

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.

§ 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.

CODIFICATION

Another section 503 of title V of Pub. L. 93-415, as added by Pub. L. 107-273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894, is classified to section 5782 of Title 42, The Public Health and Welfare.

Another section 503 of title V of Pub. L. 93-415, as added by Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was classified to section 5782 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107-273.

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.

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.

§ 5034. Duties of magistrate judge

The magistrate judge shall insure that the juvenile is represented by counsel before proceed-

ing 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.

CODIFICATION

Another section 504 of title V of Pub. L. 93-415, as added by Pub. L. 107-273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1895, is classified to section 5783 of Title 42, The Public Health and Welfare.

Another section 504 of title V of Pub. L. 93-415, as added by Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was classified to section 5783 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107-273.

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.

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.

§ 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 kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 93-415, title V, § 505, Sept. 7, 1974, 88 Stat. 1135.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 925 (June 16, 1938, ch. 486, § 5, 52, Stat. 765).

Minor changes were made in arrangement and phraseology.

CODIFICATION

Another section 505 of Pub. L. 93-415, as added by Pub. L. 107-273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1896, is classified to section 5784 of Title 42, The Public Health and Welfare.

Another section 505 of title V of Pub. L. 93-415, as added by Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5028, was classified to section 5784 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107-273.

AMENDMENTS

1974—Pub. L. 93-415 amended section generally, substituting “Detention prior to disposition”, for “Arrest, detention and bail” in section catchline, striking out provisions relating to discretionary power of arresting officer or marshal to confine juvenile in jail, provisions relating to bail and default of bail, and inserting provisions relating to mandatory separation of juvenile from adjudicated delinquents, and provisions relating to the physical conditions of confining facility.

§ 5036. Speedy trial

If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in

the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstated.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 93-415, title V, § 506, Sept. 7, 1974, 88 Stat. 1136.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 926 (June 16, 1938, ch. 486, § 6, 52 Stat. 766).

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.

CODIFICATION

Another section 506 of title V of Pub. L. 93-415, as added by Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5029, was classified to section 5785 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107-273.

AMENDMENTS

1974—Pub. L. 93-415 amended section generally, substituting “Speedy trial” for “Contracts for support; payment” in section catchline, and substituting provisions relating to dismissal of information due to delay, for provisions relating to contracts with public or private agencies for custody and care of juvenile delinquents.

§ 5037. Dispositional hearing

(a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, place him on probation, or commit him to official detention which may include a term of juvenile delinquent supervision to follow detention. In addition, the court may enter an order of restitution pursuant to section 3556. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

(b) 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(c) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old, beyond the lesser of—

(A) three years; or

(B) the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult.

The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an