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

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Summary

Federal authorities have 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, they can petition the federal court to transfer the juvenile for trial as an adult. The Federal Juvenile Delinquency Act generally favors referring juveniles to state authorities, but it permits federal delinquency proceedings where state courts cannot or will not accept jurisdiction. Because a majority of the federal juvenile delinquency cases have historically arisen in areas beyond state jurisdiction, *i.e.*, primarily Indian country, the majority of federal delinquency proceedings involve Native Americans. 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 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 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 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 the custody of the U.S. 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. 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.

The U.S. district court may, and in some cases must, transfer a juvenile for criminal trial as an adult. A juvenile may request a transfer to trial as an adult. Otherwise, a court must order a transfer when a juvenile, with a prior comparable conviction or juvenile adjudication, is charged with committing a violent offense or a drug trafficking offense at the age of 16 or older. 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.

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Introduction

Juvenile offenders of federal criminal law are primarily the responsibility of state juvenile court authorities.[1] 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, the law rebuttably presumed incapacity until the child reached the age of 14, by which time acquisition of the intellectual capability to entertain criminal intent was assumed. As an early nineteenth century commentator explained,

> 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 mature years.[2]

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 attuned to their rehabilitative needs. By 1930, the Wickersham Commission reported that only the federal government continued to uniformly treat children, charged with a crime, as adults.[3] The states had instead adopted various juvenile court systems in which the "child offender [was] generally dealt with on a noncriminal basis and . . . protected from prosecution and conviction for crime . . . [They undertook] to safeguard, train, and educate rather than to punish him. [They] substituted social for penal methods; the concept of juvenile delinquency for that of crime."[4]

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[1] This report is available in an abridged version entitled *Juvenile Delinquents and Federal Criminal Law: The Federal Juvenile Delinquency Act and Related Matters In Short*, without the footnotes, attributions to authority, or addendum found here.

[2] 3 JOSEPH CHITTY, A PRACTICAL TREATISE ON CRIMINAL LAW 724 (3d Am. ed. 1836); *accord* 1 JOEL PRENTISS BISHOP, COMMENTARIES ON THE CRIMINAL LAW §368 (7th ed. 1886); ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 936-39 (3d ed. 1982).

[3] National Commission on Law Observance and Enforcement [(Wickersham Commission)], REPORT ON THE CHILD OFFENDER IN THE FEDERAL SYSTEM OF JUSTICE, 2 (1931).

[4] *Id*.

Attorney General Wickersham 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."[5] He 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.[6]

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.[7] 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.[8] Although supplemented in 1950 by the Federal Youth Corrections Act, which afforded federal juvenile offenders tried as adults the prospect of special rehabilitative opportunities,[9] the Act remained essentially unchanged for over thirty-five years.

In 1974, Congress substantially revised the Act[10] 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 and court decisions."[11] Crimes punishable by death or life imprisonment (primarily murder, kidnapping, and rape) were made subject to the federal juvenile treatment for the first time.[12] At the time, the Supreme Court decision in *Furman v. Georgia*[13] 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 thereafter that *Woodson v. North Carolina*[14] and *Gregg v. Georgia*[15] gave some clue as to what procedures would pass constitutional muster. When Congress established the requisite procedures to restore capital punishment as a federal sentencing option, it exempted juveniles.[16]

In the 1974 revision of federal juvenile law, 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

[5] H.R. REP. NO. 72-958, at 2 (1932).

[6] *Id.*

[7] 52 STAT. 764 (1938), 18 U.S.C. §§ 921 to 927 (1940 ed.).

[8] 52 STAT. 765 (1938), 18 U.S.C. § 922 (1940 ed.).

[9] 64 STAT. 1086 (1950), 18 U.S.C. §§ 5005 to 5026 (1952 ed.).

[10] 88 STAT. 1133 (1974), 18 U.S.C. §§ 5031 to 5042 (1976 ed.).

[11] S. REP. NO. 93-1011 at 19 (1974).

[12] 88 STAT. 1133-134 (1974), 18 U.S.C. §§ 5031, 5032 (1976 ed.).

[13] 408 U.S. 238 (1972).

[14] 428 U.S. 280 (1976).

[15] 428 U.S. 153 (1976).

[16] 18 U.S.C. § 3591.

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.[17]

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 repealed the Federal Youth Corrections Act and eliminated juvenile parole provisions.[18] The Sentencing Reform Act also lowered the age at which a juvenile may be transferred for trial as an adult and expanded the list of crimes that justify such a transfer.[19] Thus far at least, the courts have declined to read into this history a congressional intent to repudiate rehabilitation as a sentencing consideration in federal juvenile proceedings.[20]

Overview of Existing Federal Law[21]

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.[22] The remote second preference of federal law is treatment of the juvenile under the federal delinquency provisions.[23] 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 have historically involved Native Americans.[24] In a limited, but growing, number of instances involving drugs or violence, federal law permits the trial of juveniles as adults in federal court.[25]

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

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[17] 88 STAT. 1134 (1974), 18 U.S.C. § 5032 (1976 ed.).

[18] 98 STAT. 2027, 2014 (1984). Congress made modest, largely technical, adjustments thereafter on a number of occasions: Pub. L. No. 99-646, § 21(a), 100 STAT. 3596 (1986), 18 U.S.C. § 5037 (1980 ed. Supp. V); Pub. L. No. 100-690, §§ 6467(a), 7045, 102 STAT. 4375, 4400 (1988), 18 U.S.C. §§ 5032, 5034 (1988 ed.); Pub. L. No. 101-647, §§ 1205(n), 3599G, 104 STAT. 4831, 4832 (1990), 18 U.S.C. § 5032 (1988 ed. Supp. II); Pub. L. No. 103-322, §§ 140001, 140002, 140003, 140005, 150002, 108 STAT. 2012, 2031, 2032, 2035 (1994), 18 U.S.C. §§ 5032, 5038, 5039 (1994 ed.); Pub. L. No. 104-294, §§ 601(c)(1), (f)(16), (g)(1), *o*, 604(b)(40), 110 STAT. 3499, 3500, 3502, 3509 (1996), 18 U.S.C. §§ 5032, 5037, 5038 (1994 ed. Supp. III); Pub. L. No. 107-273, § 12301, 116 STAT. 1986 (2002), 18 U.S.C. § 5037 (2000 ed. Supp. III).

[19] 18 U.S.C. §§ 5037, 5032.

[20] United States v. Lopez, 860 F.3d 201, 210 (4th Cir. 2017) ("Rather, the JDA [Juvenile Delinquency Act] is intended to ensure that at the time they are brought into the criminal justice process, juveniles will have the benefit of a system that is tailored to their special receptivity to rehabilitation."); United States v. Juvenile, 347 F.3d 778, 786-87 (9th Cir. 2003) ("Moreover, if the primary goal of the federal juvenile justice system is no longer rehabilitation, as the government asserts, then the lessened due process protections afforded under the system would become extremely problematic"); *see also* United States v. M.R.M., 513 F.3d 866, 869 (8th Cir. 2008); United States v. Patrick, 359 F.3d 3, 10-11 (1st Cir. 2004); (each citing United States v. R.L.C., 503 U.S. 291, 298 (1992) (opinion of Souter, J.)).

[21] *See generally* USAM §§ 9-8.000 to 9-8.230 (April 2018) and accompanying CRM §§ 101 to 199.

[22] 18 U.S.C. § 5032. Section 5032 does recognize an exception for minor offenses committed within federal enclaves: "A juvenile alleged to have committed an act of juvenile delinquency, *other than a violation of law committed with 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 …." *Id*. (emphasis added.).

[23] *Id*.

[24] United States v. Juvenile Male, 492 F.3d 1046, 1049 n.3 (9th Cir. 2007) ("Because of the structure of the FJDA, Native American youth are disproportionately subject to federal court jurisdiction for their delinquency offenses."); *see generally* Amy J. Standefer, Note, *The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles*, 84 MINN. L. REV. 473 (1999).

[25] 18 U.S.C. § 5032.

criminal law before reaching the age of 18.[26] The Act reaches neither individuals after they turn 21 nor conduct committed after they turn 18.[27] 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.[28] 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.[29]

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. For example, the federal Controlled Substances Act[30] has a state equivalent in every jurisdiction,[31] and robbery of a federal insured bank,[32] or murder of a federal employee or law enforcement officer,[33] will almost always be contrary to the state robbery and murder statutes in the state in which the offenses occur.[34] 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.[35] Thus, an individual under 18 who violates federal criminal law can

[26] "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. Nevertheless, as discussed below under the section captioned disposition, detention, detention after revocation of juvenile probation, and detention after revocation of juvenile delinquent supervision may extend until the individual is 26 in some cases. 18 U.S.C. §§ 5037(b), (c), (d)(6). Moreover, a court may continue to exercise jurisdiction over an individual under 21 years of age when proceedings began, but who turned 21 during the course of the proceeding. United States v. Woods, 827 F.3d 712, 717 (7th Cir. 2016) (citing in accord, United States v. Ramirez, 297 F.3d 185, 191-92 (2d Cir. 2002); United States v. Smith, 851 F.2d 706, 710 (4th Cir. 1988); United States v. Martin, 788 F.2d 696, 697-98 (11th Cir. 1986) and United States v. Doe, 631 F.2d 110, 112-13 (9th Cir. 1980)).

[27] 18 U.S.C. § 5031; United States v. Lopez, 860 F.3d 201, 209 (4th Cir. 2017); United States v. Wright, 540 F.3d 833, 839 (8th Cir. 2008); 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).

[28] United States v. Camez, 839 F.3d 871, 876 (9th Cir. 2016); United States v. Guerrero, 768 F.3d 351, 361-62 (5th Cir. 2014); 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. Delatorre, 157 F.3d 1205, 1209-211 (10th Cir. 1998); United States v. Thomas, 114 F.3d 228, 238-39 (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, D. Ross Martin, Note, *Conspiratorial Children? The Intersection of the Federal Juvenile Delinquency Act and Federal Conspiracy Law*, 74 B.U. L. Rev. 859 (1994).

[29] 18 U.S.C. § 5037(d)(6).

[30] 21 U.S.C. §§ 801-889.

[31] *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 13-3423; ARK. CODE §§ 5-64-101 to 5-64-1005.

[32] 18 U.S.C. § 2113.

[33] *Id.* § 1114.

[34] *E.g.*, CAL. PEN. CODE §§ 187 to 188 (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. 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).

[35] ALA. CODE §12-15-102 ("When used in this chapter, the following words and phrases shall have the following meanings . . . (6) Delinquent Act. An act committed by a child that is designated a violation, misdemeanor, or felony offense pursuant to the law of the . . . state in which the act was committed or pursuant to federal law . . . ."); *see also*

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.[36] Some 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.[37]

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.[38] 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,[39] and may be excused when the juvenile frustrates reasonable

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ARIZ. REV. STAT. ANN. § 8-201; CAL. WEL. & INST. CODE § 602; COLO. REV. STAT. § 19-2-104; CONN. GEN. STAT. ANN. § 46b-120; 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; ORE. REV. STAT. § 419C.005; PA. STAT. AND CONS. 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. § 78A-6-103; VT. STAT. ANN. tit. 33 § 5102; VA. CODE § 16.1-228; WASH. REV. CODE ANN. § 13.40.020; WIS. STAT. ANN. § 938.02.

[36] Although most juvenile courts have delinquency jurisdiction over juveniles under 18 years of age, there are a few exceptions, *e.g.*, MICH. COMP. LAWS ANN. § 712A.2 (under 17); MO. ANN. STAT. § 211.021 (under 17); N.C. GEN. STAT. § 7B-1501 (under 16); S.C. CODE § 63-3-510 (under 17). Far more common are crime-specific limitations on juvenile court delinquency jurisdiction, *e.g.*, ALASKA STAT. § 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), or misuse of a firearm); IND. STAT. ANN. § 31-30-1-4 (the juvenile court has no jurisdiction over those charged with various violent crimes, *e.g.*, murder, kidnapping, rape, robbery, and carjacking); MD. CTS. & JUD. PROC. § 3-8A-03 (the juvenile court has no jurisdiction over a juvenile, 14 or older, charged with conduct punishable by imprisonment for life in an adult; nor over a juvenile, 16 or order, and charged with various serious offenses *e.g.*, as kidnapping, manslaughter, robbery, and carjacking); MINN. STAT. ANN. §§ 260B.101, 260B.007 (the juvenile court has no jurisdiction over a juvenile charged with murder); N.J. STAT. ANN. § 2A:4A-26.1 (the juvenile court must waive jurisdiction over a juvenile, 15 or older, with a finding of probable cause relating to various violent crimes, *e.g.*, homicide, robbery, carjacking, rape, kidnapping or arson); PA. STAT. AND CONS. STAT. ANN. tit.42 § 6302 (delinquent acts over which the juvenile court has jurisdiction do not include murder, certain violent crimes *e.g.*, rape, robbery, and kidnapping committed by a juvenile, 15 or older, committed while armed with dangerous weapon or after having previously found delinquent of committing certain violent crimes); UTAH CODE ANN. § 78A-6-103 (the juvenile court has no jurisdiction of juveniles, 16 or older, charged with murder); WASH. REV. CODE ANN. § 13.40.030 (the juvenile court does not have exclusive jurisdiction over juveniles, 16 or 17, alleged to have committed various crimes, *e.g.*, such as robbery, rape, drive-by shooting, and "serious violence offenses").

[37] *E.g.*, ALA. CODE §12-15-203 (transfer of any juvenile, 14 or older, for any crime); HAWAII REV. STAT. § 571-11 (concurrent jurisdiction); MO. ANN. STAT. § 211.071 (transfer of any juvenile, 12 or older, for any felony); MONT. CODE ANN. §§ 41-5-203, 41-5-206 (concurrent jurisdiction); N.H. REV. STAT. ANN. § 169-B:24 (transfer of any juvenile for any felony); WYO. STAT. ANN. §§ 14-6-203(c), (d) (concurrent jurisdiction over any juvenile, any misdemeanor punishable by detention for 6 months or more or any felony).

[38] 18 U.S.C. § 5033.

[39] 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).

but unsuccessful notification efforts.[40] 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

- the word "immediate" means the same for both advice and notifications purposes;[41]
- advice given 4 hours after arrest and notification given 3½ hours after arrest has not been given "immediately";[42]
- notice given within close to an hour after arrests had been given immediately;[43]
- parental notification must include advice as to the juvenile's rights;[44]
- 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;[45]
- convictions or delinquency determinations must be overturned if they are tainted by violations of section 5033 so egregious as to violate due process;[46] and
- less egregious but prejudicial violations of section 5033 may require that any resulting incriminating statements be suppressed.[47]

The juvenile must also be brought before a magistrate for arraignment "forthwith."[48] 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.[49] On the other hand, 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.[50] Once before the magistrate, the juvenile is entitled to the assistance of counsel and to have counsel appointed in the case of indigence.[51] The magistrate may also appoint a guardian ad litem, and, after a hearing

[40] United States v. Burrous, 147 F.3d 111, 115-16 (2d Cir. 1998).

[41] United States v. Doe, 219 F.3d 1009, 1014-15 (9th Cir. 2000).

[42] United States v. Juvenile (RRA-A), 229 F.3d 737, 744 (9th Cir. 2000); *Doe*, 219 F.3d at 1014-15.

[43] United States v. Female Juvenile (Wendy G.), 255 F.3d 761, 765 (9th Cir. 2001).

[44] *Juvenile (RRA-A)*, 229 F.3d at 744; *Doe*, 219 F.3d at 1015; *Female Juvenile (Wendy G.)*, 255 F.3d at 767-77.

[45] United States v. C.M., 485 F.3d 492, 500 (9th Cir. 2007); *Juvenile (RRA-A)*, 229 F.3d at 744.

[46] United States v. Juvenile Male, 595 F.3d 885, 902 (9th Cir. 2010); *C.M.*, 485 F.3d at 505; *Juvenile (RRA-A)*, 229 F.3d at 744; *Doe*, 219 F.3d at 1016.

[47] United States v. D.L., 453 F.3d 1115, 1125-127 (9th Cir. 2006); *Juvenile (RRA-A)*, 229 F.3d at 744; *Doe*, 219 F.3d at 1017; United States v. Doe, 226 F.3d 672, 678-80 (6th Cir. 2000). Harmless violations may go unsanctioned. United States v. A.S.R., 81 F. Supp. 3d 709, 721(E.D. Wis. 2015) (failure to advise the juvenile's parents of the juvenile's rights).

[48] 18 U.S.C. § 5033; *C.M.*, 485 F.3d at 502.

[49] *Doe*, 219 F.3d 1009, 1015-16 (9th Cir. 2000) (a 31-hour delay in the absence of extenuating circumstances was not reasonable); United States v. Doe, 862 F.2d 776, 780 (9th Cir. 1988) (36-hour delay was unreasonable); 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. 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 of bad faith).

[50] United States v. D.L., 453 F.3d 1115, 1123-124 (9th Cir. 2006).

[51] 18 U.S.C. § 5034.

before counsel, order the juvenile detained to guarantee subsequent court appearances or for the safety of the juvenile or anyone else.[52]

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.[53] This speedy trial requirement runs from the time the juvenile was taken into federal custody pending judicial proceedings,[54] but does not attach to any period of state detention;[55] to any period during which the juvenile was being held for purposes other than the pendency of delinquency proceedings;[56] to any time when the juvenile is not being detained;[57] to delays attributable to the juvenile's deception;[58] to the period between admission or guilty plea and sentencing;[59] or to the period for which a continuance has been granted at the juvenile's behest.[60] Time spent on the government's appeal is excludable in the interest of justice,[61] as is time spent litigating the government's transfer motions,[62] but not when the juvenile was being unlawfully detained at the time of the government's motion.[63]

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 interest exists warranting the exercise of federal jurisdiction.[64]

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[52] *Id*. The Supreme Court has upheld state juvenile pre-trial detention, Schall v. Martin, 467 U.S. 253, 256-57 (1984), and adult federal pre-trial detention, United States v. Salerno, 481 U.S. 739, 741 (1987).

[53] 18 U.S.C. § 5036.

[54] United States v. Female Juvenile, A.F.S., 377 F.3d 27, 34 (1st Cir. 2004); United States v. Wong, 40 F.3d 1347, 1371 (2d Cir. 1994); United States v. Romulus, 949 F.2d 713, 716 (4th Cir. 1991); United States v. Doe, 882 F.2d 926, 927-28 (5th Cir. 1989).

[55] United States v. Eric B., 86 F.3d 869, 873 (9th Cir. 1996); United States v. Three Male Juveniles, 49 F.3d 1058, 1063 (5th Cir. 1995); United States v. Doe, 642 F.2d 1206, 1207-208 (10th Cir. 1981).

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

[57] United States v. Doe, 149 F.3d 945, 949-50 (9th Cir. 1998) (released to half-way house pending trial); United States v. Cuomo, 525 F.2d 1285, 1290-91 (5th Cir. 1976) (released to parents under restrictive bail conditions).

[58] United States v. Doe, 49 F.3d 859, 865-66 (2d Cir. 1995).

[59] United States v. Juvenile Male, 939 F.2d 321, 324 (6th Cir. 1991).

[60] United States v. Doe, 226 F. 3d 672, 681 (6th Cir. 2000).

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

[62] United States v. David A., 436 F.3d 1201, 1207 (10th Cir. 2006); United States v. A.R., 203 F.3d 955, 963-64 (6th Cir. 2000); United States v. Sealed Juvenile 1, 192 F.3d 488, 491-92 (5th Cir. 1999); United States v. Wong, 40 F.3d 1347, 1371 (2d Cir. 1994); United States v. Romulus, 949 F.2d 713, 716 (4th Cir. 1991).

[63] United States v. Female Juvenile, A.F.S., 377 F.3d 27, 37-8 (1st Cir. 2004).

[64] 18 U.S.C. § 5032[¶1] ("A juvenile alleged to have committed an act of juvenile delinquency . . . shall not be

"Because certification requirements are disjunctive, a single basis for certification establishes jurisdiction."[65] Although the statute calls for certification by the Attorney General, the authority has been redelegated to the various United States Attorneys.[66] A facially adequate certification is generally thought to be beyond judicial review in the absence of evidence of bad faith.[67] Certification is jurisdictional, however, so that certification by an Assistant United States Attorney without evidence of the United States Attorney's approval is insufficient.[68] The government need not certify the want of, or unwillingness to exercise, tribal as well as state jurisdiction.[69] "The Attorney General's certification of a 'substantial federal interest' is an act of prosecutorial discretion that is shielded from judicial review."[70]

Because there is no statutory definition of the term "crime of violence" for certification purposes, courts in the past have relied on the definitions in 18 U.S.C. § 16 ("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*");[71] or 18 U.S.C. § 924(c)(3) ("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");[72] or simply "an offense that 'by its very nature involves a substantial risk' that physical force against another may be used in committing the offense."[73] On April 17, 2018, however, the Supreme Court declared unconstitutionally vague the language of 18 U.S.C. § 16(b) (in italics above), incorporated by

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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 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.") (full text appears as an addendum to this report).

[65] United States v. JDT, 762 F.3d 984, 993 (9th Cir. 2014).

[66] 28 C.F.R. § 0.57; *JDT*, 762 F.3d at 993; United States v. Sealed Juvenile 1, 225 F.3d 507, 509 (5th Cir. 2000); United States v. White, 139 F.3d 998, 1000 (4th Cir. 1998).

[67] *JDT*, 762 F.3d at 992; United States v. Doe, 226 F.3d 672, 676-78 (6th Cir. 2000); United States v. Smith, 178 F.3d 22, 25 (1st Cir. 1999); United States v. Juvenile No.1, 118 F.3d 298, 304-5 (5th Cir. 1997); United States v. Juvenile Male J.A.J., 134 F.3d 905, 906-9 (8th Cir. 1998); United States v. Jarrett, 133 F.3d 519, 538 (7th Cir. 1998); *In re* Sealed Case, 131 F.3d 208, 211-14 (D.C. Cir. 1997); United States v. I.D.P., 102 F.3d 507, 511 (11th Cir. 1996); United States v. Vacier, 515 F.2d 1378, 1380-81 (2d Cir. 1975); *contra* United States v. T.M., 413 F.3d 420, 423-24 (4th Cir. 2005); *see also* Matthew Dexler, Note, *Judicial Review & the Policy of Federal Abstention: A Juvenile's Right to Ensure the Existence of a "Substantial Federal Interest,"* 98 MICH. L. REV. 1007 (2000).

[68] *Sealed Juvenile 1*, 225 F.3d 507, 509 (5th Cir. 2000); 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).

[69] United States v. Male Juvenile (Pierre Y.), 280 F.3d 1008, 1014-16 (9th Cir. 2002).

[70] United States v. Female Juvenile, A.F.S., 377 F.3d 27, 32 (1st Cir. 2004).

[71] United States v. Doe, 49 F.3d 859, 866-67 (2d Cir. 1995); United States v. Baker, 10 F.3d 1374, 1393-94 (9th Cir. 1993).

[72] United States v. Juvenile Male, 118 F.3d 1344, 1350 (9th Cir. 1997).

[73] United States v. A.S.R., 81 F. Supp. 3d 709, 719 (E.D. Wis. 2015).

cross-reference into the Immigration and Nationality Act.[74] The Court's decision may require future lower federal courts, tasked to discern the meaning of the term "crime of violence" for certification purposes, to apply 18 U.S.C. §§ 16(a) or 924(c)(3)(A) or to formulate a new definition.

If the government decides against federal proceedings, the juvenile must either be released or, under the appropriate conditions, turned over to state authorities.[75] Otherwise, the government begins the proceedings by filing an information and a statement of the juvenile's past record with the district court.[76] 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.[77] The government may proceed against a juvenile as an adult only if the child insists, or pursuant to a juvenile court transfer.[78]

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.[79] 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.[80]

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

[74] Sessions v. Dimaya, 138 S. Ct. 1204, 1210-11 (2018).

[75] 18 U.S.C. § 5001.

[76] *Id.* § 5032[¶10].

[77] United States v. Woods, 827 F.3d 712, 715 (7th Cir. 2016); Impounded (Juvenile I.H., Jr.), 120 F.3d 457, 460 (3d Cir. 1997); United States v. Wong, 40 F.3d 1347, 1369-370 (2d Cir. 1994); 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).

[78] 18 U.S.C. § 5032[¶4]

[79] *Id.* (" … 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 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. …").

[80] United States v. N.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).

prior record;[81] discretionary transfers are also possible for juveniles 13 or older in some cases of assault, homicide, or robbery.[82]

As in the case of certification, the vagaries associated with the term "crime of violence" impact transfers involving in two of the three classes. The predicate offense list found in section 5032 for the mandatory transfer of recidivists aged 16 or older uses language virtually identical to the language of 18 U.S.C. §§ 16(a) and 16 (b): "[a]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 [b] *that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense*."[83] The Supreme Court's determination in *Dimaya*, that the language of section 16(b) is unconstitutionally vague,[84] presumably applies with equal force to the comparable mandatory transfer language (italicized above).

The discretionary transfer provision for juveniles 15 years of age or older has a similar problem. It lists "crimes of violence" as predicates. Here by operation of the *Dimaya* decision, the lower courts are left with the task of applying section 16(a) or some other definition that avoids the uncertainty of section 16(b). The discretionary transfer provision for juveniles 13 and older presents no such challenge, because section 5032 enumerates specific predicate offenses there.[85]

In any event, 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.[86]

At least one federal appellate court has rejected contentions that mandatory transfers constitute an unconstitutional denial of either due process or equal protection[87] and aside from a denial of the ineffective assistance of counsel, questions of the constitutionality of the underlying prior conviction or determination may not be raised at the transfer hearing.[88]

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[81] 18 U.S.C. § 5032[¶4] ("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. …").

[82] *Id.* ("… In the application of the preceding sentence [relating to the transfers of juveniles 15 or older], 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'. …").

[83] 18 U.S.C. § 5032[¶4]. Recall that the 18 U.S.C. § 16 defines a "crime of violence" as "(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 a substantial risk that physical force against the person or property of another may be used in the course of committing the offense*." (Emphasis add).

[84] Sessions v. Dimaya, 138 S. Ct. 1204, 1210-11 (2018).

[85] 8 U.S.C. § 5032[¶4].

[86] 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).

[87] United States v. Juvenile, 228 F.3d 987, 990 (9th Cir. 2000).

[88] *M.C.E.*, 232 F.3d at 1257.

When the transfer is discretionary, juvenile adjudication is presumed appropriate,[89] unless the government can establish its case for a transfer by a preponderance of the evidence.[90] 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."[91] 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.[92]

A court need not give the factors equal weight as long as the court documents its consideration of each.[93] 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."[94] In considering the child's social background, the courts cite the child's family life, both positive and negative, and other social interactions.[95]

[89] United States v. J.C.D., 861 F.3d 1, 4 (1st Cir. 2017); *Female Juvenile, A.F.S.*, 377 F.3d at 32; 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. A.R., 38 F.3d 699, 706 (3d Cir. 1994).

[90] United States v. Juvenile Male, 889 F.3d 450, 453 (8th Cir. 2018); United States v. Under Seal, 819 F.3d 715, 718 (4th Cir. 2016); United States v. Sealed Appellant 1, 591 F.3d 812, 820 (5th Cir. 2009); United States v. David A, 436 F.3d 1201, 1214 (10th Cir. 2006); United States v. Brandon P., 387 F.3d 969, 977 (9th Cir. 2004); *Female Juvenile, A.F.S.*, 377 F.3d at 32; *Ramirez*, 297 F.3d at 192; 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 (6th Cir. 1995); *A.R.*, 38 F.3d at 703.

[91] *Juvenile Male*, 889 F.3d at 453 (citing 18 U.S.C. § 5032[¶5]); United States v. Woods, 827 F.3d 712, 715 (7th Cir. 2016).

[92] United States v. James, 556 F.3d 1062, 1066 (9th Cir. 2009); United States v. SLW, 406 F.3d 991, 993 (8th Cir. 2005); United States v. Male Juvenile E.L.C., 396 F.3d 458, 461 (1st Cir. 2005).

[93] *Juvenile Male*, 889 F.3d at 453; *Sealed Appellant 1*, 591 F.3d at 820; *Anthony Y.*, 172 F.3d at 1253; United States v. Wilson, 149 F.3d 610, 614 (7th Cir. 1998; 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); *A.R.*, 38 F.3d at 705.

[94] United States v. Juvenile Male, 316 F. Supp. 3d 553, 561 (E.D.N.Y. 2018); *see also J.C.D.*, 861 F.3d at 3 ("J.C.D.'s advanced age (seventeen when he allegedly committed the carjacking) favored transfer. . . .").

[95] *E.g.*, *Juvenile Male*, 889 F.3d at 453 ("It considered A.M.'s assertions of his upstanding social background, but found that there was no evidence to support those assertions and that photos of A.M. flashing gang symbols and handling firearms undercut them."); *J.C.D.*, 861 F.3d at 3 ("J.C.D.'s social background, and particularly the abuse he suffered as a child, disfavored transfer."); *Woods*, 827 F.3d at 718 (citing difficulties at home and in school, history of drug possession, and long association with a gang).

The second factor calls for an assessment of both the seriousness of the misconduct alleged and the juvenile's role in the transgression.[96] The allegations are taken as true for purposes of the assessment,[97] and allegations of serious offenses argue strongly for transfer.[98]

The third factor requires the court to take into account "the extent and nature of the juvenile's prior delinquency record."[99] This may include the juvenile's arrest record in some instances.[100] A clean record, however, is no bar to a transfer.[101]

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.[102] The factor may argue strongly for the transfer of a juvenile wise beyond his years.[103] Moreover, with age, the weight the courts give to average intellectual development and maturity begins to slip away.[104] In the case of older juveniles, the

[96] "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]; *Juvenile Male*, 889 F.3d at 453; *J.C.D.*, 861 F.3d at 3 ("The Magistrate Judge noted the seriousness of the alleged offense, recounting J.C.D.'s underlying conduct and concluding that 'the evidence does suggest that J.C.D. was the primary aggressor; he carried a gun, he drove, he robbed, and, perhaps worst of all, he threatened.'"); *Woods*, 827 F.3d at 718 ("[D]uring the second robbery, Woods shot the store clerk multiple times. . . .").

[97] *Id.*; United States v. Y.C.T., Male Juvenile, 805 F.3d 356, 358 (1st Cir. 2015).

[98] *J.C.D.*, 861 F.3d at 4 (upholding the district court's transfer order following a magistrate's finding that "'only the nature of the offense weighs strongly in favor of transfer,' while '[t]he remaining statutory factors weigh against it or are neutral.'"); United States v. Sealed Appellant 1, 591 F.3d 812, 820 (1st Cir. 2009) ("This circuit has made clear that the seriousness of the offense in particular may be given more weight than other factors. . . ."); *Juvenile Male*, 316 F. Supp. 3d at 565 ("Given the obvious severity of the alleged crimes, the Court finds that this factors weighs strongly in favor of transfer, and gives this factor more weight than any other.").

[99] 18 U.S.C. § 5032[¶5]; *e.g.*, *Woods*, 827 F.3d at 718 (noting extensive and escalating involvement with the juvenile system).

[100] United States v. C.F., 225 F. Supp. 3d 175, 194 (S.D.N.Y. 2016) (citing United States v. Juvenile LWO, 160 F.3d 1179, 1183-84 (8th Cir. 1998) and United States v. Wilson, 149 F.3d 610, 613 (7th Cir. 1998) as evidence of a split in the circuits).

[101] United States v. Juvenile Male, 269 F. Supp. 3d 29, 41-2 (E.D.N.Y. 2017) (citing United States v. Juvenile Male, 554 F.3d 456, 468-70 (4th Cir. 2009) where the Fourth Circuit affirmed the district court's transfer order relating to a juvenile with no prior record).

[102] 18 U.S.C. § 5032[¶5].

[103] *E.g.*, *Juvenile Male*, 269 F. Supp. 3d at 42-3 ("[T]he Court finds that the defendant's intellectual development and psychological maturity … weigh strongly in favor or transfer …. Dr. Bardey reported that the defendant (1) exhibited thought processes that 'were logical and goal-directed,' displayed no evidence of a thought disorder, psychotic symptoms, or symptoms of anxiety or depression; (2) appeared to be 'of average intelligence and was grossly intact cognitively;' (3) 'displayed a level of psychological and emotional maturity beyond that of the average teenager of the same age;' and (4) 'deviate[s] from the neuropsychological makeup of an immature and impulsive juvenile' in regards to his actions, the complexity of his decision making, his ability to synthesize information from different sources, and his planning ability.").

[104] United States v. Woods, 827 F.3d 712, 718 (7th Cir. 2016) (in the case of a juvenile nearly 21 years of age at the time of the transfer petition, the district "court noted that Woods had completed his GED and that there was no indication of intellectual or psychological deficits," and the appellate court found "no abuse of discretion in the court evaluating this factor as neutral"); United States v. J.J., 704 F.3d 1219, 1222-24 (9th Cir. 2013) (affirming the transfer order of a juvenile, 17 years of age at the time of the offense, after "the witnesses testified that Defendant appeared to be of average intelligence and had the maturity typical of someone in his late teens").

courts may find evidence of reduced, or even greatly reduced, development and maturity insufficient to overcome the counterweight of a serious offense.[105]

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.[106] Obviously, the factor carries no weight if there have been no past efforts.[107]

The final factor is the availability of treatment programs for the individual either as a juvenile or an adult.[108] The juvenile's age or offense may make him ineligible for state programs in some instances.[109]

Transfer hearings are considered akin to preliminary hearings and consequently, other than the rules of privilege, the Federal Rules of Evidence include those governing hearsay do not apply.[110] A juvenile's statements "prior to or during a transfer hearing" may not be admitted in subsequent criminal proceedings.[111] 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.[112] The court's determination of whether transfer is appropriate is immediately appealable under an abuse of discretion standard.[113]

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.[114] It does not preclude a

[105] United States v. J.C.D., 861 F.3d 1, 3-6 (1st Cir. 2017) (in the case of a juvenile "nearly eighteen" at the time of the carjacking, the appellate court affirming a transfer order issued on the basis of the seriousness of the offense in spite of a finding that the juvenile lacked "a sense of right and wrong and logic mediated by judgment"); United States v. Sealed Appellant 1, 591 F.3d 812, 822 (5th Cir. 2009) (finding the district court did not err in ordering the transfer of a juvenile charged with armed carjacking even though the district court found "was suffering from Conduct Disorder, PTSD, a learning disability, and had an IQ of 77, which was borderline mentally retarded or in the 'lowest range of normal").

[106] 18 U.S.C. § 5032[¶5]; *e.g.*, *Woods*, 827 F.3d at 718 ("The district court noted that 'the juvenile system has made numerous efforts to assist the Defendant, with little or no success.' The district court noted that Woods responded poorly to the various programs. The court also stressed that Woods's escalating behavior demonstrated that the numerous prior attempts to rehabilitate him did not have any positive influence and accordingly found this factor weighed in favor of transfer.").

[107] United States v. Juvenile Male, 554 F.3d 456, 469 (4th Cir. 2009); United States v. Juvenile Male, 269 F. Supp. 3d 29, 43 (E.D.N.Y. 2017).

[108] 18 U.S.C. § 5032[¶5].

[109] United States v. Juvenile Male, 889 F.3d 450, 453 (8th Cir. 2018) (The court "also considered the fact that because A.M. was now eighteen there were no longer juvenile programs designed to treat this behavioral needs."); *Woods*, 827 F.3d at 718 (no juvenile programs because of offense and age).

[110] FED. R. EVID. 1101(d)(3); *Juvenile Male*, 554 F.3d at 459-60; United States v. SLW, 406 F.3d 991, 995 (8th Cir. 2005); *In re* A.M., 34 F.3d 153, 161-62 (3d Cir. 1994); United States v. Doe, 871 F.2d 1248, 1255 (5th Cir. 1989); United States v. C.P.A., 572 F. Supp. 2d 1122, 1124-125 (D.N.D. 2008).

[111] 18 U.S.C. 5032[¶8].

[112] 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).

[113] United States v. Woods, 827 F.3d. 712, 717 & n.2 (7th Cir. 2016); United States v. Y.C.T., Male Juvenile, 805 F.3d 356, 357, 358 (1st Cir. 2015); United States v. Juvenile Male, 554 F.3d 456, 463-65 (4th Cir. 2009).

[114] United States v. Under Seal, 819 F.3d 715, 728 (4th Cir. 2016).

transfer with respect to an offense punishable alternatively by imprisonment for a term of years.[115]

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."[116] Neither the right to grand jury indictment[117] nor to a jury trial is constitutionally required.[118] However, 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, protection against double jeopardy,[119] and application of the Fourth Amendment exclusionary rule.[120]

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.[121] 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.[122] Unless the court suspends sentence, section 5037 establishes a series of time limits that restrict the court's authority when it orders detention,[123] when it imposes or revokes probation,[124] and when it imposes or revokes a period of juvenile delinquent supervision.[125]

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

[115] *Cf.* United States v. Jefferson, 816 F.3d 1016, 1017-18 (8th Cir. 2016) (affirming a district court decision to reduce a pre-*Miller* sentence of mandatory life imprisonment to imprisonment for 50 years).

[116] 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. Three Juveniles, 61 F.3d 86, 92 (1st Cir. 1995); United States v. A.D., 28 F.3d 1353, 1359-362 (3d Cir. 1994).

[117] 18 U.S.C. § 5032[¶3] ("…The Attorney General shall proceed by information …."); *see also* United States v. Juvenile, 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).

[118] McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1975) (plurality opinion) ("[W]e conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."); United States v. Male Juvenile (Pierre Y.), 280 F.3d 1008, 1021 (9th Cir. 2002); *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); *cf.* Bucio v. Sutherland, 674 F. Supp. 2d 882, 949 (S.D. Ohio 2009). Nor is a jury required in the juvenile transfer hearing, United States v. Miguel, 338 F.3d 995, 1004 (9th Cir. 2003).

[119] 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, 365-67 (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).

[120] United States v. Doe, 801 F. Supp. 1562, 1568 (E.D. Tex. 1992).

[121] 18 U.S.C. § 5037.

[122] *Id.*

[123] *Id.* § 5037(c).

[124] *Id.* § 5037(b).

[125] *Id.* § 5037(d).

age.[126] 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.[127]

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.[128] 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.[129]

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).[130] 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).[131] 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.[132]

The court may later revise or revoke a juvenile's probation and order the juvenile's detention for violation of his probation conditions.[133] 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.[134] 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.[135] 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.[136] For less serious forms of

[126] *Id.* §§ 5037(c)(1), (2).

[127] *Id.* §§ 5037(c)(1)(A), (B), (C); *e.g.*, United States v. Sealed Juvenile, 781 F.3d 747, 750 (5th Cir. 2015).

[128] *Id.* §§ 5037(c)(2)(A)(i), (ii), 3581(b); *e.g.*, United States v. J.A.S., Jr., 862 F.3d 543, 544 (6th Cir. 2017).

[129] 18 U.S.C. §§ 5037(c)(2)(B)(i), (ii), (iii).

[130] *Id.* §§ 5037(b)(1)(A), (B), 3561(c).

[131] *Id.* §§ 5037(b)(2)(A), (B), 3561(c).

[132] *Id*. §§ 5037(b), 3563.

[133] *Id*. §§ 5037(b), 3563(c).

[134] ". . . The term of official detention authorized upon revocation of probation shall not exceed the terms authorized in section 5037(c)(2)(A) and (B) . . . *Id.* § 5037(b).

[135] ". . . A disposition of a juvenile who is over the age of 21 years shall be in accordance with the provisions 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. . ." *Id*. §§ 5037(b), 3581(b).

[136] *Id.* §§ 5037(c)(2)(A)(i), (ii), 3581(b).

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.[137]

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.[138] 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.[139] 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.[140] If the individual is between 18 and 21, the initial time limits are those that apply to detention, less the time served in detention.[141] 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.[142] 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.[143]

Violation of the conditions of supervision may lead to further terms of detention and juvenile delinquent supervision.[144] 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.[145] 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.[146] 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.[147]

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[137] *Id.* §§ 5037(c)(2)(B)(i), (ii), (iii).

[138] *Id.* §§ 5037(d)(1), 5037(b).

[139] *Id.* § 5037(d)(3); *e.g.*, United States v. Sealed Juvenile, 781 F.3d 747, 750-51 (5th Cir. 2015) ("This Court has recognized that district courts have broad discretion in imposing conditions of supervised release, subject to statutory requirements. Under 18 U.S.C. § 3563, a court may provide discretional conditions 'to the extent that such conditions are reasonably related to the factors set forth in section 3553(a) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or proper as are reasonably necessary for the purposes indicated in section 3553(a)(2).'").

[140] 18 U.S.C. § 5037(d)(2)(A).

[141] *Id.* §§ 5037(d)(2)(B), 5037(c)(A), (B).

[142] *Id.* §§ 5037(c)(2)(A)(i), (ii), 3581(b).

[143] *Id.* §§ 5037(c)(2)(B)(i), (ii), (iii).

[144] *Id.* §§ 5037(d)(4), (5). Revocation of the term of supervision is mandatory if the individual is 21 years of age or older and violated a condition of supervision relating to possession of a controlled substance or a firearm or failure to take and pass a drug test. *Id.* §§ 5037(d)(5), 3565(b).

[145] *Id.* §§ 5037(d)(5), (c)(2).

[146] *Id.* §§ 5037(c)(2)(A)(i), (ii), 3581(b).

[147] *Id.* §§ 5037(c)(2)(B)(i), (ii), (iii).

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 of in § 5037(d)(2), using the juvenile's age at the time of the revocation hearing."[148]

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 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.[149] 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.[150] This does not render otherwise admissible evidence of juvenile proceedings inadmissible in criminal proceedings.[151] Moreover, in response to media requests the court will balance the competing interests which weigh heavily in favor of confidentiality.[152]

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

[148] United States v. E.T.H., 833 F.3d 931, 939 (8th Cir. 2016) (emphasis of the court) (Thus, "the maximum *total* period of detention and supervision that may be imposed upon revocation of a previously imposed term of supervision for a juvenile who is under age 21 at the time of revocation is (i) 3 years, (ii) the top of the Guidelines range that would have applied to a similarly situated adult defendant *unless the court finds an aggravating factor to warrant an upward departure*, or (iii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult, whichever is least, *see* 18 U.S.C. § 5037(c)(2)(B), 'less the term of official detention ordered.' *Id*. § 5037(d)(2)(B)."

[149] 18 U.S.C. § 5035.

[150] *Id*. § 5038(a).

[151] United States v. Jefferson, 215 F.3d 820, 824-25 (8th Cir. 2000) (upholding admission in proceedings against adult defendants when the juvenile raised no objections and the adult defendant had no standing to object); United States v. Under Seal, 853 F.3d 706, 728 (4th Cir. 2017) (upholding disclosure of partial transcript of juvenile proceedings in the order to satisfy the government's *Brady* obligations to disclose exculpatory evidence to defendant's counsel in related adult criminal proceedings).

[152] United States v. Three Juveniles, 61 F.3d 86, 92-4 (1st Cir. 1995) (upholding lower court authority to close juvenile proceedings); United States v. A.D., 28 F.3d 1353, 1361-62 (3d Cir. 1994) (holding balance favored opening juvenile proceedings); *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).

Guidelines instructed sentencing judges that an offender's youth was not ordinarily a permissible ground for reduction of the otherwise applicable Sentencing Guideline range.[153] The Sentencing Commission has since amended the guideline to permit consideration of the defendant's age in atypical cases.[154] In addition, the death penalty may not be imposed as punishment for a crime committed by a juvenile.[155] Nor may an individual be sentenced to life imprisonment without the possibility of parole for a crime committed as a juvenile.[156]

Addendum

18 U.S.C. § 5032 (Text)

> 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 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.
>
> 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.
>
> 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

[153] U.S.S.G. §5H1.1 (effective until Nov. 1, 2010 ("Age (including youth) is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range. . ."); United States v. Wong, 40 F.3d 1347, 1381 (2d Cir. 1994); United States v. Talk, 13 F.3d 369, 371 (10th Cir. 1993).

[154] U.S.S.G. § 5H1.1 ("Age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. . .").

[155] Roper v. Simmons, 543 U.S. 551, 578 (2005). 18 U.S.C. § 3591(a) ("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.").

[156] Graham v. Florida, 560 U.S. 48, 82 (2010).

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 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.

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.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

> 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.
>
> Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

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