



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

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Summary

Juvenile offenders of federal criminal law are primarily the responsibility of state juvenile court authorities. The Federal Juvenile Delinquency Act permits federal delinquency proceedings where state courts cannot or will not accept jurisdiction. Because a majority of the federal cases have historically arisen in areas beyond state jurisdiction, i.e., primarily Indian country, the majority of federal delinquency proceedings involve Native Americans. In the more serious of these cases, the juvenile offender may be transferred for trial as an adult in federal court.

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

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

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

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

This report provides an overview of the history of federal juvenile delinquency law, current federal law, and the stages of juvenile adjudications. Since the basic premise of federal juvenile law is that juvenile matters, even those arising under federal law, should be handled by state authorities whenever possible, a survey noting the circumstances under which the laws of the various states permit juveniles to be tried as adults under state law is appended. A brief selected legal bibliography is also included.

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Introduction

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

History of Federal Delinquency Law

In early America, the law held that a child, until the age of 7, lacked the maturity necessary to be held criminally responsible. Thereafter, incapacity was rebuttably presumed until the child reached the age of 14, by which time acquisition of the intellectual capability to entertain criminal intent was assumed. 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 maturest years."¹

A child found capable of the requisite intent was subject to trial and punishment as an adult; other children were set free.

In the early twentieth century, the states established juvenile court systems so that children accused of conduct that would be criminal in an adult might be processed apart from the criminal justice system in an environment more closely 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.² 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."³

¹ 3 Chitty, *A Practical Treatise on Criminal Law* 724 (3d Am.ed. 1836); accord, 1 Bishop, *Commentaries on the Criminal Law* §368 (7th ed. 1886); Perkins & Boyce, *Criminal Law* 936-39 (3d ed. 1982).

² National Commission on Law Observance and Enforcement [(Wickersham Commission)], *Report on The Child Offender in the Federal system of Justice*, 2 (1931).

³ *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.”⁴ 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.⁵

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 1938.⁶ 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.⁷ Although supplemented in 1950 by the Federal Youth Corrections Act which afforded federal juvenile offenders tried as adults the prospect of special rehabilitative opportunities,⁸ the Act remained essentially unchanged for over thirty-five years.

In 1974, Congress substantially revised the Act,⁹ 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.”¹⁰ Crimes punishable by death or life imprisonment (primarily murder, kidnaping and rape at the time) were made subject to the federal juvenile treatment for the first time.¹¹ At the time, the Supreme Court decision in *Furman v. Georgia*¹² 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*¹³ and *Gregg v. Georgia*¹⁴ gave some clue as to what procedures, if any, would pass constitutional muster. When Congress established the requisite procedures to restore capital punishment as a federal sentencing option, it exempted juveniles.¹⁵

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

⁴ H.R.Rep.No. 958, 72d Cong., 1st Sess. 2, accompanying the bill enacted as 47 Stat. 301 (1932), as amended, 18 U.S.C. 5001.

⁵ *Id.*

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

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

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

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

¹⁰ S.Rep.No. 1011, 93d Cong., 2d Sess. 19 (1974).

¹¹ 88 Stat. 1133-134 (1974), 18 U.S.C. 5031, 5032 (1976 ed.).

¹² 408 U.S. 238 (1972).

¹³ 428 U.S. 280 (1976).

¹⁴ 428 U.S. 153 (1976).

¹⁵ 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.¹⁶

Congress made the final major adjustments ten years later with changes that emphasized that at least some of the juveniles who commit serious crimes merited punishment as adults. The Sentencing Reform Act of 1984 not only repealed the Federal Youth Corrections and the juvenile parole provisions,¹⁷ but it extended the range of the court's dispositional authority and modified the list of crimes for which and the age at which a juvenile may be transferred for trial as an adult.¹⁸ Thus far at least, the courts have declined to read into this history a Congressional intent to repudiate rehabilitation as a sentencing consideration under section 5037.¹⁹

Overview of Existing Federal Law

The continuing basic premise of federal juvenile law is that juvenile matters, even those arising under federal law, should be handled by state authorities whenever possible.²⁰ The remote second preference of federal law is treatment of the juvenile under the federal delinquency provisions.²¹ Federal juvenile delinquency proceedings involve fewer than 200 juveniles a year,²² compared to the more 1.6 million juveniles involved in state delinquency cases.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 involve 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 criminal law before reaching the age of 18.²⁶ The Act reaches neither individuals after they turn

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

¹⁷ 98 Stat. 2027, 2014 (1984).

¹⁸ 18 U.S.C. 5037, 5032 (discussed below).

¹⁹ *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); *United States v. Juvenile*, 347 F.3d 778, 786-87 (9th Cir. 2003); each citing, *United States v. R.L.C.*, 503 U.S. 291, 298 (1992)(op. of Souter, J.).

²⁰ 18 U.S.C. 5032.

²¹ *Id.*

²² Administrative Office of the United States Courts, Statistical Tables for the Federal Judiciary, Table D-2, 61 (Dec. 2004). The Administrative Office no longer includes this information in its statistical reports. Table D-2 indicates, however, that in each of the last five years for which the information was reported, the number of delinquency proceedings exceeded 200 only once (in calendar year 2000), *id.*

²³ Statistical Briefing Book, at www.ojjdp.ncjrs.org (visited on Feb. 28, 2009).

²⁴ *United States v. Juvenile Male*, 492 F.3d 1046, 1049 (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, *The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles*, 84 *Minnesota Law Review* 473 (1999).

²⁵ 18 U.S.C. 5032.

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 (continued...)

21 nor conduct committed after they turn 18,²⁷ but federal authorities may prosecute as an adult any individual whose active participation in a conspiracy or racketeering enterprise bridges his or her eighteenth birthday.²⁸

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, 21 U.S.C. 801 - 889, has a state equivalent in every jurisdiction,²⁹ and robbery of a federal insured bank, 18 U.S.C. 2113, and murder of a federal law enforcement officer or employee, 18 U.S.C. 1114, will almost always be contrary to the state robbery and murder statutes in the state in which the offenses occur.³⁰ 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.³¹ Thus, an individual under 18 who violates federal criminal law can move through the state juvenile delinquency system without ever coming into contact with federal authorities.

Contractions in state juvenile court jurisdiction, however, make this less likely than was once the case. Many states now define juvenile court jurisdiction more narrowly than federal law either in terms of age or crime or both.³² Some also permit the adult criminal trial of a juvenile either through the exercise of concurrent jurisdiction, a waiver of jurisdiction, or a transfer under circumstances the federal courts could not.

(...continued)

U.S.C. 5031.

²⁷ 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); United States v. Doerr, 886 F.2d 944, 969-70 (7th Cir. 1989).

²⁸ United States v. Soto-Beniquez, 356 F.3d 1, 23-4 (1st Cir. 2003); United States v. Burns, 298 F.3d 523, 537 (6th Cir. 2002); United States v. Peters, 283 F.3d 300, 309 (5th Cir. 2002); United States v. Delatorre, 157 F.3d 1205, 1209-211 (10th Cir. 1998); United States v. Thomas, 114 F.3d 228, 238 (D.C.Cir. 1997); United States v. Wong, 40 F.3d 1347, 1365-366 (2d Cir. 1994); United States v. Cruz, 805 F.2d 1464, 1476 (11th Cir. 1976); for a more extensive discussion of questions presented by crimes that straddle the jurisdictional age lines see, *Conspiratorial Children? The Intersection of the Federal Juvenile Delinquency Act and Federal Conspiracy Law*, 74 Boston University Law Review 859 (1994).

²⁹ E.g., Ala.Code §§20-2-1 to 20-2-93; Alaska Stat. 11.71.010 to 11.71.900; Ariz.Rev.Stat. Ann. §§13-3401 to 13-3416; Ark.Code §§5-64-101 to 5-64-1005.

³⁰ E.g., Cal.Pen.Code §§187 to 189 (homicide); Colo.Rev.Stat. §§18-3-101 to 18-3-107 (homicide); Conn.Gen. Stat. Ann. §§53a-54a to 53a-58a (homicide); Del.Code tit.11 §§631 to 641 (homicide); Fla. 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).

³¹ Ala. Code §12-15-1 ("When used in this chapter, the following words and phrases shall have the following meanings . . . Delinquent Act. An act committed by a child that is designated a violation, misdemeanor, or felony offense under the law of this state . . . or under federal law . . ."); see also, Ariz.Rev.Stat. Ann. §8-201; Cal.Wel.& Inst. Code §602; Colo.Rev.Stat. §19-2-104; Conn.Gen.Stat. Ann. §46b-120; Del.Code Ann. tit.10, §1009; Fla. Stat. Ann. §985.03; Ga.Code Ann. §15-11-2; Hawaii Rev.Stat. §571-11; Idaho Code §20-505; Ill.Comp.Stat. Ann. ch.705 §405/5-105; Iowa Code §232.2; La.Child.Code art. 804; Mich.Comp.Laws Ann. §712A.2; Minn.Stat. Ann. §260B.007; Miss.Code §43-21-105; N.D. Cent Code §27-20-02; Ohio Rev. Code §2152.02; Okla.Stat. Ann. tit.10 §7301-1.3; Ore.Rev. Stat. §419C.005; Pa.Stat. Ann. tit.42 §6302; R.I.Gen.Laws §14-1-3; S.D.Cod.Laws §26-8C-2; Tenn. Code Ann. §37-1-102; Tex.Fam.Code Ann. §51.03; Utah Code Ann. §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.

³² A state by state breakdown is appended.

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.³³ 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,³⁴ and may be excused when the juvenile contributes to reasonable but unsuccessful notification efforts.³⁵ Much of the case law relating to the advice and notification portions of section 5033 comes from the Ninth Circuit and provides that:

- the word "immediate" means the same for both advice and notifications purposes;³⁶
- advice given 4 hours after arrest and notification given 3½ hours after arrest has not been given "immediately,"³⁷
- notice given within close to an hour after arrests had been given immediately,³⁸
- parental notification must include advice as to the juvenile's rights,³⁹
- 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;⁴⁰
- convictions or delinquency determinations must be overturned if they are tainted by violations of section 5033 so egregious as to violate due process,⁴¹ and
- less egregious but prejudicial violations of section 5033 require that any resulting incriminating statements be suppressed.⁴²

The juvenile must also be brought before a magistrate for arraignment "forthwith."⁴³ At night, on weekends, or at other times when a magistrate is not immediately available, arraignment may be

³³ 18 U.S.C. 5033.

³⁴ *United States v. Doe*, 366 F.3d 1068, 1070-75 (9th Cir. 2004); *United States v. Kerr*, 120 F.3d 239, 241-42 (11th Cir. 1997); cf., *United States v. Doe*, 226 F.3d 672, 679 (6th Cir. 2000).

³⁵ *United States v. Burrous*, 147 F.3d 111, 115-16 (2d Cir. 1998).

³⁶ *United States v. Doe (Rudolfo R.)*, 219 F.3d 1009, 1014-15 (9th Cir. 2000).

³⁷ *United States v. Juvenile (RRA-A)*, 229 F.3d 737, 744 (9th Cir. 2000); *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014.

³⁸ *United States v. Female Juvenile (Wendy G.)*, 255 F.3d 761, 765 (9th Cir. 2001).

³⁹ *United States v. Juvenile (RRA-A)*, 229 F.3d at 747; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1017-18; *United States v. Female Juvenile (Wendy G.)*, 255 F.3d at 767-77.

⁴⁰ *United States v. C.M.*, 485 F.3d 492, 500 (9th Cir. 2007); *United States v. Juvenile (RRA-A)*, 229 F.3d at 744; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014.

⁴¹ *United States v. Juvenile (RRA-A)*, 229 F.3d at 744; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014.

⁴² *United States v. C.M.*, 485 F.3d at 505; *United States v. D.L.*, 453 F.3d 1115, 1125-127 (9th Cir. 2006); *United States v. Juvenile (RRA-A)*, 229 F.3d at 744; *United States v. Doe (Rudolfo R.)*, 219 F.3d at 1014; but see, *United States v. Doe*, 226 F.3d 672, 678-80 (6th Cir. 2000) (violation does not per se require suppression of resulting confession whose admissibility should be judged by considering the totality of the circumstances).

⁴³ 18 U.S.C. 5033; *United States v. C.M.*, 485 F.3d at 502.

within a time reasonable under the circumstances.⁴⁴ 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.⁴⁵ Once before the magistrate, the juvenile is entitled to the assistance of counsel and to have counsel appointed in the case of indigence.⁴⁶ 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.⁴⁷

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.⁴⁸ This speedy trial requirement runs from the time the juvenile was taken into federal custody pending judicial proceedings,⁴⁹ but does not attach to any period of state detention;⁵⁰ to any period during which the juvenile was being held for purposes other than the pendency of delinquency proceedings;⁵¹ to any time when the juvenile is not being detained;⁵² to delays attributable to the juvenile's deception;⁵³ to the period between admission or guilty plea and sentencing;⁵⁴ nor to the period for which a continuance has been granted at the juvenile's behest.⁵⁵ Time spent on the government's appeal is excludable in the interest of justice,⁵⁶ as is time spent litigating the government's transfer motions,⁵⁷ but not when the juvenile was being unlawfully detained at the time of government's motion.⁵⁸

⁴⁴ *United States v. Doe*, 701 F.2d 819, 823-24 (9th Cir. 1983)(delay between 11 at night and arraignment in the morning two days later was reasonable in light of unavailability of a magistrate and the officer's press of official business); *United States v. Doe (Rudolfo R.)*, 219 F.3d 1009, 1015-16 (9th Cir. 2000)(a thirty-one hour delay in the absence of extenuating circumstances was not reasonable); *United States v. Doe*, 862 F.2d 766, 780 (9th Cir. 1988)(36 hour delay was unreasonable); *United States v. DeMarce*, 513 F.2d 755, 757-58 (10th Cir. 1975)(80 hour delay unreasonable even if some of delay fell on a weekend); *United States v. Nash*, 620 F.Supp. 1439, 1444 (S.D.N.Y. 1985)(7-9 hour delay on a weekday unreasonable even without proof of bad faith).

⁴⁵ *United States v. D.L.*, 453 F.3d 1115, 1123-124 (9th Cir. 2006).

⁴⁶ 18 U.S.C. 5034.

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

⁴⁸ 18 U.S.C. 5036.

⁴⁹ *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 34 (1st Cir. 2004); *United States v. Wong*, 40 F.3d at 1371; *United States v. Romulus*, 949 F.2d 713, 715 (4th Cir. 1991); *United States v. Doe*, 882 F.2d 926, 927-28 (5th Cir. 1989).

⁵⁰ *United States v. Eric B.*, 86 F.3d 869, 873 (9th Cir. 1996); *United States v. Three Male Juveniles*, 49 F.3d 158, 1063 (5th Cir. 1995); *United States v. Doe*, 642 F.2d 1206, 1207-208 (10th Cir. 1981).

⁵¹ *United States v. Juvenile Male*, 74 F.3d 526, 528-29 (4th Cir. 1996).

⁵² *United States v. Cuomo*, 525 F.2d 1285, 1290 (5th Cir. 1976)(released to parents under restrictive bail conditions); *United States v. Doe*, 149 F.3d 945, 949-50 (9th Cir. 1998) (released to half-way house pending trial).

⁵³ *United States v. Doe*, 49 F.3d 859, 865-66 (2d Cir. 1995).

⁵⁴ *United States v. Juvenile Male*, 939 F.2d 321, 324 (6th Cir. 1991).

⁵⁵ *United States v. Doe*, 226 F. 3d 672, 681 (6th Cir. 2000).

⁵⁶ *United States v. Doe*, 94 F.2d 532, 535-36 (9th Cir. 1996).

⁵⁷ *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 at 1371; *United States v. Romulus*, 949 F.2d at 716.

⁵⁸ *United States v. Female Juvenile*, A.F.S., 377 F.3d at 37-8.

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.⁵⁹

The statute calls for certification by the Attorney General, but the authority has been redelegated to the various United States Attorneys.⁶⁰ A facially adequate certification is generally thought to be beyond judicial review in the absence of evidence of bad faith.⁶¹ Certification is jurisdictional, however, so that certification by an Assistant United States Attorney without evidence of the United States Attorney's approval is insufficient.⁶² The government need not certify the want of, or unwillingness to exercise, tribal as well as state jurisdiction.⁶³

With no definition of "crime of violence" for certification purposes within section 5032 or within 5031 which supplies definitions of general application for the chapter, courts have relied on the definitions in 18 U.S.C. 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

⁵⁹ "A juvenile alleged to have committed an act of juvenile delinquency . . . 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." 18 U.S.C. 5032[¶1] (full text is appended).

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

⁶¹ *United States v. F.S.J.*, 265 F.3d 764, 768 (9th Cir. 2001); *United States v. Smith*, 178 F.3d 22, 25 (1st Cir. 1999); *United States v. Vacier*, 515 F.2d 1378, 1380 (2d Cir. 1975); *Impounded* (*Juvenile R.G.*), 117 F.3d 730, 733-35 (1st Cir. 1997); *United States v. Juvenile No.1*, 118 F.3d 298, 304-5 (5th Cir. 1997); *United States v. Doe*, 226 F.3d 672, 676-78 (6th Cir. 2000); *United States v. Jarrett*, 133 F.3d 519, 538 (7th Cir. 1998); *United States v. Juvenile Male J.A.J.*, 134 F.3d 905, 906-7 (8th Cir. 1998); *United States v. I.D.P.*, 102 F.3d 507, 511 (11th Cir. 1996); *In re Sealed Case*, 131 F.3d 208, 211-14 (D.C.Cir. 1997); *contra*, *United States v. T.M.*, 413 F.3d 420, 423-24 (4th Cir. 2005); see also, *Judicial Review & the Policy of Federal Abstention: A Juvenile's Right to Ensure the Existence of a "Substantial Federal Interest,"* 98 Michigan Law Review 1007 (2000).

⁶² *United States v. Sealed Juvenile 1* (S.J.), 225 F.3d 507, 509 (5th Cir. 2000); *United States v. Doe* (M.F.), 98 F.3d 459, 460-61 (9th Cir. 1996); *United States v. Angelo D.*, 88 F.3d 856, 859-60 (10th Cir. 1996)(certification by principal assistant authorized by the United States Attorney to act for him in his absence); *United States v. F.S.J.*, 265 F.3d 764, 768 (9th Cir. 2001)(same).

⁶³ *United States v. Male Juvenile* (*Pierre Y.*), 280 F.3d at 1014-16.

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”)⁶⁴ or 18 U.S.C. 924(c)(3)(B)(“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”).⁶⁵

If the government may not or decides against federal proceedings, the juvenile must either be released or, under the appropriate conditions, turned over to state authorities.⁶⁶ Otherwise, the government files an information and a statement of the juvenile’s past record with the district court to begin federal proceedings.⁶⁷ Historically, most courts considered receipt of any prior record jurisdictional.⁶⁸ The government may proceed against a juvenile as an adult only if the child insists, or pursuant to a juvenile court transfer.⁶⁹

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.⁷⁰ 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.⁷¹ 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.⁷² While conspiracy to violate the Controlled Substances Act sections listed in 18 U.S.C. 5032 will not alone support a transfer,⁷³ conspiracy to commit a violent felony necessarily involves the threat or substantial risk of physical force and consequently may trigger a transfer.⁷⁴

⁶⁴ *United States v. Doe*, 49 F.3d 859, 865-66 (2d Cir. 1995); *United States v. Baker*, 10 F.3d 1374, 1393 (9th Cir. 1993).

⁶⁵ *United States v. Juvenile Male*, 118 F.3d 1344, 1350 (9th Cir. 1997).

⁶⁶ 18 U.S.C. 5001.

⁶⁷ 18 U.S.C. 5032[¶10].

⁶⁸ *Impounded (Juvenile I.H., Jr.)*, 120 F.3d 457, 460 (3d Cir. 1997); *United States v. Wong*, 40 F.3d at 1369-370; *United States v. Parker*, 956 F.2d 169, 170 (8th Cir. 1992); contra, *United States v. Doe*, 366 F.3d 1069, 1075-77 (9th Cir. 2004)(finding current language less mandatory than was previously the case).

⁶⁹ 18 U.S.C. 5032.

⁷⁰ 18 U.S.C. 5032[¶4].

⁷¹ *United States v. J.J.B.*, 104 F.3d 630, 636-37 (4th Cir. 1997); *United States v. Juvenile Male #1*, 47 F.3d 68, 69 (2d Cir. 1995); *United States v. David H.*, 29 F.3d 489, 492-93 (9th Cir. 1994).

⁷² *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).

⁷³ *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 368-69 (D.C.Cir. 1990).

⁷⁴ *United States v. Juvenile Male*, 923 F.2d 614, 618-19 (8th Cir. 1991); see also, *United States v. Doe*, 49 F.3d 859, 866 (2d Cir. 1995)(RICO conspiracy to commit Hobbs Act robberies constitutes a crime of violence for juvenile transfer purposes); *United States v. Juvenile Male (R.B.)*, 118 F.3d 1344, 1350 (9th Cir. 1997)(same).

The Ninth Circuit has rejected contentions that mandatory transfers constitute an unconstitutional denial of either due process or equal protection⁷⁵ and aside from a denial of the effective assistance of counsel, questions of the constitutionality of the underlying prior conviction or determination may not be raised at the transfer hearing.⁷⁶

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.⁷⁷ The government's petition is a prerequisite for either a mandatory or discretionary transfer.⁷⁸

Section 5032 lays out the factors for the court's consideration when it is asked to exercise its discretion to transfer of a juvenile for trial as an adult:

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.⁷⁹

There is no requirement that the factors be given equal weight as long as the court documents its consideration of each,⁸⁰ but may accord particular serious offenses greater weight than the other factors.⁸¹ 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.⁸² A juvenile's statements "prior to or during a transfer hearing" may not be admitted in subsequent criminal proceedings.⁸³ Consequently a juvenile may be required to submit to a

⁷⁵ *United States v. Juvenile*, 228 F.3d 987, 990 (9th Cir. 2000).

⁷⁶ *United States v. M.C.E.*, 232 F.3d 1252, 1257 (9th Cir. 2000).

⁷⁷ 18 U.S.C. 5032[¶4].

⁷⁸ *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 32 (1st Cir. 2004); *United States v. Juvenile Male No. 1*, 47 F.3d 68, 609 (2d Cir. 1995).

⁷⁹ 18 U.S.C. 5032[¶5]; *United States v. Juvenile Male*, 492 F.3d 1046, 1048 (9th Cir. 2007); *United States v. Robinson*, 404 F.3d 850, 858 (4th Cir. 2005).

⁸⁰ *United States v. Anthony Y.*, 172 F.3d 1249, 1253 (10th Cir. 1999); *United States v. Wilson*, 149 F.3d 610, 614 (7th Cir. 1998); *United States v. Juvenile JG*, 139 F.3d 584, 586-87 (8th Cir. 1998); *United States v. Juvenile No.1 (J.R.P.)*, 118 F.3d 298, 307 (5th Cir. 1997); *United States v. Doe*, 109 F.3d 626, 628 (9th Cir. 1997); *United States v. Wellington*, 102 F.3d 499, 506 (11th Cir. 1996); *United States v. Nelson*, 90 F.3d 636, 640 (2d Cir. 1996); *United States v. Juvenile Male*, 40 F.3d 841, 845-46 (6th Cir. 1994); *United States v. A.R.*, 38 F.3d 699, 705 (3d Cir. 1994).

⁸¹ *United States v. Juvenile Male MC*, 322 F.3d 482, 485 (8th Cir. 2002); *United States v. Ramirez*, 297 F.3d at 193.

⁸² *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).

⁸³ 18 U.S.C. 5032[¶8].

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.⁸⁴ When the transfer is discretionary, juvenile adjudication is presumed appropriate,⁸⁵ unless the government can establish its case for a transfer by a preponderance of the evidence.⁸⁶ The court's determination of whether transfer is appropriate is immediately appealable under an abuse of discretion standard.⁸⁷

Delinquency Hearings

In the absence or failure of a government transfer motion and unless the juvenile insists on an adult trial, a hearing is held on the government's information charging delinquency, conducted "at any time and place within the district, in chambers or otherwise."⁸⁸ Neither grand jury indictment⁸⁹ nor a jury trial are constitutionally required.⁹⁰ On the other hand, the Constitution demands many of the other features of an adult criminal trial including: notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross examination, proof beyond a reasonable doubt, double jeopardy,⁹¹ and the Fourth Amendment exclusionary rule.⁹²

⁸⁴ *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).

⁸⁵ *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 32 (1st Cir. 2004); *United States v. Ramirez*, 297 F.3d 185, 192 (2d Cir. 2002); *United States v. Anthony Y.*, 172 F.3d 1249, 1252 (10th Cir. 1999); *United States v. A.R.*, 203 F.3d 955, 961 (6th Cir. 2000); *United States v. Juvenile Male #1*, 47 F.3d 68, 71 (2d Cir. 1996); *United States v. A.R.*, 38 F.3d 699, 706 (3d Cir. 1994).

⁸⁶ *United States v. Brandon P.*, 387 F.3d 969, 977 (9th Cir. 2004); *United States v. Female Juvenile*, A.F.S., 377 F.3d at 32; *United States v. Ramirez*, 297 F.3d at 192; *United States v. Anthony Y.*, 172 F.3d at 1252; *United States v. I.D.P.*, 102 F.3d 507, 513 (11th Cir. 1996); *United States v. T.F.F.*, 55 F.3d 1118, 1122 (2d Cir. 1995); *United States v. Juvenile Male No.1*, 86 F.3d 1314, 1323 (4th Cir. 1996); *United States v. A.R.*, 38 F.3d 699, 703 (3d Cir. 1994); *United States v. Parker*, 956 F.2d 169, 171 (8th Cir. 1992).

⁸⁷ *United States v. Ramirez*, 297 F.3d at 192-93; *United States v. Juvenile (W.J.B.)*, 228 F.3d 987, 988 (9th Cir. 2000); *United States v. Leon D.M.*, 132 F.3d 583, 587-88 (10th Cir. 1997); *United States v. Juvenile No.1 (J.R.P.)*, 118 F.3d 298, 302 (5th Cir. 1997); *United States v. Wellington*, 102 F.3d 499, 503 (11th Cir. 1996); *United States v. J.J.K.*, 76 F.3d 870, 871-72 (7th Cir. 1996); *United States v. One Juvenile Male*, 40 F.3d 841, 844 (6th Cir. 1994); *United States v. A.R.*, 38 F.3d 699, 701 (3d Cir. 1994); *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 367-68 (D.C.Cir. 1990); *United States v. Smith*, 851 F.2d 706, 708 (4th Cir. 1988); *United States v. A.W.J.*, 804 F.2d 492, 492-93 (8th Cir. 1986).

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

⁸⁹ *United States v. Juvenile (W.J.B.)*, 228 F.3d 987, 990 (9th Cir. 2000); *United States v. Welch*, 15 F.3d 1202, 1208-209 n.9 (1st Cir. 1993); *United States v. Hill*, 538 F.2d 1072, 1076 (4th Cir. 1976); *United States v. Indian Boy X*, 565 F.2d 585, 595 (9th Cir. 1977).

⁹⁰ *McKeiver v. Pennsylvania*, 403 U.S. 528 (1975); *United States v. Male Juvenile (Pierre Y.)*, 280 F.3d at 1021; *United States v. Welch*, 15 F.3d at 1208-209 n.9; *United States v. Juvenile Male C.L.O.*, 77 F.3d 1075, 1077 (8th Cir. 1996). Nor is a jury required in the juvenile transfer hearing, *United States v. Miguel*, 338 F.3d 995, 1004 (9th Cir. 2003).

⁹¹ *Schall v. Martin*, 467 U.S. 253, 263 (1984), citing *In re Gault*, 387 U.S. 1, 31-57 (1967); *In re Winship*, 397 U.S. 358 (1970); and *Breed v. Jones*, 421 U.S. 519 (1971); see also, *United States v. Doe*, 226 F.3d 672, 680 (6th Cir. 2000)(proof beyond a reasonable doubt).

⁹² *United States v. Doe*, 801 F.Supp. 1562, 1567 (E.D.Tex. 1992).

Dispositional Hearings

Upon a finding of delinquency, the court schedules either a sentencing hearing or a hearing in anticipation of a commitment for examination prior to sentencing.⁹³ 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.⁹⁴

Detention is limited to not more than 5 years in cases involving serious felonies and juveniles 18 years of age or older; the maximum for 18 to 21 year olds involved in less serious offenses is the lesser of 3 years or the sentence an adult would receive for the same conduct.⁹⁵ For sentencing purposes, the age in question is the age of the juvenile at the time of sentencing;⁹⁶ or in the case of a term imposed following probation revocation, the age of the juvenile at the time of revocation hearing.⁹⁷ Juveniles under 18 face a maximum term of detention equal to the lesser of the time before they reach 21 or the sentence an adult would receive for the same conduct.⁹⁸ Thus, while strictly speaking the United States Sentencing Guidelines do not govern juvenile disposition,⁹⁹ they may influence the result since disposition is colored by adult sentencing considerations. The maximum sentence an adult would receive may be determined using the sentencing guidelines and the statutory maximum rather than merely by reference to the statutory maximum,¹⁰⁰ but this also permits consideration of any ground for upward departure.¹⁰¹

Where federal law calls for the application of state law, sentencing under comparable state law may provide guidance.¹⁰² All juveniles are subject to the same good time rules that govern adult cases.¹⁰³ A juvenile sentenced to detention may also be sentenced to a term of juvenile delinquent supervision to be served following the juveniles release from detention.¹⁰⁴ A juvenile's sentence of post-release supervision may be modified or revoked under much the same terms as an adult sentence of supervised release.¹⁰⁵ However, the term may not extend beyond the individual's 26th birthday if delinquency was based on misconduct punishable in an adult by a maximum term of imprisonment of 10 years or more (nor beyond his or her 24th birthday in the case of lesser

⁹³ 18 U.S.C. 5037.

⁹⁴ *Id.*

⁹⁵ 18 U.S.C. 5037(c)(2).

⁹⁶ *United States v. Leon*, 365 F.3d 750, 752-53 (9th Cir. 2004).

⁹⁷ *United States v. Silva*, 443 F.3d 795, 798 (11th Cir. 2006); *United States v. K.R.A.*, 337 F.3d 970, 077 (8th Cir. 2007); *United States v. Female Juvenile*, 103 F.3d 14, 17 (5th Cir. 1996).

⁹⁸ 18 U.S.C. 5037(c)(1).

⁹⁹ U.S.S.G. §1B1.12.

¹⁰⁰ *United States v. R.L.C.*, 503 U.S. 291 (1992).

¹⁰¹ *United States v. Juvenile PWM*, 121 F.3d 382, 384 (8th Cir. 1997), citing, *R.L.C.* 503 U.S. at 307; *United States v. A.J.*, 190 F.3d 873, 874-76 (8th Cir. 1999).

¹⁰² E.g., *United States v. Male Juvenile (Pierre Y.)*, 280 F.3d at 1025.

¹⁰³ 18 U.S.C. 5037(c)(2), 3624.

¹⁰⁴ 18 U.S.C. 5037(d).

¹⁰⁵ *Id.*

misconduct).¹⁰⁶ The provisions relating to post-release supervision were added in 2002 and do not apply retroactively to cases involving earlier misconduct.¹⁰⁷

Once the court has opted for restitution, the rules governing adult restitution likewise apply.¹⁰⁸ The permissible terms of juvenile probation track those established for juvenile detention, but otherwise juvenile probation follows the path of its adult statutory counterpart:

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

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

The provisions dealing with probation [for adults] set forth in sections 3564, 3564, and 3565 [relating to the conditions, running and revocation of probation respectively] are applicable to an order placing a juvenile on probation.¹⁰⁹

Juvenile Records and Conditions of Custody

One of the hallmarks of the Federal Juvenile Delinquency Act is its effort to shield juveniles from some of the harsh consequences of exposure to the criminal justice system. Before and after arrest, before and after conviction, it refuses to allow juveniles to be interspersed with adults who are awaiting trial for or have been convicted of criminal offenses.¹¹⁰ In the same spirit, ordinarily federal juvenile records are sealed for all purposes other than judicial inquiries, law enforcement needs, juvenile treatment requirements, employment in a position raising national security concerns, and disposition questions from victims.¹¹¹ This does not render otherwise admissible evidence of juvenile proceedings inadmissible in criminal proceedings.¹¹² Moreover, in response to media requests the court will balance the competing interests which weigh heavily in fact of confidentiality.¹¹³

¹⁰⁶ *Id.*

¹⁰⁷ *United States v. JWT*, 368 F.3d 994, 996-97 (8th Cir. 2004).

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

¹⁰⁹ 18 U.S.C. 5037(b).

¹¹⁰ 18 U.S.C. 5035.

¹¹¹ 18 U.S.C. 5038.

¹¹² *United States v. Jefferson*, 215 F.3d 820, 824-25 (8th Cir. 2000).

¹¹³ *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).

Juveniles Tried as Adults

Juveniles transferred for trial as adults in federal court are essentially treated as adults, with few distinctions afforded or required because of their age. Even the sentence guidelines instruct sentencing judges that an offender's youth is not ordinarily a permissible ground for reduction of the otherwise applicable sentencing guideline range.¹¹⁴ The most obvious exception to this general rule is that the death penalty may not be imposed as punishment for a crime committed by a juvenile.¹¹⁵

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¹¹⁴ "Age (including youth) is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range. Age may be a reason to impose a sentence below the applicable guideline range when the offender is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration. Physical condition, which may be related to age, is addressed in §5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse)," 18 U.S.S.G. §5H1.1(emphasis added); *United States v. Caldwell*, 219 F.3d 1186, 1192-193 (10th Cir. 2000); *United States v. Wong*, 40 F.3d at 1382 (2d Cir. 1994); *United States v. Talk*, 13 F.3d 369, 371 (10th Cir. 1993).

¹¹⁵ "A defendant who has been found guilty of [a capital offense] shall be sentenced to death if . . . it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense," 18 U.S.C. 3591(a)(emphasis added).

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Appendix. A.

JURISDICTIONAL AGE FOR STATE JUVENILE COURTS

AS WELL AS AGE AND CRIMES THAT TRIGGER

TRANSFERS OR WAIVERS OF JUVENILE COURT

JURISDICTION

Alabama: (Under 18) Ala. Code §§12-15-102, 12-15-114, 12-15-204

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

Waiver or transfer of juvenile court jurisdiction: 14 or older, any crime, Ala. Code §12-15-203

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

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

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

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

Juveniles 15 years of age or older must be tried as adults for 1st or 2d degree murder, forcible sexual assault, armed robbery, a violent felony, being a chronic felony offender (a juvenile previously convicted of a felony dangerous to children or involving infliction of serious physical injury or the use of dangerous weapon); juveniles 14 years of age or older may be tried as adults for any class 1 or 2 felony; any class 3 felony involving a violation of homicide, assault, kidnaping, sexual offense, burglary, property damage or arson laws; or any class 3, 4, 5 or 6 felony involving an intent to seriously injure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Florida: (Under 18) Fla.Stat.Ann. §§985.03, 985.0301, 985.56

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

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

discretionary: 14 or older, any crime, Fla.Stat.Ann. 985.556

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kansas: (Under 18) Kan.Stat.Ann. §§38-2302, 38-2304

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

Waiver or transfer of juvenile court jurisdiction: any age, any felony after having been previously convicted or adjudicated delinquent for felonious misconduct; 14 or older, any offgrid offense (1st degree murder), “person felony” with a severity level of 1 through 6 (i.e., a serious felony against a person such as aggravated arson, aggravated burglary, rape, manslaughter, kidnaping), drug trafficking, offense committed while armed with a firearm, (Class A and B felonies); 16 or older (other crimes), Kan.Stat.Ann. §38-2347

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Juvenile and criminal courts have concurrent felony jurisdiction over juveniles

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Waiver or transfer of juvenile court jurisdiction: **mandatory:** 16 or older, murder or attempted murder (category 1 offense); 16 or older, (if committed while armed or previously found delinquent for a category 2 offense): voluntary manslaughter, rape, arson, armed robbery, or burglary (category 2 offenses); 14 or older, murder or attempted murder (if previous found

delinquent for a category 1 or 2 offense); **discretionary**: 14 or older, any other felony, Ohio Rev.Code 2152.10

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

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

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

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

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

Waiver or transfer of juvenile court jurisdiction: 15 or older, any crime; under 15, murder, any Class A or B felony, escape, assault, coercion, arson, robbery or unlawful use of a firearm, Ore.Rev.Stat. §§419C.349, 419C.352

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

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

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

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

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

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

South Carolina: (Under 17) S.C.Code §§63-3-510, 63-19-20

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

Waiver or transfer of juvenile court jurisdiction: **mandatory**: 14 or older alleged to have committed a felony with a maximum term of imprisonment of 10 years or more who has twice previously been convicted or found delinquent on the basis of such offenses; **discretionary**: 14 or older (Class A, B, C, or D felony or a felony punishable by imprisonment for a maximum of 15 years or more, or aggravated assault, unlawful handgun possession, drug trafficking near a school, or firearm possession on school property); 16 or older (Class E or F felony or a felony punishable by imprisonment for a maximum of 10 years or less), S.C.Code §63-19-1210

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

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

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

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

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

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

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

Utah: (Under 18) Utah Code Ann. §§78A-6-105, 78A-6-103, 78A-6-701

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

Waiver or transfer of juvenile court jurisdiction: any age, any crime, Utah Code Ann. §78A-6-703

Vermont: (Under 16) Vt.Stat.Ann. tit.33 §5102

Waiver or transfer of juvenile court jurisdiction: 10 to 14 (arson causing death, assault, robbery, murder, manslaughter, kidnaping, maiming, rape, burglary); 14 to 16 (juvenile and criminal courts have concurrent jurisdiction over all crimes upon which waiver may be based for juveniles under 14), Vt.Stat.Ann. tit.33 §§5102, 5204

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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