



1-1-1983

A Synopsis of the Federal Juvenile Delinquency Act.

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Recommended Citation

William S. Sessions & Faye M. Bracey, *A Synopsis of the Federal Juvenile Delinquency Act.*, 14 ST. MARY'S L.J. (1983).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol14/iss3/2>

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A SYNOPSIS OF THE FEDERAL JUVENILE DELINQUENCY ACT

WILLIAM S. SESSIONS*

FAYE M. BRACEY**

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I. INTRODUCTION

The Juvenile Justice and Delinquency Prevention Act of 1974 was passed by the United States Congress on September 7, 1974.¹ The Act amended the Federal Juvenile Delinquency Act² which had been virtually unchanged since its enactment in 1938. As stated in the Senate Report, the purpose of the amendment was

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1. See *United States v. Maestas*, 387 F. Supp. 964, 965 (D.N.M. 1974); *United States v. Azevedo*, 386 F. Supp. 622, 623 (D. Hawaii 1974); see also *Juvenile Justice and Delinquency Prevention Act of 1974*, Pub. L. No. 93-415, §§ 101-545, 88 Stat. 1109, 1109-43 (1974) (codified at 18 U.S.C. §§ 5031-5042 (1976)).

2. Pub. L. No. 75-666, §§ 1-9, 52 Stat. 764, 764-66 (1938) (codified as amended at 18 U.S.C. §§ 5031-5042 (1976)).

“to provide basic procedural rights for juveniles who come under Federal jurisdiction and to bring Federal procedures up to the standards set by various model acts, many state codes and court decisions.”³

The Act, however, does not define a separate offense but merely determines a status through an adjudication of delinquency.⁴ The Act sets up a procedural framework for the treatment of minors⁵ who are within the jurisdictional reach of a federal court due to the commission of an act which contradicts a federal criminal statute.⁶ It should be remembered that the juvenile justice system has always attempted to maintain a balance between the juvenile concept of *parens patriae*, with a view towards rehabilitation rather than punishment, and the adult criminal justice system, designed primarily for punishment.⁷ Counsel for a juvenile charged with an

3. S. REP. NO. 1011, 93d Cong., 2d Sess. 2, reprinted in 1974 U.S. CODE CONG. & AD. NEWS 5283, 5284.

4. See, e.g., *United States v. Gonzalez-Cervantes*, 668 F.2d 1073, 1076 (9th Cir. 1981) (determination of delinquency not crime, but rather a status); *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.) (conviction under Act not criminal offense, but adjudication of status), cert. denied, 449 U.S. 987 (1980); *United States v. Duboise*, 604 F.2d 648, 649-50 (10th Cir. 1979) (prosecution under Act to establish status as delinquent); see also *United States v. Hill*, 538 F.2d 1072, 1074 (4th Cir. 1976) (juvenile not found guilty of crime, but adjudged to be delinquent); *United States v. King*, 482 F.2d 454, 456 (6th Cir.) (proceeding under Act establishes status rather than criminal conviction), cert. denied, 414 U.S. 1076 (1973); *United States v. Borders*, 154 F. Supp. 214, 216 (N.D. Ala. 1957) (status of defendant, not criminal prosecution, determined under Act), aff'd, 256 F.2d 458 (5th Cir. 1958); cf. Federal Juvenile Delinquency Act, 18 U.S.C. § 5037 (1976) (defendant to be adjudged delinquent).

5. The terms “juvenile,” “minor,” “child,” and “youth” are used interchangeably throughout the text. The authors must point out, however, that such references should always be strictly construed in accordance with the Act's definition of “juvenile.”

6. See, e.g., *United States v. Allen*, 574 F.2d 435, 437 (8th Cir. 1978); *United States v. Mechem*, 509 F.2d 1193, 1195-96 (10th Cir. 1975); *United States v. E. K.*, 471 F. Supp. 924, 929 (D. Or. 1979); cf. *Cox v. United States*, 473 F.2d 334, 335 (4th Cir.) (youth accused of federal crime prosecuted as delinquent), cert. denied, 414 U.S. 869 (1973).

7. See S. DAVIS, RIGHTS OF JUVENILES—THE JUVENILE JUSTICE SYSTEM § 1.3, at 1-3 to 1-4 (1982); S. FOX, THE LAW OF JUVENILE COURTS IN A NUTSHELL 2 (1977); M. LEVIN & R. SARRI, JUVENILE DELINQUENCY: A COMPARATIVE ANALYSIS OF LEGAL CODES IN THE UNITED STATES 1 (1974); cf. *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.) (minor provided preferential care and protection not afforded adult facing criminal charge), cert. denied, 449 U.S. 987 (1980); *United States v. Duboise*, 604 F.2d 648, 650 (10th Cir. 1979) (Act intended to establish procedure whereby juvenile receives treatment, not punishment); *United States v. Hill*, 538 F.2d 1072, 1074 (4th Cir. 1976) (Act to provide rehabilitation and not penal in nature). See generally INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO PROSECUTION 1-3 (1980) (discussing evolution of juvenile court system); Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L.

offense in federal court, therefore, should not only be aware of the benefits afforded a juvenile under the Federal Juvenile Delinquency Act (FJDA), but also the constitutional rights afforded a juvenile through the due process clause of the fifth and fourteenth amendments to the United States Constitution.⁸

This article will review basic rights and benefits provided a juvenile charged with a criminal offense in federal court. The authors will also discuss in detail the procedures outlined in the FJDA. With a thorough understanding of the FJDA, its benefits and required procedures, as well as a juvenile's constitutional rights, counsel for a juvenile offender in federal court will be able to effectively advise, counsel, and represent the individual.

II. RIGHTS AND BENEFITS

Prior to the United States Supreme Court decision in *Kent v. United States*,⁹ the prevailing theory was that constitutional notions of due process were not applicable to juvenile proceedings.¹⁰

REV. 1187, 1192-93 (1970) (noting effect of *parens patriae* doctrine on development of juvenile courts); Comment, *Juvenile Justice in Texas: A Precarious Balance*, 7 AM. J. CRIM. L. 193, 193 (1979) (juvenile justice strives to accommodate goals of rehabilitation and punishment).

8. U.S. CONST. amend. V & amend. XIV, § 1. The constitutional basis used by the courts to impose due process standards on state juvenile delinquency proceedings has been the due process clause of the fourteenth amendment. See, e.g., *In re Winship*, 397 U.S. 358, 359 (1970); *In re Gault*, 387 U.S. 1, 30-31 (1967); *Gallegos v. Colorado*, 370 U.S. 49, 51, 55 (1962); see also *Haley v. Ohio*, 332 U.S. 596, 599, 601 (1948); cf. *Kent v. United States*, 383 U.S. 541, 554 (1966) (although decision grounded on state statute and not on Constitution, due process and fundamental fairness requirements recognized); *Ciulla v. State*, 434 S.W.2d 948, 950 (Tex. Civ. App.—Houston [1st Dist.] 1968, no writ) (fourteenth amendment and Bill of Rights safeguard juveniles and adults). Under the FJDA, however, it can be argued the juvenile has no fourteenth amendment due process rights since no state action is involved. As a consequence, the courts will review the constitutional protections provided juveniles in federal court without relying upon the fourteenth amendment safeguards. Cf. *United States v. Hill*, 538 F.2d 1072, 1075 (4th Cir. 1976) (same standard applicable to federal courts and state courts in determining when trial by jury required in juvenile matter); *United States v. Cuomo*, 525 F.2d 1285, 1292 (5th Cir. 1976) (sixth amendment right to jury trial places no stronger restrictions on federal government than fourteenth amendment places on states); *United States v. Torres*, 500 F.2d 944, 946-48 (2d Cir. 1974) (FJDA provision regarding no jury trial not violative of sixth amendment or due process).

9. 383 U.S. 541 (1966).

10. See, e.g., *Edwards v. United States*, 330 F.2d 849, 850 (D.C. Cir. 1964) (minor may be held five days before formal action required, no need to present before magistrate, and no requirement minor be informed of rights); *Harling v. United States*, 295 F.2d 161, 163 (D.C. Cir. 1961) (juveniles exempt from criminal punishment and criminal law protections).

The *Kent* Court recognized the tremendous power juvenile courts wield over children.¹¹ Consequently, it was held that a juvenile must have a formal hearing before being transferred to an adult criminal court and that the juvenile's attorney must have access to

inappropriate in juvenile matters); *Pee v. United States*, 274 F.2d 556, 559 (D.C. Cir. 1959) (safeguards in juvenile case not derived from provisions in Constitution affecting criminal proceedings); *see also* *Rule v. Geddes*, 23 App. D.C. 31, 50 (1904) (minor possessed "no legal right to be heard" and refusal to bring before judge or allow hearing on minor's behalf not deprivation of due process); *Commonwealth v. Fisher*, 62 A. 198, 200 (Pa. 1905) (juvenile not committed in violation of due process since due process requirement only applicable to criminal hearing). *See generally* Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 549 (1957) (juvenile procedure informal and all safeguards not provided accused minor); Rubin, *Protecting the Child in the Juvenile Court*, 43 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 425, 435 (1952) (juvenile hearing free of procedural restrictions imposed in criminal case); Comment, *Due Process in the Juvenile Courts*, 2 CATH. U.L. REV. 90, 91 (1951-1952) (constitutional rights accorded criminals not considered in sentencing juvenile delinquents). Two reasons were identified in refuting constitutional attacks on juvenile proceedings. First, it was observed that the majority of constitutional challenges were premised on provisions applicable to criminal cases. Juvenile cases, however, were deemed to be "civil," not "criminal," in nature. Constitutional guarantees meant to safeguard the criminal defendant, therefore, were considered inappropriate. *See, e.g., United States ex rel. Yonick v. Briggs*, 266 F. 434, 437 (W.D. Pa. 1920); *Ex parte Januszewski*, 196 F. 123, 126-27 (S.D. Ohio 1911); *Cinque v. Boyd*, 121 A. 678, 685 (Conn. 1923). *See generally* Cadena, *Due Process and the Juvenile Offender*, 1 ST. MARY'S L.J. 23, 24 (1969) (criminal protections inapplicable in juvenile court setting). Second, the avowed purpose of a juvenile proceeding was to rehabilitate and educate rather than to punish. The government was acting in place of the parent and in the child's best interests in bringing the action. Consequently, juvenile courts were vested with a great deal of discretion in handling juvenile cases and procedural restrictions were "informalized" to avoid the stigma of a criminal court trial. *See, e.g., Pee v. United States*, 274 F.2d 556, 558-59 (D.C. Cir. 1959); *Ex parte Sharp*, 96 P. 563, 565 (Idaho 1908); *Marlow v. Commonwealth*, 133 S.W. 1137, 1141-42 (Ky. 1911). *See generally* NATIONAL COUNCIL ON CRIME & DELINQ., GUIDES FOR JUVENILE COURT JUDGES 1 (1957) (modern juvenile court to help and treat child, procedure necessarily different from criminal court); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 109 (1909) (court represents *parens patriae*, power of government and insures minor not branded as criminal); Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 802-03 (1966) (juvenile court to reform minor and procedures distinct from criminal trials). The United States Supreme Court, however, finally saw through these legal fictions and found that due process safeguards developed under criminal auspices are essential for fair juvenile proceedings despite their "civil" label. *See, e.g., In re Winship*, 397 U.S. 358, 368 (1970) (proof beyond reasonable doubt necessary to sentence juvenile); *In re Gault*, 387 U.S. 1, 33, 41, 55, 57 (1967) (juvenile has right to notice, counsel, and fifth amendment protection); *Kent v. United States*, 383 U.S. 541, 561 (1966) (child must be afforded hearing prior to waiver of jurisdiction and legal representation at such hearing). *But cf. McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (no constitutional right to jury trial in juvenile court proceeding). *See generally* Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 SUP. CT. REV. 167, 187-91 (discussing extension of right to counsel, fourth amendment, and fifth amendment to juvenile cases).

11. *See Kent v. United States*, 383 U.S. 541, 553-56 (1966).

any social records used by the court in its decision.¹² The Court indicated that the "civil" nature of juvenile proceedings should be pierced if an examination of the situation revealed the proceeding was truly criminal in character.¹³

In its landmark decision, *In re Gault*,¹⁴ the United States Supreme Court reaffirmed its dedication to due process and fairness in juvenile proceedings. The *Gault* decision imposed the following requirements on juvenile delinquency determinations: (1) the child and his or her parents must be given adequate and timely notice of charges against the child so that they will have a reasonable opportunity to prepare for the hearing; (2) the child and his or her parents must be advised of the child's right to be represented by counsel and that if they are unable to afford counsel then counsel will be appointed; (3) the privilege against self-incrimination is applicable to juvenile proceedings; and (4) the child has the right to confront and cross-examine adverse witnesses.¹⁵ In *In re Win-*

12. See *id.* at 561-62.

13. See *id.* at 553-56. General discussions of the impact of the *Kent* decision are contained in Croxton, *The Kent Case and Its Consequence*, 7 J. FAM. L. 1 (1967) and Schornhorst, *The Waiver of Juvenile Court Jurisdiction: Kent Revisited*, 43 IND. L.J. 583 (1968).

14. 387 U.S. 1 (1967).

15. See *id.* at 33, 41, 55, 57. For an overview of the *Gault* case, see Paulsen, *The Constitutional Domestication of the Juvenile Court*, 1967 SUP. CT. REV. 233. After the *Gault* ruling, questions arose concerning whether the privilege against self-incrimination protects the juvenile in the pre-adjudicative stages of a delinquency proceeding. According to *Miranda v. Arizona*, 384 U.S. 436 (1966), in the case of an adult defendant, the fifth amendment protection against self-incrimination is threatened "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning." *Id.* at 478. While the *Gault* Court held that the fifth amendment was applicable to juvenile cases as well as adult matters, it was pointed out that the decision did not involve "the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process." *In re Gault*, 387 U.S. 1, 13 (1967). The 1974 amendments to the FJDA resolved this issue as it relates to juvenile proceedings in federal court by requiring the arresting officer to immediately advise a child of his or her legal rights. See *United States v. White Bear*, 668 F.2d 409, 411-12 (8th Cir. 1982); see also *Juvenile Justice and Delinquency Prevention Act of 1974*, 18 U.S.C. § 5033 (1976) (arresting official to immediately notify juvenile of rights). Questions likewise developed concerning at what time the minor's right to counsel attached. The FJDA revisions also addressed this point, requiring that the accused youth be assisted by an attorney "during the transfer hearing, and at every other critical stage of the proceedings." *Juvenile Justice and Delinquency Prevention Act of 1974*, 18 U.S.C. § 5032 (1976). Finally, with the juvenile properly afforded due process safeguards, emphasis shifted to the capability of a juvenile to waive any or all of these rights. The United States Supreme Court dealt with the issue of waiver in *Fare v. Michael C.*, 442 U.S. 705 (1979), and determined that a child's request to see his probation officer while undergo-

ship,¹⁶ the Court determined that due process required that the guilt of the defendant in a juvenile proceeding, just as in an adult matter, be established beyond a reasonable doubt.¹⁷

As a result of the foregoing rulings, many commentators felt that the Court would, on the basis of selected provisions of the Bill of Rights, reshape the juvenile hearing into a procedural duplicate of an adult criminal trial.¹⁸ In its decision in *McKeiver v. Pennsylvania*,¹⁹ the Court dispelled such beliefs by holding that there is no constitutional right to a trial by jury in a delinquency proceed-

ing custodial interrogation was not a per se invocation of his fifth amendment privilege against self-incrimination. *See id.* at 724, 727. The *Fare* decision indicated that, in determining whether a juvenile has voluntarily waived his or her rights, courts must look beyond the age of the offender and consider "the totality of the circumstances surrounding the interrogation." *Id.* at 725, 728; *accord, e.g.*, *United States v. White Bear*, 668 F.2d 409, 412 (8th Cir. 1982) (waiver evaluated in light of circumstances surrounding interrogation); *United States v. Palmer*, 604 F.2d 64, 67 (10th Cir. 1979) (admissibility of statements predicated upon examination of factors surrounding questioning); *United States v. Indian Boy X*, 565 F.2d 585, 592 (9th Cir. 1977) (various elements considered to determine whether confession competent), *cert. denied*, 439 U.S. 841 (1979); *cf.* *West v. United States*, 399 F.2d 467, 469 (5th Cir. 1968) (nine factors identified as considerations in deciding whether waiver valid), *cert. denied*, 393 U.S. 1102 (1969); *McBride v. Jacobs*, 247 F.2d 595, 596 (D.C. Cir. 1957) ("all pertinent facts" to be weighed to find effective waiver); *Williams v. Huff*, 142 F.2d 91, 92 (D.C. Cir. 1944) (all relevant evidence to be considered in evaluating competency of waiver).

16. 397 U.S. 358 (1970).

17. *See id.* at 368; *see also* *Ivan v. City of New York*, 407 U.S. 203, 205 (1972) (*Winship* rule retroactive); *cf.* *United States v. Costanzo*, 395 F.2d 441, 444 (4th Cir. 1968) (proof beyond reasonable doubt required in juvenile case); *In re Urbasek*, 232 N.E.2d 716, 719-20 (Ill. 1967) (criminal standard of proof applicable to juvenile court proceeding); *DeBacker v. Brainard*, 161 N.W.2d 508, 513 (Neb. 1968) (reasonable doubt standard to be utilized in juvenile court matter), *appeal dismissed*, 396 U.S. 28 (1969). *See generally* Case Comment, *Constitutional Law—Juvenile Proceedings—Juveniles Must Be Proven Guilty Beyond A Reasonable Doubt When Accused Of Criminal Violations*, 46 NOTRE DAME LAW. 373, 386-89 (1971) (discussing *Winship* decision). At least one commentator recognized the advantages of imposing the higher standard of proof in juvenile proceedings prior to the *Winship* ruling. *See* Cohen, *The Standard of Proof in Juvenile Proceedings: Gault Beyond a Reasonable Doubt*, 68 MICH. L. REV. 567, 585-90, 599, 602 (1970).

18. *See, e.g.*, Dorsen & Reznick, *In Re Gault and the Future of Juvenile Law*, 1 FAM. L.Q. 1, 10-11 (Dec. 1967) (*Gault* implies incorporation of constitutional guarantees into juvenile hearings); Glen, *Juvenile Court Reform: Procedural Process and Substantive Stasis*, 1970 WIS. L. REV. 431, 440 (proposing juvenile be allowed jury trial if requested); Popkin & Lippert, *Is There a Constitutional Right to the Insanity Defense in Juvenile Court?*, 10 J. FAM. L. 421, 437 (1971) (*Gault-Winship* rulings infer constitutional right to insanity defense exists in juvenile adjudication matter); *cf.* Comment, *Waiver of Jurisdiction in the Juvenile Court: Another Gault Question Still Unanswered*, 15 S.D.L. REV. 376, 381 (1970) (*Gault* and *Kent* indicate constitutional guarantees to be extended to children).

19. 403 U.S. 528 (1971).

ing.²⁰ The Justices reasoned that a jury trial in the juvenile court context was not necessary to assure "fundamental fairness."²¹ In *Breed v. Jones*,²² however, the Court once again armed a juvenile with the shield of the due process clause of the fifth amendment. The *Breed* Court ruled that subjecting a child to a criminal trial as an adult after he had been adjudicated a delinquent in a juvenile court proceeding for the same offense violated the double jeopardy clause of the fifth amendment.²³

20. See *id.* at 545. The *McKeiver* reasoning has been followed so that there is no constitutional right to a jury trial in a proceeding under the FJDA. See, e.g., *United States v. Cuomo*, 525 F.2d 1285, 1293 (5th Cir. 1976) (FJDA does not require trial by jury); *United States v. Torres*, 500 F.2d 944, 948 (2d Cir. 1974) (jury trial not mandated by Act); *United States v. Salcido-Medina*, 483 F.2d 162, 164 (9th Cir.) (trial by jury not needed under FJDA), *cert. denied*, 414 U.S. 1070 (1973); see also *United States v. King*, 482 F.2d 454, 456 (6th Cir.) (Act's waiver of jury trial not violative of sixth amendment), *cert. denied*, 414 U.S. 1076 (1973); *United States v. James*, 464 F.2d 1228, 1229-30 (9th Cir.) (denial of jury trial under FJDA not prohibited by Constitution), *cert. denied*, 409 U.S. 1086 (1972); *Cotton v. United States*, 446 F.2d 107, 110 (8th Cir. 1971) (trial by jury not constitutional requirement under FJDA); *United States v. Doe*, 385 F. Supp. 902, 906-07 (D. Ariz. 1974) (Act constitutional although no jury trial required). But see *Nieves v. United States*, 280 F. Supp. 994, 1001 (S.D.N.Y. 1968) (FJDA unconstitutional since it waives right to jury trial).

21. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 547 (1971). General comments regarding *McKeiver* can be found in Ketcham, *McKeiver v. Pennsylvania: The Last Word on Juvenile Court Adjudication?*, 57 CORNELL L. REV. 561 (1972) and *The Supreme Court, 1970 Term*, 85 HARV. L. REV. 113 (1971).

22. 421 U.S. 519 (1975).

23. See *id.* at 531, 541. See generally Whitebread & Batey, *Juvenile Double Jeopardy*, 63 GEO. L.J. 857, 881-85 (1975) (pre-*Breed* article suggesting framework to insure protection against double jeopardy); Note, *Breed v. Jones: Double Jeopardy in the Context of Juvenile Proceedings—Who Says Once Is Not Enough?*, 3 OHIO N.U.L. REV. 588, 593-601 (1975) (discussion of *Breed* ruling); Annot., 5 A.L.R.4th 234, 242-44 (1981) (cases holding fifth amendment guarantee against double jeopardy applicable in juvenile matter). There is disagreement among the courts regarding retroactivity of the *Breed* decision. Compare *Rios v. Chavez*, 620 F.2d 702, 705-06 (9th Cir. 1980) (*Breed* given retrospective application) and *Holt v. Black*, 550 F.2d 1061, 1063-64 (6th Cir.) (*Breed* applied retroactively), *cert. denied*, 432 U.S. 910 (1977) with *Jackson v. Justices of Superior Court*, 549 F.2d 215, 220 (1st Cir.) (*Breed* not generally retroactive, but will be decided on case-by-case basis), *cert. denied*, 430 U.S. 975 (1977) and *Stokes v. Genakos*, 441 F. Supp. 147, 149 n.2 (D. Mass. 1977) (*Breed* not given retroactive force), *rev'd on other grounds*, 581 F.2d 287 (1st Cir. 1978), *cert. denied*, 439 U.S. 1078 (1979). Because of the potential double jeopardy violation outlined in *Breed*, a motion to transfer a juvenile for trial as an adult in federal court must be resolved before any adjudication of delinquency under the FJDA. See, e.g., *United States v. Doe*, 627 F.2d 181, 184 n.4 (9th Cir. 1980) (transfer motion to be heard prior to acceptance of admission to information); *United States v. Hayes*, 590 F.2d 309, 311 (9th Cir. 1979) (refusal of admission to information proper since transfer motion pending); *United States v. Rombom*, 421 F. Supp. 1295, 1297-98 (S.D.N.Y. 1976) (rejection of guilty plea correct in light of pendency of transfer motion); cf. Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (subsequent criminal proceeding barred when juvenile pleads guilty).

Under the FJDA, the juvenile offender is not only afforded the above constitutional due process rights, but also receives several additional benefits.²⁴ For example, the juvenile is entitled to a hearing before a court to determine delinquency.²⁵ The juvenile's fingerprints or photograph cannot be taken unless the court consents in writing nor can his or her name or picture be given to the media.²⁶ Furthermore, the Act provides that the juvenile shall proceed under an information, as opposed to an indictment by grand jury, to maintain confidentiality.²⁷

III. PROCEEDING UNDER THE FJDA

A. Definition of a Juvenile

Under the FJDA, juvenile delinquency is the commission of an act by a person under eighteen years of age which contravenes a federal statute and which would have constituted a crime if performed by an adult.²⁸ If the act was committed before the juvenile was eighteen, but a hearing on the filed information was not held before the offender's eighteenth birthday, the juvenile may proceed under the FJDA so long as he or she has not reached twenty-one.²⁹

24. See, e.g., *United States v. Sechrist*, 640 F.2d 81, 86-87 (7th Cir. 1981) (Act provides juvenile greater safeguards than adult since it requires judge to consent to fingerprinting or photographing); *United States v. Doe*, 631 F.2d 110, 114 (9th Cir.) (youth over nineteen years of age not to be sentenced to term exceeding two years if prosecuted under FJDA), cert. denied, 449 U.S. 867 (1980); *United States v. Doe*, 627 F.2d 181, 182-83 (9th Cir. 1980) (juvenile has option to proceed under FJDA or request trial as adult).

25. See *In re Gault*, 387 U.S. 1, 30 (1967); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (if minor not surrendered to state authorities, proceeding to determine delinquency may be implemented in federal court).

26. See *United States v. Sechrist*, 640 F.2d 81, 86-87 (7th Cir. 1981); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5038(d) (1976) (fingerprints and photo prohibited unless court consents and name of accused not to be released).

27. See *United States v. Indian Boy X*, 565 F.2d 585, 595 (9th Cir. 1977), cert. denied, 439 U.S. 841 (1978); *United States v. Hill*, 538 F.2d 1072, 1076 (4th Cir. 1976); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (prosecutor to initiate action by information).

28. See, e.g., *United States v. Alvarez-Porras*, 643 F.2d 54, 66 (2d Cir.), cert. denied, 454 U.S. 839 (1981); *United States v. Doe*, 631 F.2d 110, 112 (9th Cir.), cert. denied, 449 U.S. 867 (1980); *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir. 1980); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5031 (1976); cf. *United States v. Mecham*, 509 F.2d 1193, 1196 (10th Cir. 1975) (Act concerns "substantive offense of 'juvenile delinquency'" predicated upon other illegal acts).

29. See *United States v. Doe*, 631 F.2d 110, 112-13 (9th Cir.), cert. denied, 449 U.S. 867

If an offender committed an infraction between the ages of eighteen and twenty-two, then he or she is not considered a juvenile under the FJDA.³⁰ The wrongdoer is, however, a youth offender and may be sentenced under the Federal Youth Corrections Act³¹ until he or she reaches twenty-six years of age.³²

(1980); *see also* Federal Juvenile Delinquency Act, 18 U.S.C. § 5031 (1976) (proceedings under FJDA for delinquent conduct effective against defendant below twenty-one years of age if act committed prior to defendant's eighteenth birthday); *cf.* *United States v. Williams*, 459 F.2d 903, 905 (2d Cir. 1972) (time offense committed relevant fact in determining whether defendant qualifies as juvenile); *United States v. Fotto*, 103 F. Supp. 430, 431 (S.D.N.Y. 1952) (FJDA affects person who was juvenile when illegal act performed).

30. *See United States v. Alvarez-Porras*, 643 F.2d 54, 67 (2d Cir.), *cert. denied*, 454 U.S. 839 (1981); *see also Josey v. United States*, 216 F.2d 181, 182 (4th Cir. 1954) (accused over eighteen years old when act committed and not subject to FJDA), *cert. denied*, 348 U.S. 954 (1955); *cf.* Federal Juvenile Delinquency Act, 18 U.S.C. § 5031 (1976) (delinquency represents commission of infraction by minor prior to eighteenth birthday).

31. Pub. L. No. 865, §§ 2-5, 64 Stat. 1085, 1085-90 (1950) (codified as amended at 18 U.S.C. §§ 5005-5026 (1976)).

32. *See, e.g., Dorszynski v. United States*, 418 U.S. 424, 433 (1974) (persons below twenty-two years of age may be sentenced under FYCA); *Micklus v. Carlson*, 632 F.2d 227, 234 (3d Cir. 1980) (FYCA to protect individuals between sixteen and twenty-two years of age); *United States v. Carter*, 225 F. Supp. 566, 567 (D.D.C. 1964) ("youth offender" defined as person under twenty-two years old); *see also* Federal Youth Corrections Act, 18 U.S.C. § 5006(d) (1976) ("youth offender" is individual less than twenty-two years old at time of conviction). A person qualifying as a "youth offender" is to be sentenced under the FYCA unless the court determines the accused will not benefit from the Act's provisions. *See, e.g., Dorszynski v. United States*, 418 U.S. 424, 443-44 (1974) (judge to consider penalty under FYCA and find "no benefit" to insure proper exercise of discretion); *United States v. Silla*, 555 F.2d 703, 708 (9th Cir. 1977) (court considered alternative sentence under FYCA, but rejected it upon finding of "no benefit"); *Williams v. United States*, 543 F.2d 1154, 1155 (5th Cir. 1976) (although judge to affirmatively find "no benefit" in order to sentence youth offender under other statute, such finding may be included in supplement to order after sentence imposed); *see also* Federal Youth Corrections Act, 18 U.S.C. § 5010(d) (1976) (upon determination of "no benefit," defendant may be penalized under other applicable statute). *See generally* Annot., 54 A.L.R. FED. 382, 392 (1981) (discussing sufficiency of "no benefit" decision). The advantages of the FYCA sentencing provisions were also extended to "young adult offenders," i.e., persons over twenty-two years old but below twenty-six years of age. *See, e.g., United States v. Boydston*, 622 F.2d 398, 399 (8th Cir. 1980) (FYCA provisions applicable only to individuals below twenty-six years old); *United States v. Riffe*, 600 F.2d 1146, 1147 (5th Cir. 1979) (FYCA extended only to defendants aged twenty-two to twenty-five at date of conviction); *United States v. Barton*, 566 F.2d 1106, 1107 (9th Cir. 1977) (sentencing under FYCA extended to limited class of defendants over age twenty-two but below age twenty-six); *see also* Young Adult Offenders Act, 18 U.S.C. § 4216 (1976) (accused over twenty-two but under twenty-six eligible for sentence under FYCA). *See generally* Annot., 11 A.L.R. FED. 499, 505 (1972) (offenders aged twenty-two to twenty-six affected by FYCA in certain instances). Unlike a youth offender, however, a young adult offender can only be sentenced under the FYCA if the court believes he or she will benefit from such treatment. *See, e.g., Micklus v. Carlson*, 632 F.2d 227, 234 (3d Cir. 1980) (FYCA punishment

B. Certification—Transfer

The Attorney General, after investigation, must certify³³ one of the following in order for a district court to have jurisdiction over the prosecution of a juvenile: (1) a juvenile court or other pertinent state court does not have power over the case or declines to accept authority over the accused minor regarding the purported delinquent conduct or (2) the state lacks necessary projects and services capable of satisfying the needs of child offenders.³⁴ If the Attorney General does not confirm either of these facts, the child must be turned over to the appropriate legal agencies of the state.³⁵ After

imposed on young adult offender if beneficial); *United States v. Muller*, 588 F.2d 591, 592 (8th Cir. 1978) (sentencing under FYCA predicated upon conclusion that young adult offender benefitted by such treatment); *United States v. Noland*, 510 F.2d 1093, 1094 (4th Cir. 1975) (young adult offender eligible for FYCA punishment depending upon whether court believes defendant benefitted). Compare Young Adult Offenders Act, 18 U.S.C. § 4216 (1976) (persons aged twenty-two to twenty-six may be penalized under FYCA if judge determines accused benefitted) with Federal Youth Corrections Act, 18 U.S.C. § 5010(d) (1976) (youth offender may be punished under other statute if court finds defendant not benefitted by FYCA).

33. The Attorney General may delegate his authority to certify alleged juvenile delinquents for federal proceedings. See, e.g., *United States v. Parker*, 622 F.2d 298, 306 (8th Cir. 1980), cert. denied, 455 U.S. 926 (1982); *United States v. Cuomo*, 525 F.2d 1285, 1289 (5th Cir. 1976); *United States v. Vancier*, 515 F.2d 1378, 1379 n.1 (2d Cir.), cert. denied, 423 U.S. 857 (1975); see also 28 C.F.R. § 0.57 (1982) (Assistant Attorney General and Deputy Assistant Attorneys General empowered to exercise duties listed in sections 5032 and 5036 and Assistant Attorney General can redelegate functions to United States Attorneys and Chief of Section within Criminal Division supervising juvenile program).

34. See, e.g., *United States v. Gonzalez-Cervantes*, 668 F.2d 1073, 1075 (9th Cir. 1981) (Attorney General certified that state juvenile court refused case); *United States v. Allen*, 574 F.2d 435, 438-39 (8th Cir. 1978) (section 5032 calls for certification that state courts decline authority or state facilities inadequate and no need to certify tribal courts refuse jurisdiction or tribal programs ineffective); *United States v. Ramapuram*, 432 F. Supp. 140, 142 (D. Md. 1977) (section 5032 confirmation of state court's refusal of jurisdiction sufficient if made by State's Attorney), aff'd, 577 F.2d 738 (4th Cir.), cert. denied, 439 U.S. 926 (1978); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (Attorney General to certify refusal of state court to accept power over case or inefficiency of state programs in order for federal court to assume jurisdiction).

35. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976). A defective certification, however, is capable of being cured. See *United States v. Ramapuram*, 432 F. Supp. 140, 143 (D. Md. 1977), aff'd, 577 F.2d 738 (4th Cir.), cert. denied, 439 U.S. 926 (1978). Cure of a faulty certification may be timely even though subsequent to initiation of the proceedings against the juvenile. See *id.* at 141, 143 (cure permitted after transfer hearing begun). But cf. *United States v. Cuomo*, 525 F.2d 1285, 1290 (5th Cir. 1976) (certification before arraignment sufficient compliance with section 5032 to allow continuation of matter). At least one court has held that the Attorney General's certification must be accepted as final and cannot be reviewed by the federal court hearing the delinquency case. See *United*

certification to a United States district court has been made, the Attorney General may then file the juvenile delinquency information.³⁶

Until the amendments to the FJDA in 1974, the choice of whether a juvenile would proceed as a juvenile or an adult was within the sole discretion of the Attorney General.³⁷ Presently, however, upon advice of counsel, a minor can make a written request to proceed as an adult.³⁸ If a juvenile is sixteen years of age or older and has allegedly committed a felony which, if performed by an adult, would be punishable by ten or more years of imprisonment, life imprisonment, or death, the Attorney General may file a motion to transfer³⁹ the youth for prosecution as an adult.⁴⁰

States v. Vancier, 515 F.2d 1378, 1380-81 (2d Cir.), *cert. denied*, 423 U.S. 857 (1975).

36. See *United States v. Indian Boy X*, 565 F.2d 585, 595 (9th Cir. 1977), *cert. denied*, 439 U.S. 841 (1978); *United States v. Hill*, 538 F.2d 1072, 1076 (4th Cir. 1976); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (prosecutor to proceed by filing information).

37. See *Ramirez v. United States*, 238 F. Supp. 763, 764 (S.D.N.Y. 1965); *Barnes v. Pescor*, 68 F. Supp. 127, 128 (W.D. Mo.), *appeal dismissed*, 158 F.2d 800 (8th Cir. 1946); see also Federal Juvenile Delinquency Act, Pub. L. No. 666, § 2, 52 Stat. 764, 765 (1938) (amended 1974) (child charged as juvenile if he or she consents unless Attorney General decides otherwise). See generally Comment, *Juvenile Criminal Proceedings in Federal Courts*, 18 *Loy. L. Rev.* 133, 141-42 (1971-1972) (discussing original version of section 5032 of FJDA permitting Attorney General to determine whether defendant tried as adult or juvenile).

38. See *United States v. Doe*, 627 F.2d 181, 185 (9th Cir. 1980); *United States v. Hayes*, 590 F.2d 309, 310 (9th Cir. 1979); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (youth can make written request upon lawyer's advice to be treated as adult). The juvenile's request to be proceeded against as an adult may be made after the defendant's first appearance in district court. See *United States v. Doe*, 627 F.2d 181, 183, 185 (9th Cir. 1980). In *Doe*, the defendant made two court appearances and the request to be treated as an adult was made twenty-seven days after arrest and one day before the delinquency trial. See *id.* at 183. It was determined that the statute's failure to address a court's discretion to approve or disapprove the child's request indicated the juvenile should be afforded a reasonable time before trial to request treatment as an adult. See *id.* at 185. Under the facts in *Doe*, the Ninth Circuit felt that the written request was made within a reasonable time prior to the delinquency proceeding. See *id.* at 185.

39. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976). Authority to file a transfer motion has been allocated to the Assistant Attorney General and his or her Deputy Assistant Attorneys General. See *United States v. Hayes*, 590 F.2d 309, 310 n.1 (9th Cir. 1979); see also 28 C.F.R. § 0.57 (1982) (Assistant Attorney General and deputies authorized to exercise section 5032 powers). United States Attorneys, on the other hand, have not been delegated the ability to file a transfer motion. See *United States v. Hayes*, 590 F.2d 309, 310 n.1 (9th Cir. 1979); cf. 28 C.F.R. § 0.57 (1982) (section 5032 authority delegated to Assistant Attorney General and deputies). Assistant United States Attorneys, therefore, must seek the Attorney General's permission to transfer a juvenile offender for treatment as an adult. See

At a hearing on the motion for transfer to proceed as an adult, the federal district court must determine that transfer would best serve the interests of justice.⁴¹ In assessing whether transfer would be just and appropriate, the court must make findings on the record with regard to the following factors: (1) the accused minor's age and social history; (2) the character of the alleged delinquent act; (3) the juvenile's previous delinquent conduct, if any; (4) the intelligence and degree of psychological development of the child at the present time; (5) earlier treatment programs and the minor's reaction to these programs; and (6) the presence and accessibility of projects intended to treat the child's behavioral difficulties.⁴²

United States v. Parker, 622 F.2d 298, 306 (8th Cir. 1980), *cert. denied*, 455 U.S. 926 (1982); *cf.* United States v. Hayes, 590 F.2d 309, 310 (9th Cir. 1979) (Assistant United States Attorney securing approval of transfer motion from Department of Justice). The transfer motion must be ruled upon before the delinquency adjudication to avoid a violation of the double jeopardy provision of the fifth amendment. *See, e.g.*, United States v. Doe, 627 F.2d 181, 184 n.4 (9th Cir. 1980) (motion to transfer properly resolved before acceptance of admission); United States v. Hayes, 590 F.2d 309, 311 (9th Cir. 1979) (rejection of admission correct since transfer issue undecided); United States v. Rombom, 421 F. Supp. 1295, 1297-98 (S.D.N.Y. 1976) (guilty plea properly refused since motion to transfer pending); *cf.* Breed v. Jones, 421 U.S. 519, 531, 541 (1975) (violation of double jeopardy protection to prosecute juvenile in criminal court after delinquency adjudication). *But cf.* United States v. Cheyenne, 558 F.2d 902, 907 (8th Cir.) (taking of evidence concerning nature of crime at transfer hearing not bar to subsequent criminal prosecution), *cert. denied*, 434 U.S. 957 (1977); United States v. Martinez, 536 F.2d 886, 891 (9th Cir.) (consideration of evidence regarding character of delinquent act at transfer proceeding not impediment to later adult trial), *cert. denied*, 429 U.S. 907 (1976).

40. *See, e.g.*, United States v. Parker, 622 F.2d 298, 306-07 (8th Cir. 1980) (transfer motion proper since decision to file made by authorized individual), *cert. denied*, 455 U.S. 926 (1982); United States v. J. D., 525 F. Supp. 101, 102 (S.D.N.Y. 1981) (juvenile may request adult trial or Attorney General may file transfer motion); United States v. Rombom, 421 F. Supp. 1295, 1297 (S.D.N.Y. 1976) (government to file information and motion to transfer to prosecute juvenile as adult); *see also* Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (motion to transfer by Attorney General allowed in certain instances).

41. *See* United States v. J. D., 525 F. Supp. 101, 104-07 (S.D.N.Y. 1981); United States v. Rombom, 421 F. Supp. 1295, 1297 (S.D.N.Y. 1976); *see also* Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (transfer motion granted if in interest of justice). *See generally* INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO TRANSFER BETWEEN COURTS § 2.2(c), at 39 (1980) (specifying determinations to be made to find defendant not proper person for juvenile court treatment).

42. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976). *See generally* United States v. J. D., 525 F. Supp. 101, 105-06 (S.D.N.Y. 1981) (discussing statutory elements relating to approval of transfer motion); Feld, *Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions*, 62 MINN. L. REV. 515, 529-46 (1978) (discussing factors considered in judicial waiver of youth to adult court); Vitiello, *Constitutional Safeguards for Juvenile Transfer Procedure: The Ten Years Since Kent v. United States*, 26 DE PAUL L. REV. 23, 30-40 (1976) (noting spe-

Reasonable notice of the hearing must be given to the juvenile, his or her parents, guardian, or custodian, and his or her counsel.⁴³ If the motion to transfer is granted or the juvenile offender elects to proceed as an adult, the district court may sentence the accused under the Federal Youth Corrections Act.⁴⁴

cific elements to be analyzed in making transfer decision).

43. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976); *cf.* *McKeiver v. Pennsylvania*, 403 U.S. 528, 532 (1971) (restating due process requirement of parental notice prior to delinquency adjudication); *In re Gault*, 387 U.S. 1, 33-34 (1967) (due process mandates notice of charges to parents at earliest practicable time); *Kent v. United States*, 383 U.S. 541, 557 (1966) (transfer "critically important" issue and juvenile entitled to hearing, counsel, and reasons for court's decision). *But cf.* *United States v. Watts*, 513 F.2d 5, 8-9 (10th Cir. 1975) (failure to notify parents deemed "technical violation" and not denial of fundamental fairness). See *generally* Annot., 30 A.L.R. FED. 745, 746-47 (1976) (summarizing *Watts* decision). The FJDA specifically addresses other due process rights of juveniles. The assistance of an attorney is mandatory at a transfer hearing and all other significant stages of the proceeding. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976); *cf.* *Kent v. United States*, 383 U.S. 541, 557 (1966) (child entitled to legal advice during transfer proceeding); *Geboy v. Gray*, 471 F.2d 575, 579, 581 (7th Cir. 1973) (defendant to receive legal assistance at waiver hearing and due process called for appointment of attorney in advance of hearing); *Powell v. Hocker*, 453 F.2d 652, 654 (9th Cir. 1971) (assistance of lawyer mandated at transfer hearing); *Kemplen v. Maryland*, 428 F.2d 169, 175 (4th Cir. 1970) (juvenile to be provided counsel at waiver proceeding). See *generally* Annot., 60 A.L.R.2d 691, 698 (1958) (youth's constitutional right to legal advice during juvenile proceedings). A child's statements made before or during a waiver proceeding cannot be used against the youth at a subsequent criminal trial. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976); *cf.* *United States v. Smith*, 574 F.2d 707, 712 (2d Cir.) (remarks connected with transfer proceeding suppressed by section 5032), *cert. denied*, 439 U.S. 986 (1978); *United States v. Cheyenne*, 558 F.2d 902, 906 (8th Cir.) (section 5032 precludes use of comments related to waiver hearing), *cert. denied*, 434 U.S. 957 (1977); *United States v. Spruille*, 544 F.2d 303, 307 (7th Cir. 1976) (remarks unrelated to waiver proceeding not barred by section 5032). The Act also incorporates the guarantee against double jeopardy and provides that "[o]nce a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken . . . subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred." Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976). The receipt of evidence regarding the nature of the alleged crime at a transfer hearing, however, does not preclude a subsequent criminal prosecution. See *United States v. Cheyenne*, 558 F.2d 902, 907 (8th Cir.), *cert. denied*, 434 U.S. 957 (1977); *United States v. Martinez*, 536 F.2d 886, 891 (9th Cir.), *cert. denied*, 429 U.S. 907 (1976).

44. See Federal Youth Corrections Act, 18 U.S.C. §§ 5006(d), 5010 (1976); see also *Dorszynski v. United States*, 418 U.S. 424, 432-33 (1974) (Act designed to aid youths between ages sixteen and twenty-two); *Taylor v. Carlson*, 671 F.2d 137, 138 (5th Cir. 1982) (section 5010(d) permits sentencing under any appropriate law if judge finds FYCA punishment ineffective). For more detailed consideration of some of the procedural issues involving the Federal Youth Corrections Act, see Annot., 54 A.L.R. FED. 382 (1981) (necessity of finding "no benefit" under FYCA as prerequisite for sentencing under other statute); Annot., 38 A.L.R. FED. 470 (1978) (interpretations of FYCA provisions allowing removal of youth's con-

C. Custody Prior to Appearance Before the Magistrate

Upon taking a juvenile offender into custody, the arresting officer must immediately inform the child of his or her legal rights.⁴⁵ The officer must also promptly notify the Attorney General and the individual's parents, guardian, or custodian of the arrest.⁴⁶ In addition, the officer must inform the juvenile and his or her parents, guardian, or custodian of the minor's legal rights as well as the nature of the alleged criminal act.⁴⁷ The juvenile must be taken before a magistrate as soon as practicable and cannot be held for more than a reasonable amount of time.⁴⁸

viction); Annot., 11 A.L.R. FED. 499 (1972) (sentencing and rehabilitation provisions of FYCA).

45. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5033 (1976); see also S. REP. NO. 1011, 93d Cong., 2d Sess. 18, reprinted in 1974 U.S. CODE CONG. & AD. NEWS 5283, 5320; cf. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966) (individual taken into custody to be told of right to counsel); D. BESHAROV, JUVENILE JUSTICE ADVOCACY: PRACTICE IN A UNIQUE COURT § 4.2.2.4B, at 103 (1974) (law of arrest for juvenile generally same as law of arrest for adults).

46. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5033 (1976). In *United States v. Watts*, 513 F.2d 5 (10th Cir. 1975), the court determined that the failure to inform the minor's parents of the charges against the youth or of the minor's right to legal assistance was "a technical violation of a prophylactic safeguard." *Id.* at 8. The *Watts* court stated that the reason for requiring notice to a juvenile's parents was to guarantee knowledge of the charges asserted and opportunity to formulate an adequate defense. See *id.* at 8; cf. *Holloway v. Wainwright*, 451 F.2d 149, 151 (5th Cir. 1971) (parental notice insures persons most concerned with youth available to provide protection). Because *Watts* was aware of the crimes with which he was charged, had the chance to confront and examine adverse witnesses, had received sufficient written notice of the proceedings, and his parents could have helped in preparing his defense, the failure to give notice to *Watts*' mother and father did not constitute a denial of due process. See *United States v. Watts*, 513 F.2d 5, 8 (10th Cir. 1975). Judge Holloway, concurring, disagreed with the majority's characterization of the failure to give parental notice as a "technical violation." See *id.* at 9 (Holloway, J., concurring). He felt that adequate notice to the juvenile's parents was constitutionally mandated and that the lack of notice was an infringement of *Watts*' constitutional rights. See *id.* at 10 (Holloway, J., concurring). Judge Holloway concluded, however, that the constitutional infraction was harmless in the context of this case. See *id.* at 11 (Holloway, J., concurring).

47. See *United States v. White Bear*, 668 F.2d 409, 411 (8th Cir. 1982); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5033 (1976) (arresting officer to inform parents of youth's rights). See generally S. REP. NO. 1011, 93d Cong., 2d Sess. 18, reprinted in 1974 U.S. CODE CONG. & AD. NEWS 5283, 5320 (notice of juvenile's rights to be given parents).

48. See *United States v. Smith*, 574 F.2d 707, 710 (2d Cir.), cert. denied, 439 U.S. 986 (1978); *United States v. Indian Boy X*, 565 F.2d 585, 590-91 (9th Cir. 1977), cert. denied, 439 U.S. 841 (1978); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5033 (1976) (child to be brought before magistrate "forthwith" and not held beyond reasonable time). In *United States v. Indian Boy X*, the juvenile contended that a confession obtained during his detention should be suppressed since he was not taken before a magistrate until three days after his arrest. See *United States v. Indian Boy X*, 565 F.2d 585, 587-88 (9th Cir.

D. *Duties of the Magistrate*

The magistrate⁴⁹ is to make certain that the child offender is assisted by an attorney before continuing with the critical phases of the proceedings.⁵⁰ If the parents, guardian, or custodian cannot afford to engage legal counsel, an attorney must be assigned to represent the accused youth.⁵¹ If the juvenile's mother and father,

1977), *cert. denied*, 439 U.S. 841 (1978). The child argued that section 5033 barred delay for the purpose of questioning and that the provision required a juvenile offender to be presented to a magistrate as soon as he or she could be transported there. *See id.* at 590. The Ninth Circuit rejected this construction, noting that such a reading would place a greater burden on police officers and magistrates than would be the case if the defendant were an adult. *See id.* at 590; *cf.* *United States v. Lovejoy*, 364 F.2d 586, 589 (2d Cir. 1966) (two hour detention not violative of FJDA since officers unaware of defendant's age), *cert. denied*, 386 U.S. 974 (1967). *But cf.* *United States v. DeMarce*, 513 F.2d 755, 758 (8th Cir. 1975) (eighty hour detention violated statute and statements inadmissible); *United States v. Binet*, 442 F.2d 296, 299-300 (2d Cir. 1971) (four hour delay for purpose of interrogation not authorized by FJDA); *United States v. Glover*, 372 F.2d 43, 47 (2d Cir. 1967) (admission suppressed since statute disallows detention for any purpose other than immediate arraignment). The court rejected earlier decisions interpreting the predecessor version of section 5033, stating:

Comparison of the language of the two statutes reveals that while the first sentence of the second paragraph of the statute as amended in 1974 appears to repeat the old standard of arraignment "forthwith," the next sentence now appears to say the "forthwith" requirement bars only "unreasonable," not "unnecessary," delays.

United States v. Indian Boy X, 565 F.2d 585, 590-91 (9th Cir. 1977), *cert. denied*, 439 U.S. 841 (1978).

49. The powers and jurisdictional reach of a United States magistrate are specified in the Federal Magistrates Act, 28 U.S.C. § 636 (1976 & Supp. IV 1980). General discussions of the Federal Magistrates Act can be found in Spaniol, *The Federal Magistrates Act: History and Development*, 1974 ARIZ. ST. L.J. 565; Note, *Masters and Magistrates in the Federal Courts*, 88 HARV. L. REV. 779 (1975); Comment, *An Adjudicative Role for Federal Magistrates in Civil Cases*, 40 U. CHI. L. REV. 584 (1973); Comment, *The Federal Magistrates Act—An Exercise in Article III Constitutionality*, 17 WAYNE L. REV. 1483 (1971); Annot., 16 A.L.R. FED. 871 (1973).

50. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5034 (1976).

51. *See id.* A lawyer representing the juvenile has a variety of duties at the intake stage of the proceedings: (1) examine potential avenues for diversion from the juvenile court system; (2) explain to the juvenile client and his or her parents the significance of the hearing, the procedures to be used, the available options, and the likely result of each option; (3) challenge the sufficiency of the jurisdictional allegations contained in the petition, if relevant, present facts regarding the alleged delinquent act, and discuss the client's culpability for the asserted conduct; (4) if the juvenile client admits the act and the facts corroborate this admission, attempt to arrange an informal resolution of the controversy which meets with the juvenile's consent; (5) if the juvenile client denies the alleged conduct, the attorney should refuse to acquiesce in obtaining an admission to insure an informal adjustment of the matter; (6) if the juvenile client is detained by the court, good faith steps should be taken to promote the minor's release; (7) if the intake department determines detention issues, reasons for the proposed confinement as well as arguments in favor of release may be

guardian, or custodian can afford to retain a lawyer, but have not yet obtained legal assistance, a representative may be appointed and payment of reasonable attorney's fees ordered.⁵² The magistrate also has the option to command the minor's parents, guardian, or custodian to obtain private legal counsel within an established period of time.⁵³ Furthermore, the magistrate may designate a guardian ad litem if the parents, guardian, or custodian is absent.⁵⁴ If there is evidence indicating that the mother and father, guardian, or custodian would refuse to cooperate with the minor in formulating a defense or that the interests of the parents, guardian, or custodian are contrary to those of the child, a guardian ad litem may also be appointed.⁵⁵

If the accused youth was not released to someone's custody prior to his or her initial presentation to the magistrate, the minor may be discharged to his or her mother and father, guardian or custodian, or other responsible individual, including the supervisor of a shelter unit who agrees to bring the child before the magistrate when asked.⁵⁶ Custody over the juvenile, however, may be retained by the magistrate if it is determined that detention is necessary to insure the minor's timely appearance, safeguard his or her well-being, or protect the safety of others.⁵⁷ A decision to continue cus-

made; however, if a detention hearing is to be held, jurisdictional challenges, arguments relating to the adequacy of the facts supporting confinement and the place of confinement, and any procedural irregularities should be presented at this proceeding; and (8) counsel should not personally vouch for the appearance or conduct of the juvenile client. *See* INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES §§ 6.1-6.4, at 119-33 (1980).

52. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5034 (1976). *But cf.* INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS § 5.3(A), at 95 (1980) (lawyer assigned if parents not expected to engage attorney and no reimbursement sought regardless of parents' capacity to pay).

53. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5034 (1976).

54. *See id.*

55. *See id.*; *see also* INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS § 6.7(A), at 117-18 (1980) (guardian ad litem appointed if parents' interests contrary to juvenile's).

56. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5034 (1976); *cf.* V. STREIB, JUVENILE JUSTICE IN AMERICA 29 (1978) (statutes favor release to parents unless juvenile threat to society or likely to refuse to attend subsequent trial). Section 5034 of the Act establishes a preference for the release of an accused minor. *See* S. REP. NO. 1011, 93d Cong., 2d Sess. 18, *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 5283, 5320.

57. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5034 (1976). *See generally* Fester, Sneath & Courtless, *Juvenile Detention: Protection, Prevention or Punishment?*, 38 FORDHAM L. REV. 161, 164-70 (1969) (discussing reasons juveniles detained).

tody must be made at a hearing at which the juvenile is to receive competent legal advice.⁵⁸

The magistrate also has the authority to try and sentence juveniles charged with petty offenses.⁵⁹ If a juvenile offender files a written consent to be tried before the magistrate, specifically waiving trial, judgment, and sentencing by the district court judge, the magistrate may exercise all the powers granted to the district court judge under the FJDA.⁶⁰ At arraignment, the Attorney General must file the proper certification for proceeding against the juvenile as required under the FJDA.⁶¹ An information, however, is not required for petty offenses; therefore, juvenile delinquency proceedings may be instituted by a violation notice or complaint.⁶² The only limitation placed upon the magistrate in sentencing juvenile offenders charged with petty offenses is that the magistrate may not impose a sentence of imprisonment.⁶³

E. *Detention Prior to Disposition*

Prior to disposition,⁶⁴ a juvenile wrongdoer claimed to be a de-

58. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5034 (1976); cf. V. STREIB, *JUVENILE JUSTICE IN AMERICA* 29 (1978) (detention decision significant and serious issue). See generally *Detention and Shelter Use and Practice*, 23 *JUV. JUST.* 21, 21-22 (Special Issue 1972) (detention question to be closely scrutinized by court); Comment, *Juvenile Justice and Pre-Adjudication Detention*, 1 *U.C.L.A.-ALASKA L. REV.* 154, 158 (1972) (contending detention hearing constitutional requirement).

59. See Federal Magistrates Act, 28 U.S.C. § 636(a)(1)(3) (1976); see also *id.*, 18 U.S.C. § 3401 (1976 & Supp. III 1979) (describing magistrate's authority to conduct trial).

60. See Federal Magistrates Act, 18 U.S.C. § 3401(b), (h) (Supp. III 1979). The magistrate must specifically advise the juvenile that he has a right to trial before the district court judge. See, e.g., *United States v. Marcyes*, 557 F.2d 1361, 1368 (9th Cir. 1977); *United States v. Aleman*, 417 F. Supp. 117, 123 (S.D. Tex. 1976); Federal Magistrates Act, 18 U.S.C. § 3401(b) (Supp. III 1979).

61. See Federal Magistrates Act, 18 U.S.C. § 3401(h) (Supp. III 1979); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (enumerating conditions to which Attorney General must certify as prerequisite to district court jurisdiction over juvenile).

62. See Federal Magistrates Act, 18 U.S.C. § 3401(h) (Supp. III 1979).

63. See *id.* But cf. *United States v. Manjarrez-Arce*, 382 F. Supp. 1046, 1048-49 (S.D. Cal.) (magistrate has power to impose consecutive sentences "beyond . . . apparent jurisdictional limits"), *aff'd*, 504 F.2d 426 (9th Cir. 1974), *cert. denied*, 419 U.S. 1112 (1975).

64. The disposition stage of a juvenile case is the rough equivalent of the sentencing phase of an adult criminal trial. See D BESHAROV, *JUVENILE JUSTICE ADVOCACY: PRACTICE IN A UNIQUE COURT* § 12.4, at 404-07 (1974). It is reached only after there has been an adjudication of delinquency. See V. STREIB, *JUVENILE JUSTICE IN AMERICA* 40-41 (1978); see also Ferster & Courtless, *Pre-Dispositional Data, Role of Counsel and Decisions in a Juvenile Court*, 7 *LAW & Soc'y REV.* 195, 195 (1972) (upon finding of delinquency, court must deter-

linquent may only be held in a juvenile care center or other appropriate facility as specified by the Attorney General.⁶⁵ Confinement is to be in a foster home or community-based agency within or close to the youth's neighborhood or home city if possible.⁶⁶ The accused minor may not be held or confined in any facility in which he or she is regularly exposed to criminally convicted adults or adults awaiting criminal prosecution.⁶⁷ Further, juveniles claimed to be delinquents are to be kept separate from youths who have been declared delinquents.⁶⁸ All detained juveniles must be supplied with "adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment."⁶⁹

F. *Speedy Trial Rights of Juveniles*

Section 5036 of the FJDA specifies that "an alleged delinquent who is in detention pending trial [must be] brought to trial within thirty days from the date upon which such detention was begun."⁷⁰

mine what action to take). See generally Comment, *Appellate Review of Juvenile Court Dispositions: Gault's Forgotten Footnote*, 5 CONN. L. REV. 117, 122-23 (1972) (courts proceed to dispositional phase once juvenile adjudged delinquent).

65. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5035 (1976).

66. See *id.*; cf. *Guy v. Ciccone*, 439 F.2d 400, 403 (8th Cir. 1971) (Bright, J., concurring) (although claim moot, confinement and examination at distant federal institution considered inefficient).

67. See *United States v. Vancier*, 515 F.2d 1378, 1381 (2d Cir.), *cert. denied*, 423 U.S. 857 (1975); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5035 (1976) (child not to be held in facility with convicted adult); cf. *Guy v. Ciccone*, 439 F.2d 400, 403 (8th Cir. 1971) (Bright, J., concurring) (appellant's point now moot, but section 5035 requires juvenile to be separated from convicted adults and detention at adult facility deemed inappropriate).

68. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5035 (1976).

69. *Id.*

70. *Id.* § 5036; see, e.g., *United States v. Dazen*, 607 F.2d 816, 817 (9th Cir. 1979); *United States v. Cheyenne*, 558 F.2d 902, 907 (8th Cir.), *cert. denied*, 434 U.S. 957 (1977); *United States v. Cuomo*, 525 F.2d 1285, 1290-92 (5th Cir. 1976). Recent decisions have indicated that for purposes of the speedy trial provision a juvenile offender's detention begins on the day on which he or she is actually taken into federal custody or held by government officers. See, e.g., *United States v. Doe*, 642 F.2d 1206, 1208 (10th Cir.) (custody over youth marks beginning of thirty day period), *cert. denied*, 454 U.S. 817 (1981); *United States v. Sechrist*, 640 F.2d 81, 84 (7th Cir. 1981) (thirty days counted from time of detention by officials); *United States v. Cheyenne*, 558 F.2d 902, 907-08 (8th Cir.) (speedy trial period calculated from day of unconsented confinement), *cert. denied*, 434 U.S. 957 (1977); see also *United States v. Cuomo*, 525 F.2d 1285, 1292 (5th Cir. 1976) ("detention" defined as "physically restrictive" custody); cf. *United States v. Andy*, 549 F.2d 1281, 1283 (9th Cir. 1977) (thirty days measured from earlier of date Attorney General certifies or could have certified

There is no parallel speedy trial provision in the FJDA for alleged delinquents who are not being confined.⁷¹ Any youth who has been released to his or her parents, however, is protected by the Criminal Speedy Trial Act (CSTA).⁷² The CSTA requires that juveniles be tried within seventy days from when the charging information was filed or the date “[the juvenile] has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.”⁷³

The remedy for a failure to comply with the FJDA’s speedy trial provisions is dismissal of the information.⁷⁴ The court, however,

jurisdictional requirements or date on which youth taken into custody).

71. *Cf.* Federal Juvenile Delinquency Act, 18 U.S.C. § 5036 (1976) (delinquent “in detention” must be tried within thirty days). In *United States v. Cuomo*, 525 F.2d 1285 (5th Cir. 1976), the court stated: “Our conclusion is that the phrase ‘in detention’ in § 5036 means ‘in physically restrictive detention amounting to institutionalization.’ ” *Id.* at 1292. Consequently, the *Cuomo* court determined that a juvenile who had been conditionally released from incarceration was not “in detention” within the meaning of section 5036. *See id.* at 1290, 1292. The case indicates that the speedy trial provision contained in section 5036 is applicable only to those children being confined. *Cf. id.* at 1290, 1292 (minor out on conditional bail not “in detention” and prosecution not violative of speedy trial provision).

72. *See* Speedy Trial Act of 1974, 18 U.S.C. §3161 (1976 & Supp. IV 1980); *cf.* *United States v. Iaquinta*, 674 F.2d 260, 264 (4th Cir. 1982) (arrest by federal officers triggers running of time periods set out in Act). More detailed analysis of the Speedy Trial Act of 1974 can be found in Bridges, *The Speedy Trial Act of 1974: Effects on Delays in Federal Criminal Litigation*, 73 J. CRIM. L. & CRIMINOLOGY 50 (1982); Frase, *The Speedy Trial Act of 1974*, 43 U. CHI. L. REV. 667 (1976); Russ & Mandelkern, *The Speedy Trial Act of 1974: A Trap for the Unwary Practitioner*, 2 NAT’L J. CRIM. DEF. 1 (1976); Steinberg, *Dismissal With or Without Prejudice Under the Speedy Trial Act: A Proposed Interpretation*, 68 J. CRIM. L. & CRIMINOLOGY 1 (1977); Steinberg, *Right to Speedy Trial: The Constitutional Right and Its Applicability to the Speedy Trial Act of 1974*, 66 J. CRIM. L. & CRIMINOLOGY 229 (1975).

73. Speedy Trial Act of 1974, 18 U.S.C. § 3161(c)(1) (Supp. IV 1980). The timing of proceedings under the FJDA may be summarized as follows:

Juvenile in Custody

(1) Trial must begin within thirty days from the date on which detention was initiated. *See* Federal Juvenile Delinquency Act, 18 U.S.C. 5036 (1976).

(2) A dispositional hearing must begin within twenty days after a child is determined to be a delinquent. *See id.* § 5037(a).

Juvenile Not in Custody

(1) Trial must begin within seventy days from the later of either the date the information was filed or the date the juvenile made an appearance in the court in which the complaint is pending. *See* Speedy Trial Act of 1974, 18 U.S.C. § 3161(c)(1) (Supp. IV 1980).

(2) A dispositional hearing must begin within twenty days after a child is determined to be a delinquent. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(a) (1976).

74. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5036 (1976). Likewise,

may decide against dismissal of the information if the Attorney General can show that the postponement was: (1) caused by the youth or the youth's attorney; (2) agreed to by the child and his or her attorney; or (3) in the interest of fairness under the facts of the case.⁷⁵

The FJDA also establishes a twenty day time frame within which a dispositional hearing must be held.⁷⁶ If the juvenile is found to be a delinquent, a separate disposition proceeding must be convened within twenty days after the delinquency trial unless the judge has directed preparation of further studies regarding the minor's social and psychological background.⁷⁷

G. Adjudicatory Hearing

A juvenile has the right to a hearing before the district court to

violation of the CSTA also results in dismissal. *See* United States v. Ford, 532 F. Supp. 352, 353 (D.D.C. 1981) (Speedy Trial Act violated and case dismissed); *see also* Speedy Trial Act of 1974, 18 U.S.C. § 3162(a)(1) (1976) (if action not brought within required period, complaint to be dismissed). *See generally* Martoche, *The Federal Speedy Trial Act: An Introduction and Guide*, 4 NAT'L J. CRIM. DEF. 295, 301 (1978) (if trial not initiated within time limit, accused may move for dismissal). A juvenile seeking to have charges against him or her dismissed because of "preaccusatorial delay" must demonstrate that actual prejudice resulted from the postponement and that the delay was intentionally caused in order to secure a strategic benefit or to annoy the juvenile. *See* United States v. Doe, 642 F.2d 1206, 1208-09 (10th Cir.), *cert. denied*, 454 U.S. 817 (1981); *cf.* United States v. Lovasco, 431 U.S. 783, 789-90, 795-96 (1977) (investigative delay not designed to gain trial advantage and not violative of defendant's speedy trial rights); United States v. Marion, 404 U.S. 307, 325 (1971) (pre-indictment delay not infringement of due process since defendants failed to prove prejudice and that delay gave prosecution tactical benefit).

75. *See, e.g.*, United States v. Dazen, 607 F.2d 816, 817 (9th Cir. 1979) (dismissal unwarranted since delay attributed to juvenile's attorney); United States v. Cheyenne, 558 F.2d 902, 907 (8th Cir.) (information dismissed unless Attorney General shows delay caused by youth, consented to by youth and youth's lawyer, or in interest of justice), *cert. denied*, 434 U.S. 957 (1977); United States v. Gonzalez-Gonzalez, 522 F.2d 1040, 1041 (9th Cir. 1975) (delay results in dismissal except when caused by child or child's counsel or in interest of fairness); *see also* Federal Juvenile Delinquency Act, 18 U.S.C. § 5036 (1976) (if trial not within thirty days, complaint dismissed unless government demonstrates postponement caused by or agreed to by juvenile or counsel or delay in interest of justice). A delay resulting entirely from a crowded court calendar is not deemed to be in the interest of justice. *See* United States v. Gonzalez-Gonzalez, 522 F.2d 1040, 1044 (9th Cir. 1975); *see also* Federal Juvenile Delinquency Act, 18 U.S.C. § 5036 (1976) (congested docket not to be considered in interest of fairness).

76. *See* Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(a) (1976).

77. *See id.*

determine delinquency.⁷⁸ This adjudicatory hearing is the point at which factual determinations are to be made regarding whether the child actually engaged in the alleged conduct and whether the child should be found to be delinquent.⁷⁹ The court must also determine if the youth should proceed as an adult or a juvenile⁸⁰ and receive an admission or denial of the charges against the child.⁸¹

Prior to allowing a minor to elect whether to proceed as a juvenile or adult offender, the judge must ascertain whether the minor understands all the rights of an adult as well as the rights and benefits afforded a juvenile.⁸² Accordingly, the district court should ex-

78. See *In re Gault*, 387 U.S. 1, 30-31 (1967). See generally Annot., 25 L. Ed. 2d 950, 954-55 (1971) (decisions recognizing juvenile's right to adequate notice and hearing).

79. See, e.g., S. DAVIS, RIGHTS OF JUVENILES—THE JUVENILE JUSTICE SYSTEM § 5.1, at 5-1 (1982) (adjudication stage represents fact-finding process determining truth or falsity of complaint); M. LEVIN & R. SARRI, JUVENILE DELINQUENCY: A COMPARATIVE ANALYSIS OF LEGAL CODES IN THE UNITED STATES 48 (1974) (adjudication decides sufficiency of facts allowing government to intervene in juvenile's life); V. STREIB, JUVENILE JUSTICE IN AMERICA 37 (1978) (adjudicatory phase determines whether minor committed act and whether minor to be adjudged delinquent). See generally 14 AM. JUR. TRIALS *Juvenile Court Proceedings* § 56, at 669 (1968) (adjudicatory hearing examines jurisdictional facts, whether act took place, and whether juvenile to be found delinquent).

80. See *United States v. Doe*, 627 F.2d 181, 185 (9th Cir. 1980); *United States v. Hayes*, 590 F.2d 309, 310 (9th Cir. 1979); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (after consultation with attorney, minor may request in writing to proceed as adult).

81. See INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO ADJUDICATION § 2.4, at 24 (1980). In *United States v. Hayes*, 590 F.2d 309 (9th Cir. 1979), the court commented:

Although FJDA does not expressly confer with a right of a juvenile to tender an admission to the information or discretion on the district court to accept or reject an offered admission, both rights are implied. Although juvenile proceedings under FJDA are in many ways distinguishable from adult criminal prosecutions, the tendered admission to a delinquency information is analogous to the offer of a guilty plea in a criminal prosecution. Nothing in the statute suggests that Congress intended to deny a juvenile the right to offer a "plea." . . . Although the juvenile has a right to tender a plea in a juvenile proceeding, the district court has reasoned discretion in accepting or rejecting a tendered admission. [citation omitted]

Id. at 311; cf. Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (once child entered guilty plea or evidence received, subsequent criminal trial prohibited).

82. See *United States v. Williams*, 459 F.2d 903, 904 (2d Cir. 1972); cf. *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979) (effectiveness of waiver of right to counsel judged in light of willingness to continue and knowledge of defendant); *Brewer v. Williams*, 430 U.S. 387, 404 (1977) (waiver of right to attorney must be purposeful abandonment of recognized privilege); *Miranda v. Arizona*, 384 U.S. 436, 475 (1966) (record to show accused made knowing and intelligent waiver of constitutional rights). See generally 9 L. ED. FED. PROC. *Criminal*

plain the maximum penalties an adult offender could receive as a result of the alleged infraction and the discretion of the judge to sentence the offender under the Federal Youth Corrections Act.⁸³ The court should then explain disposition of a juvenile offender under the FJDA.⁸⁴ Because of the distinctions between punishment as an adult and disposition as a juvenile, the juvenile offender should be well apprised of the judge's dispositional power prior to the juvenile delinquency hearing.⁸⁵

Once the court is assured that the accused understands the rights, benefits, and sentencing alternatives available, the defendant will be asked whether he or she wishes to be treated as an adult or as a juvenile. If the youth elects to proceed as an adult, his

Procedure § 22:1416, at 768 (1982) (minor must recognize rights and consequences of continuing under FJDA to make valid waiver of privileges under statute).

83. See Federal Youth Corrections Act, 18 U.S.C. §§ 5006(d), 5010 (1976). A "youth offender" is defined as an individual under twenty-two years of age on the date of conviction. See *id.* § 5006(d). The benefits of the FYCA were extended to young adult offenders above the age of twenty-two but below the age of twenty-six by virtue of a 1976 amendment to Title 18. See Parole Commission and Reorganization Act, Pub. L. No. 94-233, § 2, 90 Stat. 219, 230 (1976) (codified at 18 U.S.C. § 4216 (1976)). The time of conviction is the relevant date for determining an individual's eligibility for treatment under the Act. See, e.g., *United States v. Boydston*, 622 F.2d 398, 399 (8th Cir. 1980) (defendant ineligible for FYCA treatment when indictment returned nine days after twenty-sixth birthday); *United States v. Riffe*, 600 F.2d 1146, 1147-48 (5th Cir. 1979) (defendant twenty-eight at time of conviction and unable to claim benefit of FYCA); *United States v. Barton*, 566 F.2d 1106, 1107-08 (9th Cir. 1977) (accused twenty-six years old at time of conviction and FYCA thus inapplicable). The FYCA specifies four alternative approaches to sentencing a youth offender: (1) suspend the sentence and place the defendant on probation; (2) place the accused in the Attorney General's custody for rehabilitative care and management until released by the United States Parole Commission; (3) place the youth in the Attorney General's custody for treatment and care for a term allowed by law for commission of the particular offense or until released by the United States Parole Commission; or (4) upon determining that the youth will not be benefitted by sentencing under the Act, the court may impose any other appropriate punishment as set forth in relevant statutes. See Federal Youth Corrections Act, 18 U.S.C. § 5010 (1976). See generally 9 L. Ed. FED. PROC. *Criminal Procedure* § 22:1429, at 775 (1982) (discussing possible sentences under Act).

84. The sentencing provisions of the FYCA are not applicable to an adjudicated delinquent since the juvenile would not have been tried in a criminal court setting. See *United States v. Flowers*, 227 F. Supp. 1014, 1016-17 (W.D. Tenn. 1963), *aff'd*, 331 F.2d 604 (6th Cir. 1964); see also Federal Youth Corrections Act, 18 U.S.C. § 5023(b) (1976) (FYCA not to amend, repeal, or affect FJDA).

85. See INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES § 8.3 at 166-67 (1980). See generally Feld, *Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the "Rehabilitation Ideal,"* 65 MINN. L. REV. 167, 224-30 (1980) (commenting on attorney's duty to actively represent juvenile client).

or her request must be in writing and given upon the advice of counsel.⁸⁶ The offender may then plead not guilty and force the government to trial by jury under an indictment if applicable. Of course, the minor may plead guilty and forego the time and expense of trial. If the defendant chooses to be tried as an adult, the court must set a time for arraignment.

On the other hand, if the offender elects to proceed as a juvenile, his or her request may be oral.⁸⁷ The district judge should consult the minor's attorney and the family members present in the courtroom regarding whether proceeding as a juvenile is in the accused's best interests and whether counsel for the child has discussed the individual's election with his or her relatives.⁸⁸ At this point in the proceeding, the United States Attorney must read the charge against the juvenile and identify the elements of the misdeed which the government will have to prove.⁸⁹ The juvenile may deny the charges asserted and force the government to trial before the judge or admit the offenses contained in the information and avoid trial.

Prior to accepting the juvenile's plea, the court must inform the juvenile that, regardless of admission of the offense, the government must still present the circumstances of the case and the facts

86. See, e.g., *United States v. Gonzalez-Cervantes*, 668 F.2d 1073, 1076 (9th Cir. 1981); *United States v. Doe*, 627 F.2d 181, 182-83 (9th Cir. 1980); *United States v. Hayes*, 590 F.2d 309, 310 (9th Cir. 1979); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (request to proceed as adult to be written and made upon advice of attorney).

87. Cf. Federal Juvenile Delinquency Act, 18 U.S.C. § 5032 (1976) (minor to be tried under FJDA unless written request to proceed as adult received or government seeks transfer to adult court).

88. Cf. *McMann v. Richardson*, 397 U.S. 759, 771 (1970) ("judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courts").

89. The charge must reflect that the minor committed an act of juvenile delinquency, identify the federal statute allegedly violated, and cite to section 5032 of the FJDA. Cf. *United States v. Allen*, 574 F.2d 435, 437-38 (8th Cir. 1978) (defendant committed federal offense, qualified as juvenile, and section 5032 certification made); *United States v. Mechem*, 509 F.2d 1193, 1196 (10th Cir. 1975) (FJDA concerned with "substantive offense" of delinquency predicated on violation of federal law); Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031, 5032 (1976) ("juvenile delinquency" defined as act contravening federal law and defendant not to be charged as juvenile unless government certifies state refusal to assume jurisdiction or state lacks proper facilities). It should be noted that the expedited process established by the FJDA does not include a provision for a preliminary hearing to determine probable cause. See *United States v. Allen*, 574 F.2d 435, 439 n.10 (8th Cir. 1978).

which it could prove if the matter went to trial.⁹⁰ The juvenile is obligated to assure the court that the government's version of the particular occurrence is accurate and that he or she voluntarily admits the misconduct before the judge may acknowledge his or her "confession."⁹¹ The judge must not only determine the juvenile's competency to understand the proceeding and enter an admission or denial, but must also make certain the youth is aware of the consequences of a declaration of guilt.⁹² If the accused admits that he or she is a juvenile delinquent as alleged in the information, the court will enter a judgment of delinquency. As stated earlier, if the juvenile denies the offense of which he or she is accused, the case will proceed to trial.⁹³

H. *Sealing the Juvenile Record*

Since the district court is responsible for safeguarding the records of all juvenile delinquency actions, upon the completion of any delinquency proceeding and without regard to whether there has been an adjudication, the court must order the entire report of the hearing to be sealed.⁹⁴ The statute directs the district court to

90. See INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO ADJUDICATION § 3.5, at 42 (1980); cf. FED. R. CRIM. P. 11 (court not to accept guilty plea without determining existence of facts supporting plea); INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO PROSECUTION § 5.3, at 67 (1980) (prosecutor to refuse plea bargain unless independent evidence introduced in records to support plea).

91. See INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO ADJUDICATION § 3.4, at 40-41 (1980).

92. See *id.* at 29; cf. *Brady v. United States*, 397 U.S. 742, 755 (1970) (guilty plea by defendant who understands effect valid unless induced by threat or fraud); *McCarthy v. United States*, 394 U.S. 459, 466 (1969) (plea not voluntary unless entered with "understanding of the law in relation to the facts"); *Kercheval v. United States*, 274 U.S. 220, 223 (1927) (guilty plea unacceptable unless entered with advice of counsel and comprehension of effect); J. BOND, PLEA BARGAINING AND GUILTY PLEAS § 3.02, at 77 (1978) (admission of guilt to be given voluntarily and with full understanding of character of offense and result of entering such plea).

93. For an analysis of the advocacy function of an attorney at the adjudicatory hearing, see D. BESHAROV, JUVENILE JUSTICE ADVOCACY: PRACTICE IN A UNIQUE COURT §§ 11.1-11.10, at 335-71 (1974).

94. See *United States v. Chacon*, 564 F.2d 1373, 1374 & n.1 (9th Cir. 1977); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5038(a) (Supp. I 1977) (court to guard record and seal it at conclusion of proceeding regardless of whether there has been adjudication). See generally 9 L. ED. FED. PROC. *Criminal Procedure* § 22:1427, at 773-74 (1982) (record to be protected from disclosure).

provide the juvenile and his or her parents or guardian with a written notice worded in clear and understandable language detailing the privileges concerning closure of the juvenile's record.⁹⁵ After the file has been sealed, the records cannot be released unless disclosure is necessitated by one of the circumstances enumerated in the statute.⁹⁶

I. Dispositional Hearing

If a juvenile offender is adjudicated a delinquent, a separate dispositional hearing must be held within twenty days after the delinquency determination unless further observation and study of the

95. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5038(b) (1976); see also INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO JUVENILE RECORDS AND INFORMATION SYSTEMS § 15.2, at 116 (1980) (court to allow juvenile, juvenile's parents, or juvenile's attorney access to case file).

96. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5038(a) (1976 & Supp. I 1977). The juvenile record can be released in response to: (1) requests for information made by other courts; (2) requests for data made by an agency compiling a presentence report for use in another court; (3) police inquiries when the record is needed to conduct a criminal investigation; (4) written requests from the supervisor of a treatment center or other facility to which the child has been committed; (5) inquiries from a governmental department evaluating the juvenile as an applicant for a job affecting national security; and (6) requests from persons injured by the delinquent act or, if such person is deceased, from his or her immediate family, where the request concerns disposition of the juvenile. See *id.*; see also *United States v. Bates*, 617 F.2d 585, 586-88 (10th Cir. 1980) (applying liberal policy of release to defense counsel when juvenile is significant prosecution witness in adult criminal trial). On the other hand, the statute provides that the juvenile record is not to be disclosed when the inquiry concerns an application for a job, a driver's license, bonding, or other such privilege. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5038(a) (1976 & Supp. I 1977). The Act also indicates that:

(d) Unless a juvenile who is taken into custody is prosecuted as an adult

(1) neither the fingerprints nor a photograph shall be taken without the written consent of the judge; and

(2) neither the name nor picture of any juvenile shall be made public by any medium of public information in connection with a juvenile delinquency proceeding.

Id. § 5038(d) (1976). The restrictive provisions of section 5038(d), however, have been held inapplicable to members of the press. See *Oklahoma Publishing Co. v. United States*, 515 F. Supp. 1255, 1259 (W.D. Okla. 1981); cf. *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104-06 (1979) (state statute imposing sanctions for publishing juvenile's name without court permission held violative of first amendment); *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308, 311-12 (1977) (*per curiam*) (juvenile's name and photo "publicly revealed in connection with the prosecution of the crime" and court order preventing publication violative of first and fourteenth amendments). In addition, it has been held that identification of a federal defendant through the use of a juvenile photograph obtained in contravention of a state statute does not constitute a due process violation. See *United States v. Giles*, 658 F.2d 194, 200 (3d Cir. 1981).

accused youth have been ordered by the judge.⁹⁷ If no additional studies are required, the court can conduct the dispositional hearing as soon as the delinquency proceeding is concluded. At the dispositional stage, the court settles on the appropriate action to take regarding the delinquent conduct.⁹⁸

After notification and a hearing at which the minor receives legal assistance, the juvenile may be remanded to the Attorney General's custody for psychological and medical examination and study by an appropriate facility.⁹⁹ Any such examination and study must be on an outpatient basis unless the judge finds that inpatient analysis is required to secure the relevant data.¹⁰⁰ If the minor is only an alleged delinquent, inpatient observation may only be implemented with the acquiescence of the youth and his or her attorney.¹⁰¹ The facility conducting the study is to make a thorough analysis of the child to identify his or her personal characteristics, intellectual capacity, social history, prior involvement with delinquent or criminal activities, mental or physiological defects, and any other significant information.¹⁰² The Attorney General

97. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(a) (1976); cf. INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO DISPOSITIONAL PROCEDURES § 6.3, at 50 (1980) (disposition proceeding to be held as soon as practicable after adjudication). See generally 9 L. ED. FED. PROC. *Criminal Procedure* § 22:1424, at 771 (1982) (disposition proceeding to be convened twenty days or less from date of adjudication unless court directs additional study).

98. See, e.g., A. CAMPBELL, LAW OF SENTENCING § 36, at 122 (1978) (disposition equivalent of sentencing phase); S. DAVIS, RIGHTS OF JUVENILES—THE JUVENILE JUSTICE SYSTEM § 6.2, at 6-3 to 6-4 (1982) (disposition proceeding involves correctional measures to be taken to secure child's best interest or needs); V. STREIB, JUVENILE JUSTICE IN AMERICA 41 (1978) (disposition hearing to determine interests of minor and community and order appropriate treatment).

99. See *United States v. J. D.*, 517 F. Supp. 69, 70 (S.D.N.Y. 1981); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(c) (1976) (court may place youth in Attorney General's care for observation, but youth must be given notice and provided hearing at which legal representative present). See generally Annot., 58 A.L.R. FED. 232, 261 (1982) (discussion of *United States v. J. D.*).

100. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(c) (1976); see also INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO DISPOSITIONAL PROCEDURES § 2.3(D), at 33 (1980) (data to be secured utilizing least restrictive measures).

101. See Federal Juvenile Delinquency Act, 18 U.S.C. 5037(c) (1976); cf. INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO DISPOSITIONAL PROCEDURES § 2.2, at 26-27 (1980) (no investigative report permitted until minor adjudged delinquent unless juvenile and attorney give written consent).

102. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(c) (1976); see also INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO DIS-

must present a report of the observation and study to the court, the juvenile's attorney, and the government within thirty days from the date of commitment unless this period has been extended by the court.¹⁰³

The FJDA clarifies the dispositional powers of the court by delineating several options which are available to the judge after an adjudication of delinquency. The judge may: (1) order suspension of the delinquency adjudication or dispositional "sentence" on conditions that the court feels are appropriate; (2) place the juvenile on probation; or (3) place the child in the Attorney General's custody.¹⁰⁴ Any probation or commitment levied by the court, however, must not extend beyond the twenty-first birthday of the delinquent or the maximum sentence that could have been given an adult convicted of the same crime, which ever is sooner.¹⁰⁵ If the child is nineteen years old at the time of disposition, then probation, commitment to the custody of the Attorney General, or commitment for observation and study may not "exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense."¹⁰⁶

POSITIONAL PROCEDURES § 2.3, at 31 (1980) (dispositional information base to consist of child's age, nature of delinquent act, prior delinquent conduct, social situation, traits of juvenile, family situation, performance in school, and related items).

103. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(c) (1976); cf. INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO DISPOSITIONAL PROCEDURES § 2.1(F), at 24 (1980) (dispositional information to be "broadly shared" among parties to action).

104. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(b) (1976). See generally INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO DISPOSITIONS §§ 3.1-3.3, at 39-80 (1980) (identification of disposition alternatives with accompanying commentaries).

105. See, e.g., *United States v. Lopez-Garcia*, 683 F.2d 1226, 1228-29 (9th Cir. 1982) (youth validly placed on probation for duration of minority); *United States v. Gonzalez-Cervantes*, 668 F.2d 1073, 1076 (9th Cir. 1981) (section 5037 allows term of imprisonment for minor equal to imprisonment adult could receive or term of probation for minor equal to probation adult could receive); *United States v. Doe*, 631 F.2d 110, 114 (9th Cir.) (child ordinarily cannot be placed on probation or committed for period beyond twenty-first birthday), cert. denied, 449 U.S. 867 (1980); see also Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(b) (1976) (probation or commitment not to exceed earlier of date of juvenile's twenty-first birthday or conclusion of maximum sentence adult could have received); cf. *Fish v. United States*, 254 F. Supp. 906, 907 (D. Md. 1966) (juvenile not to be placed on probation for period exceeding minority or committed for term surpassing sentence that could have been imposed). See generally Annot., 58 A.L.R. FED. 232, 260 (1982) (discussion of cases addressing term of commitment under section 5037(b)).

106. Federal Juvenile Delinquency Act, 18 U.S.C. 5037(b) (1976); see *United States v.*

As noted earlier, if the juvenile is transferred for trial as an adult, the court may sentence the offender under the Federal Youth Corrections Act.¹⁰⁷ There are two key subdivisions in section 5010 of the Act that guide sentencing decisions. Under subdivision (b), the youth offender may receive an indefinite sentence and in some circumstances he or she may be kept under supervision for as long as six years even though a juvenile offender could not receive a sentence exceeding his or her minority or the term authorized by statute for the asserted offense, whichever is sooner.¹⁰⁸ If the offender is sentenced under section 5010(b), however, he or she must be conditionally discharged within four years from the time of conviction.¹⁰⁹

Under subdivision (c), the defendant may receive an indefinite sentence for any term which does not surpass the maximum pro-

Gonzalez-Cervantes, 668 F.2d 1073, 1076 (9th Cir. 1981).

107. See, e.g., *Dorszynski v. United States*, 418 U.S. 424, 433 (1974) (judge authorized to sentence persons under twenty-two years of age by Act); *Micklus v. Carlson*, 632 F.2d 227, 234 (3d Cir. 1980) (Act intended to affect individuals between sixteen and twenty-two years old and benefits extended by legislation to persons between twenty-two and twenty-six years of age); *Guidry v. United States*, 317 F. Supp. 1110, 1111 (E.D. La.) (Act provides alternative sentencing procedures for judges in relation to eligible offenders), *aff'd*, 433 F.2d 968 (5th Cir. 1970). It must be noted, however, the sentencing alternatives prescribed by the Federal Youth Corrections Act are not applicable to adjudicated delinquents. See *United States v. Flowers*, 227 F. Supp. 1014, 1017 (W.D. Tenn. 1963), *aff'd*, 331 F.2d 604 (6th Cir. 1964); cf. *Dorszynski v. United States*, 418 U.S. 424, 433 n.9 (1974) (FYCA generally inapplicable to juveniles); *Guidry v. United States*, 317 F. Supp. 1110, 1112 n.2 (E.D. La.) (child prosecuted in "regular action" may be sentenced under FYCA), *aff'd*, 433 F.2d 968 (5th Cir. 1970).

108. See Federal Youth Corrections Act, 18 U.S.C. § 5010(b) (1976); see also *id.* § 5017(c) (youth offender to be conditionally discharged four years from time of conviction and unconditionally discharged within six years). Compare *United States v. Gonzalez-Cervantes*, 668 F.2d 1073, 1076 (9th Cir. 1981) (juvenile's term of imprisonment or probation may equal period of imprisonment or probation adult may receive) and Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(b) (1976) (probation or commitment not to surpass youth's twenty-first birthday or expiration of maximum term adult could have received) with *Watts v. Hadden*, 651 F.2d 1354, 1357 (10th Cir. 1981) (sections 5010(b) and 5017(c) permit confinement for up to four years and additional two year period of conditional release) and Federal Youth Corrections Act, 18 U.S.C. § 5010(b) (1976) (defendant may be remanded to Attorney General until discharged by Parole Commission under guidelines in section 5017(c)).

109. See Federal Youth Corrections Act, 18 U.S.C. § 5010(b) (1976); see also *id.* § 5017(c) (youth offender to be conditionally released within four years from date of conviction). See generally *Partridge, Chaset & Eldridge, The Sentencing Options of Federal District Judges*, 84 F.R.D. 175, 202 (1980) (section 5010(b) permits maximum term of imprisonment up to four years).

vided by statute for the asserted misconduct even though this term is greater than the period of his or her minority and such a sentence would not be permissible under the FJDA.¹¹⁰ If the minor is sentenced pursuant to section 5010(c), he or she may be conditionally released at any time and must be conditionally discharged at least two years before the end of the sentence imposed.¹¹¹ In addition, the offender must be unconditionally released prior to or on the date of the conclusion of the maximum term imposed.¹¹²

Under both the FJDA and the FYCA, no juvenile committed to the custody of the Attorney General may be placed in an adult correctional institution in which he or she is regularly exposed to incarcerated adults convicted of a crime or awaiting trial on criminal charges.¹¹³ Moreover, the FJDA specifies that all youths who

110. See, e.g., *Watts v. Hadden*, 651 F.2d 1354, (10th Cir. 1981) (sections 5010(c) and 5017(d) permit indeterminate sentence for term set by other relevant statute); *United States v. Stoddard*, 553 F.2d 1385, 1387 (D.C. Cir. 1977) (Act sanctions commitment equal to maximum adult term for offense); *Burns v. United States*, 552 F.2d 828, 830 (8th Cir. 1977) (section 5010(c) allows sentence equal to term authorized by another statute); see also Federal Youth Corrections Act, 18 U.S.C. §§ 5010(c), 5017(d) (1976) (defendant may be subjected to commitment for period authorized by law for crime or until released by Parole Commission pursuant to section 5017(d). Compare *United States v. Doe*, 631 F.2d 110, 114 (9th Cir.) (juvenile's probation generally not in excess of twenty-first birthday), cert. denied, 449 U.S. 867 (1980) and Federal Juvenile Delinquency Act, 18 U.S.C. § 5037(b) (1976) (probation or commitment limited to date of youth's twenty-first birthday or conclusion of maximum adult sentence) with *Robinson v. United States*, 474 F.2d 1085, 1087, 1090 (10th Cir. 1973) (eighteen year sentence valid under section 5010(c) since maximum adult sentence was twenty-five years) and Federal Youth Corrections Act, 18 U.S.C. § 5010(c) (1976) (youth offender eligible for commitment up to term authorized by law for crime or until released by Parole Commission under section 5017(d) guidelines).

111. See Federal Youth Corrections Act, 18 U.S.C. § 5010(c) (1976); see also *id.* § 5017(d) (defendant to be conditionally discharged at least two years prior to expiration of sentence). See generally 9 L. ED. FED. PROC. *Criminal Procedure* § 22:1434, at 780 (1982) (general discussion of period of commitment under FYCA).

112. See Federal Youth Corrections Act, 18 U.S.C. § 5017(d) (1976); see also Partridge, Chaset & Eldridge, *The Sentencing Options of Federal District Judges*, 84 F.R.D. 175, 201 (1980) (youth offender to unconditionally released on or prior to conclusion of sentence).

113. See, e.g., *Ralston v. Robinson*, 454 U.S. 201, 207-08 (1981) (FYCA evinces concern that youth offenders be separated from adult criminals); *United States v. Smith*, 683 F.2d 1236, 1240-41 (9th Cir. 1982) (youth offenders receiving "split sentences" under FYCA to be segregated from convicted adults); *United States v. Vancier*, 515 F.2d 1378, 1381 (2d Cir.) (Congress deemed segregation of juveniles and adult criminals to be important), cert. denied, 423 U.S. 857 (1975); see also Federal Youth Corrections Act, 18 U.S.C. § 5011 (1976) (treatment agencies to be used solely for youth offenders and youth offenders to be separated from other violators); Federal Juvenile Delinquency Act, 18 U.S.C. § 5039 (1976) (juveniles not be incarcerated in jails where regularly exposed to convicted adults). See generally Pirsig, *The Constitutional Validity of Confining Disruptive Delinquents in Penal*

are committed are to receive "adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment."¹¹⁴ The FJDA also indicates that the juvenile is to be committed to a foster home or community-based care center near the youth's neighborhood when ever possible.¹¹⁵

J. Parole and Revocation of Parole or Probation

The FJDA provides that a juvenile delinquent may be paroled at any time under terms and conditions deemed appropriate by the United States Parole Commission.¹¹⁶ A parole decision is predicated upon consideration of the individual's cooperation with the rules of the confining institution, the character of the offense, the history and personal traits of the defendant, and a finding that release would not encourage disrespect for the law or endanger the community.¹¹⁷ To protect the juvenile on probation or parole, the

Institutions, 54 MINN. L. REV. 101, 135-36, 138-39, 144-45 (1969) (legislation allowing juveniles to be committed to penal institutions violative of due process and equal protection); Note, *Transfer of Juveniles to Adult Correctional Institutions*, 1966 WIS. L. REV. 866, 895-98 (discussing objections to transfer of juveniles to adult correctional facilities); Annot., 95 A.L.R.3d 568, 577 (1979) (noting state court decisions regarding segregation of juveniles and adult criminals).

114. Federal Juvenile Delinquency Act, 18 U.S.C. § 5039 (1976). See generally *Morales v. Turman*, 383 F. Supp. 53, 70-71, 77-78, 84-85, 88-90, 92, 100-01, 105, 119-20 (E.D. Tex. 1974) (holding juvenile has constitutional and statutory right to treatment and establishing minimum standards for delivery of adequate services), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977); NATIONAL ADVISORY COMM. FOR JUV. JUST. & DELINQ. PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE 400-07, 411-20, 469-91, 493-507 (1980) (discussing basic services to be provided juveniles).

115. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5039 (1976); see also INSTITUTE OF JUD. ADMIN. & A.B.A., JUVENILE JUSTICE STANDARDS—STANDARDS RELATING TO CORRECTIONS ADMINISTRATION § 7.3, at 126 (1980) (juvenile to be situated near home community when possible).

116. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5041 (1976); see also 28 C.F.R. § 2.4 (1982) (juvenile delinquent may be paroled at any time as determined by United States Parole Commission).

117. See Parole Commission and Reorganization Act, 18 U.S.C. § 4206(a) (1976); see also 28 C.F.R. §§ 2.13(d), 2.18 (1982) (parole denied or granted on basis of failure to obey or compliance with institution rules, whether discharge would minimize seriousness of crime or encourage disrespect of law, or whether release would threaten community); cf. A.B.A., STANDARDS RELATING TO PROBATION §§ 1.3, 5.1, at 30, 56-57 (1970) (probation allowed or revoked on basis of whether confinement needed to safeguard public, offender in need of

FJDA indicates that the youth must be afforded notice and a hearing with counsel prior to any revocation of his or her probation or parole.¹¹⁸

IV. CONCLUSION

With an understanding of the Federal Juvenile Delinquency Act and the constitutional rights afforded a juvenile offender, counsel should be able to effectively represent a juvenile charged with a criminal offense in federal court. The authors hope that this article will be helpful to the practicing bar in providing a framework to assist them in counseling their juvenile clients and explaining the juvenile offender's numerous rights, benefits, and procedural options prior to a juvenile delinquency hearing in federal district court.

care which can best be provided if incarcerated, or whether seriousness of offense lessened if released on probation or probation not revoked).

118. See Federal Juvenile Delinquency Act, 18 U.S.C. § 5042 (1976); see also 28 C.F.R. §§ 2.44(a)(1), 2.45(b) (1982) (parole violator or youth offender in need of additional treatment may be provided hearing concerning revocation of parole); A.B.A., STANDARDS RELATING TO PROBATION § 5.4, at 65 (1970) (revocation of probation to be accomplished in open court proceeding); cf. *Gagnon v. Scarpeli*, 411 U.S. 778, 782 (1973) (individual entitled to preliminary and final revocation proceedings at which he or she represented by counsel); *Morrissey v. Brewer*, 408 U.S. 471, 487-89 (1972) (parolee to be afforded revocation hearing which comports with requirements of due process); *Mempa v. Rhay*, 389 U.S. 128, 137 (1967) (offender to be provided assistance of counsel at probation revocation hearing). See generally S. DAVIS, RIGHTS OF JUVENILES—THE JUVENILE JUSTICE SYSTEM § 6.9, at 6-34, 6-36 (1982) (juvenile entitled to hearing before revocation of probation or parole); 9 L. ED. FED. PROC. *Criminal Procedure* § 22:1426, at 773 (1982) (general discussion of juvenile's right to parole and revocation procedures under FJDA).