reasonable notification efforts. Much of the case law relating to the federal advice and notification provisions comes from the U.S. Court of Appeals for the Ninth Circuit, which has held that: (1) the word "immediate" means the same for both advice and notifications purposes; (2) advice given 4 hours after arrest and notification given 3½ hours after arrest has not been given "immediately"; (3) notice given within close to an hour after arrests had been given immediately; (4) parental notification must include advice as to the juvenile's rights; (5) parental notification may be accomplished through the good offices of the surrogate or appropriate foreign consulate when the juvenile's parents reside outside of the United States; (6) convictions or delinquency determinations must be overturned if they are tainted by violations of section 5033 so egregious as to violate due process; and (7) less egregious but prejudicial violations of section 5033 may require that any resulting incriminating statements be suppressed.

The juvenile must also be brought before a magistrate for arraignment "forthwith." 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, and a waiver of *Miranda* rights may be construed as a waiver of the right to timely presentation. When a magistrate is available, arraignment may not be delayed simply because the government is proceeding with an abundance of caution or because the associated paperwork is tedious. Once before the magistrate, the juvenile is entitled to the assistance of counsel and to have counsel appointed in the case of indigence. 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.

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. This speedy trial requirement runs from the time the juvenile was taken into federal custody pending judicial proceedings, but does not attach to any period of state detention; to any period during which the juvenile was being held for purposes other than the pendency of delinquency proceedings; to any time when the juvenile is not being detained; to delays attributable to the juvenile's deception; to the period between an admission or guilty plea and sentencing; or to the period for which a continuance has been granted at the juvenile's behest. Time spent on the government's appeal is excludable in the interest of justice, as is time spent litigating the government's transfer motions, but not when the juvenile was being unlawfully detained at the time of the government's motion.

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 a felony and crime of violence and that a substantial federal interest exists warranting the exercise of federal jurisdiction.

"Because certification requirements are disjunctive, a single basis for certification establishes jurisdiction." Although the statute calls for certification by the Attorney General, the authority has been redelegated to the various United States Attorneys. A facially adequate certification is generally thought to be beyond judicial review in the absence of evidence of bad faith. Certification is jurisdictional, however, so that certification by an Assistant United States Attorney without evidence of the United States Attorney's approval is insufficient. The government need not certify the want of, or unwillingness to exercise, tribal as well as state jurisdiction. "The Attorney General's certification of a 'substantial federal interest' is an act of prosecutorial discretion that is shielded from judicial review."

The term "crime of violence" appears, undefined, several times in section 5032. Elsewhere, the term is defined using an "elements" clause ("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 a "risk" clause ("[an] offense . . . 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"). In one instance, section 5032, itself, uses an "element" clause and a "risk" clause rather than the term "crime of violence."

In other contexts, The Supreme Court has declared the identical language in the "risk" clause or "residual" clause unconstitutionally vague and inoperable. In the context of section 5032, prosecutors have relied on the elements clause and avoided the risk clause.

If the government decides against federal proceedings, the juvenile must either be released or, under the appropriate conditions, turned over to state authorities. Otherwise, the government begins the proceedings by filing an information and a statement of the juvenile's past record with the district court. Most courts appear to believe that they have no jurisdiction to proceed against a juvenile until they receive evidence of the juvenile's prior record. The government may proceed against a juvenile as an adult only if the child insists, or pursuant to a juvenile court transfer.

Transfers

There are two types of transfers to proceed against a juvenile as an adult under 18 U.S.C. § 5032, 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. 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.

Charges that would support a mandatory transfer if brought against a 16-year-old recidivist may be used to trigger a 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.

At least one federal appellate court has rejected contentions that mandatory transfers constitute an unconstitutional denial of either due process or equal protection. Aside from a denial of a claim of ineffective assistance of counsel, questions of the constitutionality of the underlying prior conviction or determination may not be raised at the transfer hearing.

When the transfer is discretionary, juvenile adjudication is presumed appropriate, unless the government can establish its case for a transfer by a preponderance of the evidence. Section 5032 lays out the factors for the court's consideration when it is asked to exercise its discretion to transfer a juvenile in the interest of justice for trial as an adult. "In making its determination, the court must consider six factors: (1) the age and social background of the juvenile; (2) the nature of the alleged offense; (3) the extent and nature of the juvenile's prior delinquency record; (4) the juvenile's present intellectual development and psychological maturity; (5) the nature of past treatment efforts and the juvenile's response to them; and (6) the availability of programs designed to treat the juvenile's behavioral problems." The purpose of the exercise is to determine whether the prospects for the juvenile's rehabilitation are outweighed by the risk of harm that he poses if not tried as an adult.

A court need not give the factors equal weight as long as the court documents its consideration of each. The age factor compels the court to consider a juvenile's age both at the time of the misconduct and at the time of the transfer hearing. "The older a juvenile delinquent is both at the time of the alleged offense and at the time of transfer hearing, the more the juvenile defendant's age weighs in favor of transfer." In considering the child's social background, the courts cite the child's family life, both positive and negative, and other social interactions. The second factor calls for an assessment of both the seriousness of the misconduct alleged and the juvenile's role in the transgression. The allegations are taken as true for purposes of the assessment, and allegations of serious offenses argue strongly for transfer. The third factor requires the court to take into account "the extent and nature of the juvenile's prior delinquency record." This may include the juvenile's arrest record in some instances. A clean record, however, is no bar to a transfer, but may weigh against a transfer. The fourth factor, the juvenile's "intellectual development and psychological maturity," is essentially a matter of whether the juvenile has the mind of a child at the time of the transfer petition, indicating a receptivity to rehabilitation. The factor may argue strongly for the transfer of a juvenile wise beyond his years. Moreover, with age, the weight the courts give to average intellectual development and maturity begins to slip away. In the case of older juveniles, the courts may find evidence of reduced, or even greatly reduced, development and maturity insufficient to overcome the counterweight of a serious offense. The fourth factor attempts to predict whether the juvenile will be receptive to rehabilitative efforts. The fifth factor evaluates whether the juvenile has been receptive to past rehabilitative efforts. Sometimes, the factor carries no weight when there have been no past efforts; on other occasions, the want of past treatment may favor transfer. The final factor is the availability of treatment programs for the individual either as a juvenile or an adult. The juvenile's age or offense may make him ineligible for programs in some instances.

Transfer hearings are considered akin to preliminary hearings. Consequently, other than the rules of privilege, the Federal Rules of Evidence, including those governing the use of hearsay, do not apply. A juvenile's statements "prior to or during a transfer hearing" may not be admitted in subsequent criminal proceedings. Thus, 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. The court's determination of whether transfer is appropriate is immediately appealable under an abuse of discretion standard.

The Supreme Court's decision in *Miller v. Alabama*, barring imposition of a sentence of life imprisonment without parole for an offense committed while a juvenile, precludes a transfer relating to an offense punishable only by death or life imprisonment. It does not preclude a transfer with respect to an offense punishable alternatively by imprisonment for a term of years. A court may order a juvenile transferred whose alleged misconduct carries both permissible and impermissible adult sentences.

Delinquency Hearings

In the absence or failure of a government transfer motion and unless the juvenile insists on an adult trial, the district court, at its discretion, conducts a delinquency hearing "at any time and place within the district, in chambers or otherwise." Neither the right to grand jury indictment nor to a jury trial is constitutionally required. The Constitution demands many of the other features of an adult criminal trial, however, including notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross examination, proof beyond a reasonable doubt, protection against double jeopardy, and application of the Fourth Amendment exclusionary rule.

Disposition

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. 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. The Sentencing Guidelines do not apply to detention ordered pursuant to federal juvenile delinquency proceedings. Some recent cases reflect the view that a sentencing court need not opt for the least-restrictive disposition needed to secure the juvenile's rehabilitation.

Unless the court suspends sentence, section 5037 establishes a series of time limits that restrict the court's authority when it orders detention, when it imposes or revokes probation, and when it imposes or revokes a period of juvenile delinquent supervision.

Section 5037(c) provides different detention limitations depending upon whether the dispositional hearing occurs when the individual is under 18 years of age or is between 18 and 21 years of age. In the case of a juvenile under 18, the court may order a term of detention no longer than the shorter of (A) the date the juvenile will turn 21; (B) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an adult; or (C) the maximum term of imprisonment that would apply had the juvenile been an adult.

The detention limits for juveniles between the ages of 18 and 21 depend on the seriousness of the misconduct that led to the delinquency determination. If the misconduct would have been punishable by imprisonment for a maximum of 12 years or more, the term of detention may be no longer than the sooner of (i) five years, or (ii) the top of the Sentencing Guideline range applicable to adults under comparable circumstances. If less serious misconduct led to the delinquency determination, the court may order detention for no longer than the sooner of (i) three years; (ii) the top of the Sentencing Guideline range; or (iii) the maximum term of imprisonment that an adult would have faced under the circumstances.

The time limits for probation are comparable. The court may set the term of probation for a juvenile under 18 years of age at no longer than the sooner of (A) the date on which the juvenile will turn 21 years of age; or (B) five years (or one year if the misconduct in an adult would be punishable by imprisonment for not more than five days). For juveniles between the ages of 18 and 21, the limit is the shorter of (A) three years; or (B) one year (if the misconduct in an adult would be punishable by imprisonment for not more than five days). The adult mandatory and discretion condition statutes apply, including the requirement that any discretion conditions involve only such deprivations of liberty or property as are reasonably necessary to comply with statutory sentencing principles.

The court may later revise or revoke a juvenile's probation and order the juvenile's detention for violation of his probation conditions. Detention authority following revocation mirrors the court's initial detention authority with two exceptions. First, regardless of the juvenile's age at the time of revocation, the court is initially governed by the time limits that apply to the detention of juveniles between the ages of 18 and 21. Second, an individual who is 21 years of age or older may not be detained beyond the age of 23, or beyond the age of 25 if the misconduct is punishable by imprisonment for 12 years or more. Subject to those restrictions, when the misconduct that resulted in the delinquency determination would be punishable by a maximum term of imprisonment of 12 years or more, the court may order a term of detention no longer than the shorter of (i) five years; or (ii) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an adult. For less serious forms of misconduct, the limit is the shorter of (i) three years; (ii) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an adult; or (iii) the maximum term of imprisonment that would apply had the juvenile been an adult.

When a court orders juvenile detention, it may also impose a term of juvenile delinquent supervision to be served after the individual's release from detention. Juvenile delinquent supervision has its own time limits and its own set of conditions. The conditions are the same as those available when the court sentences a juvenile to probation. The initial term of juvenile delinquent supervision may not exceed the juvenile's 21st birthday if the individual is under the age of 18 when the detention order is issued. If the individual is between 18 and 21 when the detention order is issued, the initial time limits for supervision are those that apply to detention, less the time served in detention. Thus, when the misconduct that resulted in the delinquency determination would be punishable by a maximum term of imprisonment of 12 years or more, the court may order a term of supervision no longer than the shorter of (i) five years; or (ii) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an adult. For less serious forms of misconduct, the limit is the shorter of (i) three years; (ii) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an adult; or (iii) the maximum term of imprisonment that would apply had the juvenile been an adult.

Violation of the conditions of supervision may lead to further terms of detention and juvenile delinquent supervision. The maximum term of detention following revocation of a term of supervision is the same as the maximum term of detention following revocation of probation, less time served in detention. That is, when the misconduct that resulted in the delinquency determination would be punishable by a maximum term of imprisonment of 12 years or more, the court may order a term of supervision no longer than the shorter of (i) five years; (ii) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an adult; or (iii) the time before which the individual turns 26 years of age. For less serious forms of misconduct, the limit is the shorter of (i) three years; (ii) the term at the top of the sentencing range under the Sentencing Guidelines that would apply had the juvenile been an

adult; (iii) the maximum term of imprisonment that would apply had the juvenile been an adult; or (iv) the time before which the individual turns 24.

Section 5037(d)(6) is somewhat cryptic about the term limits on the juvenile delinquent supervision imposed after revocation. It makes no mention of the limits in place when the individual is less than 18 years of age or between 18 and 21 years of age. As for individuals over 21 years of age, it declares that the term of juvenile delinquent supervision "shall be in accordance with the provisions of section 5037(d)(1)," with the exception of the usual bars on supervision over individuals once they reach either 24 or 26 years of age depending on the seriousness of their original misconduct.

The difficulty stems in part from the fact that section 5037(d)(1) says nothing about time limits. It merely states that "[t]he 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." One appellate court has held that "the maximum term of supervision that a court may impose under § 5037(d)(6) is determined by the requirements in § 5037(d)(2), using the juvenile's age at the time of the revocation hearing."

Juvenile Records and Conditions of Custody

One of the hallmarks of the JDA is its effort to shield juveniles from some of the harsh consequences of exposure to the criminal justice system. Before and after being taken into custody, and before and after being found delinquent, it refuses to allow juveniles to be interspersed with adults who are awaiting trial for, or have been convicted of, criminal offenses. 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, or disposition questions from victims. This does not render otherwise admissible evidence of juvenile proceedings inadmissible in criminal proceedings. Moreover, in response to media requests the court will balance the competing interests, which weigh heavily in favor of confidentiality; and, in light of the Crime Victims' Rights Act, the court may permit the government to notify the victim of a juvenile threat of the status of proceedings against the juvenile, without identifying him.

The Sex Offender Registration and Notification Act dictates when a federal juvenile delinquent must register as a sex offender, notwithstanding apparent conflicts with the confidentiality provisions that govern juvenile records.

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. At one time, even the Sentencing Guidelines instructed sentencing judges that an offender's youth was not ordinarily a permissible ground for reduction of the otherwise applicable Sentencing Guideline range. The Sentencing Commission has since amended the guideline to permit consideration of the defendant's age in atypical cases.

The Constitution's Cruel and Unusual Punishments Clause limits the sentence that a court may impose upon a juvenile tried as an adult. The Supreme Court has decided that the "death penalty cannot be imposed upon juvenile offenders." Nor can life imprisonment without the possibility of parole be imposed upon a juvenile offender for a non-homicide offense. Nor may a sentence of mandatory life without the possibility of parole be imposed for a homicide committed by a

juvenile under the age of 18. Nevertheless, a sentencing court need not find that a juvenile is permanently incorrigible before imposing a discretionary sentence of life without parole.

A federal court may sentence a juvenile to a term of imprisonment which, given his life expectancy and abolition of federal parole, can effectively constitute a sentence of life without parole.

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