

(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 L. 93-415, title V, § 503, Sept. 7, 1974, 88 Stat. 1135, cited as a credit to this section, was repealed by Pub.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.

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##### 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