

sions of section 5037(d)(1), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of juvenile delinquent supervision may continue beyond the juvenile's 26th birthday, and in any other case, no term of juvenile delinquent supervision may continue beyond the juvenile's 24th birthday.

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

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 93-415, title V, §507, Sept. 7, 1974, 88 Stat. 1136; Pub. L. 98-473, title II, §214(a), Oct. 12, 1984, 98 Stat. 2013; Pub. L. 99-646, §21(a), Nov. 10, 1986, 100 Stat. 3596; Pub. L. 104-294, title VI, §604(b)(40), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 107-273, div. C, title II, §12301, Nov. 2, 2002, 116 Stat. 1896.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §927 (June 16, 1938, ch. 486, §7, 52 Stat. 766).

Reference to section establishing the Board of Parole was omitted as unnecessary.

Minor changes were made in phraseology.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, §12301(1), in second sentence, struck out "enter an order of restitution pursuant to section 3556," after "findings of juvenile delinquency," and inserted "which may include a term of juvenile delinquent supervision to follow detention" after "official detention", and inserted after second sentence "In addition, the court may enter an order of restitution pursuant to section 3556."

Subsec. (b). Pub. L. 107-273, §12301(2), added concluding provisions and struck out former concluding provisions which read as follows: "The provisions dealing with probation set forth in sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation."

Subsec. (c)(1)(B), (C). Pub. L. 107-273, §12301(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(A). Pub. L. 107-273, §12301(4), substituted "the lesser of—

"(i) five years; or

"(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or"

for "five years; or".

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 107-273, §12301(5), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (d), (e). Pub. L. 107-273, §12301(6), (7), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (b)(1)(B), (2)(B). Pub. L. 104-294 substituted "section 3561(c)" for "section 3561(b)".

1986—Subsec. (a). Pub. L. 99-646, §21(a)(1), substituted "subsection (d)" for "subsection (e)".

Subsec. (c). Pub. L. 99-646, §21(a)(2)-(4), struck out "by section 3581(b)" after "would be authorized" in pars. (1)(B) and (2)(B)(ii), and inserted provision that section 3624 is applicable to an order placing a juvenile under detention.

1984—Pub. L. 98-473 substituted subsecs. (a) to (c) for former subsecs. (a) and (b) and redesignated former subsec. (c) as (d). Prior to amendment, subsecs. (a) and (b) read as follows:

"(a) If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than twenty court days after trial unless the court has ordered further study in accordance with subsection (c). Copies of the presentence report shall be provided to the attorneys for both the juvenile and the Government a reasonable time in advance of the hearing.

"(b) The court may suspend the adjudication of delinquency or the disposition of the delinquent on such conditions as it deems proper, place him on probation, or commit him to the custody of the Attorney General. Probation, commitment, or commitment in accordance with subsection (c) shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner, unless the juvenile has attained his nineteenth birthday at the time of disposition, in which case probation, commitment, or commitment in accordance with subsection (c) shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense."

1974—Pub. L. 93-415 amended section generally, substituting "Dispositional hearing" for "Parole" in section catchline and striking out provisions relating to parole.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, §21(b), Nov. 10, 1986, 100 Stat. 3597, provided that: "The amendments made by this section [amending this section] shall take effect on the date the amendments made by such section 214 [of Pub. L. 98-473] take effect [Nov. 1, 1987]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

§ 5038. Use of juvenile records

(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

- (1) inquiries received from another court of law;
- (2) inquiries from an agency preparing a presentence report for another court;
- (3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and non-technical language, of rights relating to his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the Government, or others entitled under this section to receive juvenile records.

(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, or whenever a juvenile has been found guilty of committing an act after his 13th birthday which if committed by an adult would be an offense described in the second sentence of the fourth paragraph of section 5032 of this title, the court shall transmit to the Federal Bureau of Investigation the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.

(Added Pub. L. 93-415, title V, §508, Sept. 7, 1974, 88 Stat. 1137; amended Pub. L. 95-115, §8(b), Oct. 3, 1977, 91 Stat. 1060; Pub. L. 98-473, title II, §1202, Oct. 12, 1984, 98 Stat. 2150; Pub. L. 103-322, title XIV, §140005, Sept. 13, 1994, 108 Stat. 2032; Pub. L. 104-294, title VI, §601(f)(16), (o), Oct. 11, 1996, 110 Stat. 3500, 3502.)

REFERENCES IN TEXT

Section 401 of the Controlled Substances Act, referred to in subsecs. (d) and (f), is classified to section 841 of Title 21, Food and Drugs.

Sections 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, referred to in subsecs. (d) and (f), are classified to sections 951(a), 955, and 959, respectively, of Title 21.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-294, §601(f)(16), substituted “section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act” for “section 841, 952(a), 955, or 959 of title 21”.

Subsec. (f). Pub. L. 104-294 substituted “section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act” for “section 841, 952(a), 955, or 959 of title 21”, “juvenile has been found guilty” for “juvenile has been found guilty”, and “the Federal Bureau of Investigation” for “the Federal Bureau of Investigation, Identification Division.”.

1994—Subsec. (f). Pub. L. 103-322 inserted “or whenever a juvenile has been found guilty of committing an act after his 13th birthday which if committed by an adult would be an offense described in the second sentence of the fourth paragraph of section 5032 of this title,” after “title 21.”.

1984—Pub. L. 98-473 amended section generally, striking out in subsec. (a) provisions that, upon completion of any delinquency proceedings the court shall order the entire record and file to be sealed, substituting a new subsec. (d) for a former subsec. (d) which provided that unless a juvenile is prosecuted as an adult neither fingerprints nor photographs shall be taken without the consent of the judge and the juveniles name and picture shall not be made available to any public medium of communication and adding subsecs. (e) and (f).

1977—Subsec. (a)(6). Pub. L. 95-115 added par. (6).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

§ 5039. Commitment

No juvenile committed, whether pursuant to an adjudication of delinquency or conviction for an offense, to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

(Added Pub. L. 93-415, title V, §509, Sept. 7, 1974, 88 Stat. 1138; amended Pub. L. 103-322, title XIV, §140003, Sept. 13, 1994, 108 Stat. 2032.)