

birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult or a violation by such a person of section 922(x).

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 93-415, title V, § 501, Sept. 7, 1974, 88 Stat. 1133; Pub. L. 103-322, title XI, § 110201(c)(1), Sept. 13, 1994, 108 Stat. 2012.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 921 (June 16, 1938, ch. 486, § 1, 52 Stat. 764).

The phrase "who has not attained his eighteenth birthday" was substituted for "seventeen years of age or under" as more clearly reflecting congressional intent and administrative construction. The necessity of a definite fixing of the age of the juvenile was emphasized by Hon. Arthur J. Tuttle, United States district judge, Detroit, Mich., in a letter to the Committee on Revision of the Laws dated June 24, 1944. Words "an offense against the" was changed to "the violation of a" without change of substance.

Minor change was made in translation of section references to "this chapter".

#### CODIFICATION

Another section 501 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 set out as a note under section 5601 of Title 42, The Public Health and Welfare.

Another section 501 of title V of Pub. L. 93-415, as added by Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was set out as a note under section 5601 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107-273.

#### AMENDMENTS

1994—Pub. L. 103-322 inserted before period at end "or a violation by such a person of section 922(x)".

1974—Pub. L. 93-415 amended section generally, inserting "or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday" after "eighteenth birthday," and substituting "committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult", for "committed by a juvenile and not punishable by death or life imprisonment."

#### § 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, 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, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in 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)), section 922(x) or section 924(b), (g), or (h) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday 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 (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), or section 922(x) of this title, or in section 924(b), (g), or (h) of this title, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice. 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, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be 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 that,

by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, 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)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. 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.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

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 any prior juvenile court

records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 93-415, title V, § 502, Sept. 7, 1974, 88 Stat. 1134; Pub. L. 98-473, title II, § 1201, Oct. 12, 1984, 98 Stat. 2149; Pub. L. 100-690, title VI, § 6467(a), Nov. 18, 1988, 102 Stat. 4375; Pub. L. 101-647, title XII, § 1205(n), title XXXV, § 3599G, Nov. 29, 1990, 104 Stat. 4831, 4932; Pub. L. 103-322, title XI, § 110201(c)(2), title XIV, §§ 140001, 140002, title XV, § 150002, Sept. 13, 1994, 108 Stat. 2012, 2031, 2035; Pub. L. 104-294, title VI, § 601(c)(1), (g)(1), Oct. 11, 1996, 110 Stat. 3499, 3500.)

#### 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.

#### CODIFICATION

Another section 502 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 5781 of Title 42, The Public Health and Welfare.

Another section 502 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 5781 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107-273.

#### 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.

### § 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-