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

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Summary

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.

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. 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.”

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.” He recommended, and Congress agreed,

¹ This is an abridged version of a longer report, CRS Report RL30822, *Juvenile Delinquents and Federal Criminal Law: The Federal Juvenile Delinquency Act and Related Matters*, without the footnotes, attributions to authority, or addendum found in the longer version.

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.

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. 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. Although supplemented in 1950 by the Federal Youth Corrections Act which afforded federal juvenile offenders tried as adults the prospect of special rehabilitative opportunities, the Act remained essentially unchanged for over thirty-five years. In 1974, Congress substantially revised the Act 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.” Crimes punishable by death or life imprisonment (primarily murder, kidnapping, and rape) were made subject to the federal juvenile treatment for the first time. At the time, the Supreme Court decision in *Furman v. Georgia* 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* and *Gregg v. Georgia* 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.

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 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. 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. 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. 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.

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. The remote second preference of federal law is treatment of the juvenile under the federal delinquency provisions. 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. In a limited, but growing, number of instances involving drugs or violence, federal law permits the trial of juveniles as adults in federal court.

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. The Act reaches neither individuals after they turn 21

nor conduct committed after they turn 18. Federal authorities, however, may prosecute as an adult any individual whose active participation in a conspiracy or racketeering enterprise bridges his or her eighteenth birthday. Once the federal courts have found a juvenile delinquent, however, a court that revokes a juvenile's delinquent supervised release may order the juvenile held until age 26.

Federal Juvenile Offenders in State Proceedings

Criminal investigation and prosecution is 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 has a state equivalent in every jurisdiction, and robbery of a federal insured bank, or murder of a federal employee or law enforcement officer will almost always be contrary to the state robbery and murder statutes in the state in which the offenses occur. Moreover, while state crimes are the most common basis for state juvenile court jurisdiction, many state juvenile courts enjoy delinquency jurisdiction based upon a violation of federal law. Thus, an individual under 18 who violates federal criminal law can move through the state juvenile delinquency system without ever coming into contact with federal authorities. Contractions in state juvenile court jurisdiction, however, make this less likely than was once the case. Many states now define juvenile court jurisdiction more narrowly than federal law either in terms of age or crime or both. 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.

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. 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, and may be excused when the juvenile frustrates reasonable but unsuccessful notification efforts. Much of the case law relating to the federal advice and notification provisions comes from the U.S. Court of Appeals for the Ninth Circuit which has held that: (1) the word "immediate" means the same for both advice and notifications purposes; (2) advice given 4 hours after arrest and notification given 3½ hours after arrest has not been given "immediately"; (3) notice given within close to an hour after arrests had been given immediately; (4) parental notification must include advice as to the juvenile's rights; (5) parental notification may be accomplished through the good offices of the surrogate or appropriate foreign consulate when the juvenile's parents reside outside of the United States; (6) convictions or delinquency determinations must be overturned if they are tainted by violations of section 5033 so egregious as to violate due process; and (7) less egregious but prejudicial violations of section 5033 may require that any resulting incriminating statements be suppressed.

The juvenile must also be brought before a magistrate for arraignment "forthwith." At night, on weekends, or at other times when a magistrate is not immediately available, arraignment may be within a time reasonable under the circumstances. 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. Once before the magistrate, the juvenile is entitled to the assistance of counsel and to have counsel appointed in the case of indigence. The magistrate may also appoint a guardian ad litem, and, after a hearing before counsel, order the juvenile detained to guarantee subsequent court appearances or for the safety of

the juvenile or anyone else. A juvenile under federal detention is entitled to a delinquency hearing within 30 days or to have the information charging his or her delinquency dismissed with prejudice unless he or she has contributed or consented to the delay or unless dismissal with prejudice would be contrary to the interests of justice. This speedy trial requirement runs from the time the juvenile was taken into federal custody pending judicial proceedings, but does not attach to any period of state detention; to any period during which the juvenile was being held for purposes other than the pendency of delinquency proceedings; to any time when the juvenile is not being detained; to delays attributable to the juvenile's deception; to the period between admission or guilty plea and sentencing; or to the period for which a continuance has been granted at the juvenile's behest. Time spent on the government's appeal is excludable in the interest of justice, as is time spent litigating the government's transfer motions, but not when the juvenile was being unlawfully detained at the time of government's motion.

Initial Stages of Federal Adjudication

Federal law permits federal proceedings against a federal juvenile offender when there is no realistic state alternative or when the juvenile is accused of a serious federal crime. The government must certify that it has elected a federal forum. The certificate must assert that either: (1) the state courts are unwilling or unable to proceed against the juvenile for the misconduct in question; or (2) the juvenile programs of the state are unavailable or inadequate; or (3) the offense is a drug dealing or drug smuggling violation, possession of an undetectable firearm, or felony and crime of violence and that a substantial federal interest exists warranting the exercise of federal jurisdiction. "Because certification requirements are disjunctive, a single basis for certification establishes jurisdiction." Although the statute calls for certification by the Attorney General, the authority has been redelegated to the various United States Attorneys. A facially adequate certification is generally thought to be beyond judicial review in the absence of evidence of bad faith. Certification is jurisdictional, however, so that certification by an Assistant United States Attorney without evidence of the United States Attorney's approval is insufficient. The government need not certify the want of, or unwillingness to exercise, tribal as well as state jurisdiction. "The Attorney General's certification of a 'substantial federal interest' is an act of prosecutorial discretion that is shielded from judicial review."

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*"); 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"); 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." On April 17, 2018, however, the Supreme Court in *Sessions v. Dimaya* declared unconstitutionally vague the language of 18 U.S.C. § 16(b) (in italics above), incorporated by cross-reference into the Immigration and Nationality Act. 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. Otherwise, the government begins the proceedings by filing an information and a statement of the juvenile's past record with the district court. Most courts appear to believe that they have no jurisdiction to proceed against a juvenile until they receive evidence of the juvenile's prior record. The government may proceed against a juvenile as an adult only if the child insists, or pursuant to a juvenile court transfer.

Transfers

There are two types of transfers, mandatory and discretionary. A transfer is mandatory in the case of a violent felony, drug trafficking, drug smuggling, or arson, allegedly committed by a juvenile 16 years of age or older who has previously been found to have committed comparable misconduct. As the language suggests, the prior felony "conviction" may be either a conviction as an adult or a finding of delinquency based on conduct that would be felonious if committed by an adult. Charges that would support a mandatory transfer if brought against a 16 year old recidivist, may be used to trigger a discretionary transfer if the juvenile is 15 or older regardless of his or her prior record; discretionary transfers are also possible for juveniles 13 or older in some cases of assault, homicide or robbery. 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] 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.*" The Supreme Court's determination in *Dimaya*, that the language of section 16(b) is unconstitutionally vague, 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. At least one federal appellate court has rejected contentions that mandatory transfers constitute an unconstitutional denial of either due process or equal protection 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. When the transfer is discretionary, juvenile adjudication is presumed appropriate, unless the government can establish its case for a transfer by a preponderance of the evidence. Section 5032 lays out the factors for the court's consideration when it is asked to exercise its discretion to transfer a juvenile in the interest of justice for trial as an adult. "In making its determination, the court must consider six factors: (1) the age and social background of the juvenile; (2) the nature of the alleged offense; (3) the extent and nature of the juvenile's prior delinquency record; (4) the juvenile's present intellectual development and psychological maturity; (5) the nature of past treatment efforts and the juvenile's response to them; and (6) the availability of programs designed to treat the juvenile's behavioral problems." The purpose of the exercise is to determine whether the prospects for the juvenile's rehabilitation are outweighed by the risk of harm that he poses if not tried as an adult.

A court need not give the factors equal weight as long as the court documents its consideration of each. The age factor compels the court to consider a juvenile's age both at the time of the misconduct and at the time of the transfer hearing. "The older a juvenile delinquent is both at the

time of the alleged offense and at the time of transfer hearing, the more the juvenile defendant's age weighs in favor of transfer." In considering the child's social background, the courts cite the child's family life, both positive and negative, and other social interactions.

The second factor calls for an assessment of both the seriousness of the misconduct alleged and the juvenile's role in the transgression. The allegations are taken as true for purposes of the assessment, and allegations of serious offenses argue strongly for transfer. The third factor requires the court to take into account "the extent and nature of the juvenile's prior delinquency record." This may include the juvenile's arrest record in some instances. A clean record, however, is no bar to a transfer. The fourth factor, the juvenile's "intellectual development and psychological maturity," is essentially a matter of whether the juvenile has the mind of a child at the time of the transfer petition, indicating a receptivity to rehabilitation. The factor may argue strongly for the transfer of a juvenile wise beyond his years. Moreover, with age, the weight the courts give to average intellectual development and maturity begins to slip away. In the case of older juveniles, the courts may find evidence of reduced, or even greatly reduced, development and maturity insufficient to overcome the counter weight of a serious offense. The fourth factor attempts to predict whether the juvenile will be receptive to rehabilitative efforts. The fifth factor evaluates whether the juvenile has been receptive to past rehabilitative efforts. Obviously, the factor carries no weight if there have been no past efforts. The final factor is the availability of treatment programs for the individual either as a juvenile or an adult. The juvenile's age or offense may make him ineligible for state programs in some instances.

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. A juvenile's statements "prior to or during a transfer hearing" may not be admitted in subsequent criminal proceedings. 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. The court's determination of whether transfer is appropriate is immediately appealable under an abuse of discretion standard. The Supreme Court's decision in *Miller v. Alabama*, barring imposition of a sentence of life imprisonment without parole for an offense committed while a juvenile, precludes a transfer relating to an offense punishable only by death or life imprisonment. It does not preclude a transfer with respect to an offense punishable alternatively by imprisonment for a term of years.

Delinquency Hearings

In the absence or failure of a government transfer motion and unless the juvenile insists on an adult trial, the district court, at its discretion, conducts a delinquency hearing "at any time and place within the district, in chambers or otherwise." Neither the right to grand jury indictment or to a jury trial are constitutionally required. 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, and application of the Fourth Amendment exclusionary rule.

Disposition

Upon a finding of delinquency, the court schedules either a sentencing hearing or a hearing in anticipation of a commitment for examination prior to sentencing. At sentencing, the court may dispose of a juvenile delinquency case by suspending sentence, by ordering restitution or

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

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

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

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

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

When a court orders juvenile detention, it may also impose a term of juvenile delinquent supervision to be served after the individual's release from detention. Juvenile delinquent supervision has its own time limits and its own set of conditions. The conditions are the same as those available when the court sentences a juvenile to probation. The initial term of juvenile delinquent supervision may not exceed the juvenile's 21st birthday if the individual is under the age of 18 when the detention order is issued. If the individual is between 18 and 21, the initial time limits are those that apply to detention, less the time served in detention. Thus, when the

misconduct that resulted in the delinquency determination would be punishable by a maximum term of imprisonment of 12 years or more, the court may order a term of supervision no longer than the shorter of (i) five years; or (ii) the term at the top of the sentencing range under the sentencing guidelines that would apply had the juvenile been an adult. For less serious forms of misconduct, the limit is the shorter of (i) three years; (ii) the term at the top of the sentencing range under the sentencing guidelines that would apply had the juvenile been an adult; or (iii) the maximum term of imprisonment that would apply had the juvenile been an adult.

Violation of the conditions of supervision may lead to further terms of detention and juvenile delinquent supervision. The maximum term of detention following revocation of a term of supervision is the same as the maximum term of detention following revocation of probation, less time served in detention. That is, when the misconduct that resulted in the delinquency determination would be punishable by a maximum term of imprisonment of 12 years or more, the court may order a term of supervision no longer than the shorter of (i) five years; (ii) the term at the top of the sentencing range under the sentencing guidelines that would apply had the juvenile been an adult; or (iii) the time before which the individual turns 26 years of age. For less serious forms of misconduct, the limit is the shorter of (i) three years; (ii) the term at the top of the sentencing range under the sentencing guidelines that would apply had the juvenile been an adult; (iii) the maximum term of imprisonment that would apply had the juvenile been an adult; or (iv) the time before which the individual turns 24.

Section 5037(d)(6) is somewhat cryptic about the term limits on the juvenile delinquent supervision imposed after revocation. It makes no mention of the limits in place when the individual is less than 18 years of age or between 18 and 21 years of age. As for individuals over 21 years of age, it declares that the term of juvenile delinquent supervision “shall be in accordance with the provisions of section 5037(d)(1)” with the exception of the usual bars on supervision over individuals once they reach either 24 or 26 years of age depending on the seriousness of their original misconduct. The difficulty stems in part from the fact that section 5037(d)(1) says nothing about time limits. It merely states that “[t]he court, in ordering a term of official detention, may include the requirement that the juvenile be placed on a term of juvenile delinquent supervision after official detention.” One appellate court has held that “the maximum term of supervision that a court may impose under § 5037(d)(6) is determined by the requirements of in § 5037(d)(2), using the juvenile’s age at the time of the revocation hearing.”

Juvenile Records and Conditions of Custody

One of the hallmarks of the 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. In the same spirit, ordinarily federal juvenile records are sealed for all purposes other than judicial inquiries, law enforcement needs, juvenile treatment requirements, employment in a position raising national security concerns, or disposition questions from victims. This does not render otherwise admissible evidence of juvenile proceedings inadmissible in criminal proceedings. Moreover, in response to media requests the court will balance the competing interests which weigh heavily in favor of confidentiality.

Juveniles Tried as Adults

Juveniles transferred for trial as adults in federal court are essentially treated as adults, with few distinctions afforded or required because of their age. At one time, even the Sentencing Guidelines instructed sentencing judges that an offender's youth was not ordinarily a permissible ground for reduction of the otherwise applicable Sentencing Guideline range. The Sentencing Commission has since amended the guideline to permit consideration of the defendant's age in atypical cases. In addition, the death penalty may not be imposed as punishment for a crime committed by a juvenile. Nor may an individual be sentenced to life imprisonment without the possibility of parole for a crime committed as a juvenile.

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