

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §922 (June 16, 1938, ch. 486, §2, 52 Stat. 765).

The final sentence of said section 922 of title 18, U.S.C., 1940 ed., was incorporated in section 5033 of this title.

Changes were made in arrangement and phraseology.

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-294, in first par., inserted “section 922(x)” before “or section 924(b)” and struck out “or (x)” after “or (h)”, and in third par., inserted “or as authorized under section 3401(g) of this title” after “shall proceed by information”.

1994—Pub. L. 103-322, §150002(1), substituted “924(b), (g), or (h)” for “922(p)” in first par.

Pub. L. 103-322, §110201(c)(2)(A), inserted “or (x)” after “922(p)” in first par.

Pub. L. 103-322, §140001, in fourth par., substituted “. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), ‘thirteen’ shall be substituted for ‘fifteen’ and ‘thirteenth’ shall be substituted for ‘fifteenth’. Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However” for “; however”.

Pub. L. 103-322, §110201(c)(2)(B), 150002(2), inserted “or section 922(x) of this title, or in section 924(b), (g), or (h) of this title,” before “criminal prosecution on the basis” in fourth par.

Pub. L. 103-322, §150002(3), inserted at end of fifth par. “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.”

Pub. L. 103-322, §140002, substituted “A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until” for “Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until” in tenth par.

1990—Pub. L. 101-647 inserted definition of “State” at end of second par., struck out “or the District of Columbia” after “to the authorities of a State” in third par., and substituted “offenses set forth in this paragraph” for “offenses set forth in this subsection” in fourth par.

1988—Pub. L. 100-690, §6467(a)(1), substituted “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)), or section 922(p) of this title,” for “section 841, 952(a), 955, or 959 of title 21,” in first par.

Pub. L. 100-690, §6467(a)(2), substituted “section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959),” for “section 841, 952(a), 955, or 959 of title 21,” and inserted “subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959,

960(b)(1), (2), (3)),” after “2275 of this title,” in fourth par.

1984—Pub. L. 98-473, §1201(a), amended first par. generally, inserting “, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months,” before “shall not be proceeded”, inserting “(1)” before “the juvenile court”, striking out “(1)” before “does not have”, inserting “the State” after “(2)”, and inserting “, or (3) the offense charged is a crime of violence that is a felony, or an offense described in section 841, 952(a), 955, or 959 of title 21, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.”

Pub. L. 98-473, §1201(b)(1), which directed the amendment of fourth par. by substituting “that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21” for “punishable by a maximum penalty of ten years imprisonment or more, life imprisonment or death” was executed by substituting the quoted wording for “punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death” as the probable intent of Congress.

Pub. L. 98-473, §1201(b)(2), substituted “fifteen” for “sixteen” and “fifteenth” for “sixteenth” in fourth par.

Pub. L. 98-473, §1201(b)(3), inserted provision at end of fourth par., relating to transfer of a juvenile who is alleged to have committed certain acts after his sixteenth birthday to the appropriate district court of the United States for criminal prosecution.

Pub. L. 98-473, §1201(c), added three pars. at end of section relating to juveniles not convicted of crimes in district court, reception of prior juveniles court records by the court, and description of the specific act of delinquency for the record.

1974—Pub. L. 93-415 amended section generally, substituting “Delinquency proceedings in district courts; transfer for criminal prosecution”, for “Proceedings against juvenile delinquent” in section catchline, inserting provisions relating to certification to, and procedures in, district courts, transfer upon motion by Attorney General with respect to a juvenile sixteen years and older, factors considered in transfer, notice of transfer, barring of subsequent criminal or juvenile delinquency proceedings upon entering plea of guilty or upon taking of evidence, and admissibility of statements by a juvenile in subsequent criminal prosecution, and substituting provision relating to consent upon advice of counsel for treatment as an adult, for provision requiring consent for treatment as a juvenile.

Statutory Notes and Related Subsidiaries

REPEALS

Pub. L. 93-415, title V, §502, Sept. 7, 1974, 88 Stat. 1134, cited as a credit to this section, was repealed by Pub. L. 115-385, title III, §307, Dec. 21, 2018, 132 Stat. 5152.

§ 5033. Custody prior to appearance before magistrate judge

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile’s parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before a magistrate judge forthwith. In no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate judge.

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 93-415, title V, § 503, Sept. 7, 1974, 88 Stat. 1135; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 922, 923 (June 16, 1938, ch. 486, §§ 2, 3, 52 Stat. 765).

This section consolidates said section 923, and the final sentence of said section 922, of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect the consolidation.

This revised section and section 5032 of this title were rewritten to make clear the legislative intent that a juvenile delinquency proceeding shall result in the adjudication of a status rather than the conviction of a crime.

The other provisions of said section 922 are incorporated in section 5032 of this title.

Editorial Notes

AMENDMENTS

1974—Pub. L. 93-415 amended section generally, substituting “Custody prior to appearance before magistrate”, for “Jurisdiction; written consent; jury trial precluded” in section catchline, and substituting provisions relating to advice of rights by arresting officer, notification of Attorney General, parents, guardian or custodian, and appearance before magistrate, for provisions relating to jurisdiction of district courts, jury, consent by juvenile, and appraisal of rights by Judge of District Court.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in catchline and wherever appearing in text pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

REPEALS

Pub. L. 93-415, title V, § 503, Sept. 7, 1974, 88 Stat. 1135, cited as a credit to this section, was repealed by Pub. L. 115-385, title III, § 307, Dec. 21, 2018, 132 Stat. 5152.

§ 5034. Duties of magistrate judge

The magistrate judge shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate judge may assign counsel and order the payment of reasonable attorney’s fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate judge may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate judge has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate judge, the magistrate judge shall release the juvenile to his parents, guardian, custodian, or

other responsible party (including, but not limited to, the director of a shelter-care facility) upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate judge determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 87-428, Mar. 31, 1962, 76 Stat. 52; Pub. L. 93-415, title V, § 504, Sept. 7, 1974, 88 Stat. 1135; Pub. L. 100-690, title VII, § 7045, Nov. 18, 1988, 102 Stat. 4400; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 924 (June 16, 1938, ch. 486, § 4, 52 Stat. 765).

The words “foster homes” were inserted to remove any doubt as to the authority to commit to such foster homes in accordance with past and present administrative practice.

The reference to particular sections dealing with probation was omitted as unnecessary.

Changes were made in phraseology and arrangement.

Editorial Notes

AMENDMENTS

1988—Pub. L. 100-690 substituted “facility) upon” for “facility upon” in last par.

1974—Pub. L. 93-415 amended section generally, substituting “Duties of magistrate”, for “Probation; commitment to custody of Attorney General; support” in section catchline, and substituting provisions relating to procedure before, and duties of, magistrate, for provisions relating to probation, commitment to custody of Attorney General, duties of Attorney General, and procedures aiding court in determining whether to place juvenile on probation or commit him to custody of Attorney General.

1962—Pub. L. 87-428 added fourth par. authorizing commitment of a juvenile delinquent to the custody of the Attorney General for observation and study.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in catchline and wherever appearing in text pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

REPEALS

Pub. L. 93-415, title V, § 504, Sept. 7, 1974, 88 Stat. 1135, cited as a credit to this section, was repealed by Pub. L. 115-385, title III, § 307, Dec. 21, 2018, 132 Stat. 5152.

§ 5035. Detention prior to disposition

A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or community based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be