Summary Convictions, Absolute
and Conditional Discharge and
Juvenile Delinquency

MAR 2 2 1993

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CRIMES INVOLVING MORAL TURPITUDE

A crime involving moral turpitude (CIMT) is an act that is base, vile, depraved or evil. It is an act done contrary to justice, honesty, principle or good morals. It may be performed against one person, or against society in general. Aliens with convictions for crimes involving moral turpitude may be found excludable and/or deportable under certain circumstances.

Some often encountered CIMT's are:

murder	kidnapping	incest
rape	arson	forgery
robbery	theft	fraud

assault (with a weapon, or with intent to commit CIMT)
possession of stolen property (with guilty knowledge)
gross indecency (depending upon the statute)
Conspiring or attempting to commit any of these crimes is a CIMT.

Often encountered crimes which are not CIMT's are:

common assault	tax violations
firearms violations	taking auto without consent
juvenile delinquency	immigration violations
gambling offenses	mischief
traffic violations	smuggling and customs violations

breaking and entering (unless "with intent" or "and theft")

For a discussion of assault causing bodily harm from the Canadian criminal statute, please see the last entry of this memo.

SUMMARY CONVICTIONS
UNDER THE CRIMINAL CODE OF CANADA

On August 10, 1992, an opinion was issued by the Office of the General Counsel on the admissibility of an alien convicted in Canada of a single CIMT, the disposition of which was a summary conviction. The conclusion reached was that such an alien is not excludable.

Under Canadian law, certain offenses may be treated by the court as summary convictions. A conviction on summary offense in Canada carries a maximum term of imprisonment of six months. Therefore anyone with only <u>one</u> conviction, when it is a summary conviction for a CIMT fits into the exception of §212(a)(2)(A)(ii)(II), and is not excludable under §212(a)(2)(A)(i)(I). The exception allows for an alien to have <u>one</u> conviction for a CIMT when the maximum penalty

did not exceed one year, and the alien was not sentenced to more than 6 months, and therefore he or she will not be excludable due to the conviction. It should be noted that the exception applies only to CIMT's and not to any types of drug convictions.

The burden of proof is always on the alien to show that he or she is admissible. When it is known that an alien has a conviction, it is up to the alien to provide evidence that the conviction was treated summarily. Acceptable proof of summary conviction will include a criminal record, showing the code section of a summary conviction, or court records that indicate that the alien was summarily convicted.

Some of the more frequently encountered code sections for summary convictions for crimes involving moral turpitude from the 1991 Canadian criminal code are listed:

Theft under $1000; §334(b)(ii)
previously, §294(b)(ii)
Theft or Forgery of credit card; §342(1)(f)
previously, §301.1(1)(f)
Possession of property obtained by crime under $1000; §355(b)(ii)
previously, §313(b)(2)
False Pretence or false statement; §362(2)(a)(ii)
previously, §320(2)(B)(ii)
Punishment for various sexual crimes; §169
previously, §165(b)
Keeping common bawdy house, §210
previously, §193
Assaulting a Peace Officer; §270(2)(b)
previously, §246(2)(b)
Sexual Assault; §271(1)(b)
previously, §246.1(1)(b)
Fraud under $1000; §380 (1)(b)(ii)
previously, §338(1)(b)(ii)

For further clarification, please see appendix 1, memo from General Counsel.

ABSOLUTE AND CONDITIONAL DISCHARGES

This is an effort to clarify some of the confusion that has surrounded Canadian discharges. Absolute discharges for all crimes are not convictions for the purposes of United States Immigration law. This includes all CIMT's and all drug-related charges as well.

Conditional discharges ARE convictions for the purposes of United States Immigration law, even though in the eyes of the Canadian government they are not convictions. This includes conditional discharges for all offenses, CIMT's and drug-related. Conditional discharges are granted for convictions handled both by summary conviction and as indictable offenses. So a conditional discharge for an indictable offense renders the alien excludable, but a conditional discharge for a single offense convicted summarily will

put the alien within the exception mentioned above, thus rendering the alien not excludable.

It should be noted once again that for an alien to be found inadmissible pursuant to §212(a)(2)(C), a consular or immigration officer must have reason to believe he or she is or has been a drug trafficker. No conviction is necessary to a finding of excludability on this ground. Therefore, while an absolute discharge does not render an alien excludable, it may be a factor in finding an alien excludable under §212(a)(2)(C). As in the past, determinations will be made on a case by case basis, considering all the relevant facts available.

For further reference as to why conditional discharges are convictions, please see appendix 2, memo from General Counsel.

JUVENILE DELINQUENCY

According to the Federal Juvenile Delinquency Act, juvenile delinquency is the violation of a law of the United States committed by a person under the age of 18 which would be a crime if committed by an adult. See appendix 3, FJDA. Convictions for offenses committed when the offender was under the age of 18 do not render the alien excludable except if they are for crimes of violence, drug trafficking, or drug import/export.

Crimes of violence are offenses that have an element of physical force against the person or property of another, or felonies that involve a substantial risk that physical force against a person or property may be used in committing the offense. See appendix 4, Therefore any offense that is a crime of violence against a person or against property is potentially a ground for exclusion.

A minor drug offense (simple possession) or nonviolent CIMT offense (theft or fraud), therefore, is a delinquency, not a crime, in the U.S. if committed by a person under the age of 18.

An alien who was convicted of a minor drug offense (not trafficking or importing/exporting) or nonviolent CIMT offense (not a crime of violence) who was under the age of 18 at the time of commission of the offense has not been convicted of a crime for the purpose of United States Immigration law, and is therefore not excludable under §212(a)(2)(i)(I) or §212(a)(2)(i)(II) of the Act. It is important to note that an alien with more than one of these minor drug offenses or nonviolent CIMT offenses, or some combination of the two, is not excludable.

For further clarification, please see appendix 5, memo from General Counsel.

EXAMPLES OF APPLICATIONS

ADMISSIBLE

1. Alien commits one theft offense while under the age of eighteen, and is convicted of that offense.

2. Alien commits a minor drug offense (simple possession of narcotics) while under the age of 18 and is convicted of the offense.

3. Alien received an absolute discharge for possession of narcotics and one summary conviction for possession of property obtained by crime.

4. Alien has one summary conviction for theft offense.

5. Alien commits two offenses while under the age of 18, theft and possession of narcotics.

INADMISSIBLE

1. Alien has two theft convictions, both summary convictions.

2. Alien has a conditional discharge for possession of narcotics.

3. Alien has one credit card fraud conviction. He claims he was summarily convicted. His criminal record does not show a Canadian code section.

ASSAULT ON A PEACE OFFICER

The charge of Assault on a Peace Officer has caused some confusion for officers trying to determine if an alien who has been convicted for this offense is excludable. If an alien has been convicted for this offense and the statute indicates that the alien assaulted the peace officer executing his duty, or someone who was aiding such an officer, then the alien is not excludable for that offense. The offense itself is not a CIMT. This would usually be the case of an individual resisting his or her own arrest.

The statutory definition of Assaulting a Peace Officer often includes more than the above, however. When an alien is convicted for the offense of Assaulting a Peace Officer and the statute indicates that the alien was involved in assaulting a peace officer with the intent to prevent the arrest of another person, or to prevent the officer from executing process against land or goods, or with the intent to regain something taken by lawful process, the alien may be excludable. The offense itself is a CIMT. The only exceptions to the excludability of such an alien are if the alien is convicted summarily and has no other convictions for CIMT's, or if the alien was under the age of 18 at the time of the conviction, and has no other convictions.

The relevant code sections from the Canadian criminal code follow:
§ 270(1)(a) - not a CIMT
previously, §246(1)(a)
§ 270(1)(b) or (c) - CIMT

previously, §246(b) or (c)
§ 270(2)(b) - alien summarily convicted
previously, §246(2)(b)

ASSAULT CAUSING BODILY HARM

Recently, we have received an opinion from the General Counsel's Office indicating that this offense from the Canadian criminal code is not a CIMT. We previously had been considering assault causing bodily harm to be a CIMT. The reason that it is not a CIMT is that the requisite intent is not present in the statute. In order for this offense to be a CIMT there must be an element of intentional action, or at least reckless action. These do not exist in the Canadian statute. As of this writing, the unpublished opinion of the General Counsel is not available in writing, but it will be distributed upon becoming available.

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For a flow chart of what to consider when determining whether an alien is excludable, please see appendix 6.
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Memorandum

APPENDIX I

Subject: Legal Opinion: Admissibility of an alien convicted of a single theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada	Date: AUG 10 1992

To

John J. Ingham
District Director
Buffalo

From

Office of the
General Counsel

ISSUE

Whether an alien convicted of a theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada, as the only offense committed by the alien, is excludable under section 212(a)(2)(A)(ii)(II).

SUMMARY CONCLUSION

An alien who is convicted of a theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada, as the only offense committed by the alien, is not inadmissible to the United States because of that conviction.

ANALYSIS

Section 334(b) of the Criminal Code of Canada relates to multiple theft offenses. Section 334(b)(i) relates to a felony offense punishable by a maximum term of imprisonment not exceeding two years. Section 334(b)(ii) relates to a misdemeanor offense punishable by a term of imprisonment not exceeding six months. Where the prosecution elects to proceed by way of section 334(b)(i) the offense is prosecuted as an indictable offense. When the prosecution elects to proceed by way of summary conviction under section 334(b)(ii), the proceedings are conducted by a summary conviction court pursuant to Part XXVII of the Criminal Code of Canada. Since an offense punishable on summary conviction is prosecuted under a special procedure in a summary conviction court with a maximum sentence of imprisonment of six months, this offense is a misdemeanor offense. A conviction for this offense does not constitute a ground of excludability under section 212(a)(2)(A)(ii)(II).

	DD	DDD	DEP	[illegible]	[illegible]	DC	[illegible]	ADM	[illegible]	[illegible]	[illegible]	[illegible]
ACT												
RF						✓	✓					

Form G-2
(Rev. 3-2-80)

Section 212(a)(2)(A)(ii)(II) of the Immigration and Nationality Act (Act) provides that an alien convicted of a crime involving moral turpitude is not inadmissible on the basis of section 212(a)(2)(A)(i)(I) of the Act if the maximum possible penalty for the crime of which the alien was convicted did not exceed imprisonment for one year and the actual sentence imposed did not exceed six months. (Emphasis added.)

Since a conviction on summary offense in Canada carries a maximum term of imprisonment of six months, all aliens convicted thereunder have met the requirements of the "petty offense" exception of section 212(a)(2)(A)(ii)(II). They are not inadmissible under section 212(a)(2)(A)(i)(I) although they may independently be inadmissible under some other provision of the exclusion statute.

CONCLUSION

An alien convicted of a theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada, and of no other crime, is not inadmissible to the United States for this conviction.

Grover Joseph Rees III
General Counsel

APPENDIX 2

CO 893-P
CO 212.5-P

21 APR 1989

LEGAL OPINION
Your CO 893-P Memorandum of August 1, 1988: Conditional or Absolute Discharges; Interpretation of Canadian Criminal Code for INS Purposes

Ronald A. Brooks
Assistant Commissioner
COINS

Office of the General Counsel

ATTN: Dwight Faulkner
Assistant Chief Inspector

I. QUESTIONS

In the subject memorandum, you request a legal opinion concerning the following questions:

A. Does a Canadian criminal court's order granting a defendant an absolute discharge qualify as a conviction for U.S. immigration purposes?

B. Does a Canadian criminal court's order granting a defendant a conditional discharge qualify as a conviction for U.S. immigration purposes?

II. SUMMARY CONCLUSIONS

A. A Canadian criminal court's order granting a defendant an absolute discharge does not qualify as a conviction for U.S. immigration purposes.

B. A Canadian criminal court's order granting a defendant a conditional discharge does qualify as a conviction for U.S. immigration purposes.

III. ANALYSIS

A. Matter of Dykes Provides the Rule for Determining Whether an Order Granting an Alternative to Incarceration Qualifies as a Conviction for Immigration Purposes

The Board of Immigration Appeals has recently reexamined the conditions under which a person found guilty of an offense, but granted an alternative to incarceration without entry of a formal

adjudication of guilt, is to be considered "convicted" of the offense for immigration purposes. Matter of Ozkok, I.D. 3044 (BIA 1988). The Board found this reexamination necessary because of the many and varied alternatives available to sentencing judges under the laws of the various states. Id., slip opinion at 7-8. The Board noted that, in administering Federal law, the determination of whether a person has been "convicted" of an offense is "a question of federal law and should not depend on the vagaries of state law." Id., slip opinion at 9, n. 6, citing Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 111-112, 117 (1983). The Board held that, for immigration purposes, a conviction exists if all of these elements are present:

> (a) a judge or jury has found the defendant guilty or the defendant has entered a plea of guilty or nolo contendere or has admitted sufficient facts to support a finding of guilty;
>
> (b) the judge has ordered the imposition of some form of punishment, penalty, or restraint of liberty on the defendant;
>
> (c) the law under which the judge acted permits the judge to enter a judgment or adjudication of guilt, without availability of further proceedings concerning the defendant's guilt or innocence on the original charge, if the defendant violates probation or fails to comply with the court's order.

Ozkok, I.D. 3044, slip opinion at 9-10.

B. A Canadian Court's Grant of an Absolute Discharge Does Not Qualify as a Conviction Under Ozkok, Because No Punishment Is Imposed on the Defendant

Canadian law permits a sentencing judge to defer the entry of a conviction against a defendant who pleads guilty or is found guilty of an offense, under certain conditions. Can. Rev. Stat., 1985, Criminal Code, c. C-46, part XXIII, § 736(1).[1] The court

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[1] Canadian law gives jurisdiction to try criminal cases to the provincial and local courts. Revised Statutes of Canada, 1985, Criminal Code, ch. C-46 §§ 2, 468, 469. The national Parliament, however, has exclusive legislative power over the substance of the criminal law. Constitution Act, 1867, 30-31 Vict. c. 3 (U.K.), title VI, § 91, cl. 27, as amended. Thus, the questions presented need not be analyzed on a province-by-province basis.

may not defer conviction if the offense may be punished by imprisonment for fourteen years or for life, or if the law prescribes a minimum punishment for the offense. Id. Before it decides to defer entry of a conviction, the court must find that doing so is in the defendant's best interest and is not contrary to the public interest. Id.

If the court finds that deferring entry of a conviction is warranted, it may enter an order absolutely discharging the defendant from the underlying charge. Id. Canadian law does not consider a discharge order to be a conviction, with two limited exceptions. The defendant may appeal the discharge order as if it were a conviction. Id. He may also plead the discharge order as the basis of a claim of former jeopardy. Id.[2]

An absolute discharge under Canadian law does not satisfy the Board's second Ozkok standard. A Canadian sentencing judge who grants a defendant an absolute discharge imposes on the defendant no form of punishment, penalty, or restraint of liberty. Ozkok, I.D. 3044, slip opinion at 9. Thus, a Canadian court's order granting a defendant an absolute discharge is not a conviction for purposes of the United States immigration law.

C. A Canadian Court's Grant of a Conditional Discharge Does Qualify as a Conviction for Immigration Purposes

1. A Canadian Conditional Discharge Order Satisfies the Board's Ozkok Standards

A Canadian sentencing judge may grant a defendant a discharge conditioned on the completion of probation, rather than an absolute discharge. Can. Rev. Stat., supra, § 736(1). Like an absolute discharge, a conditional discharge is not a conviction under Canadian law, except for purposes of the defendant's appeal or of a later plea of former jeopardy. Id., § 736(3). Unlike an absolute discharge, however, a conditional discharge does impose restraints on the defendant's liberty. Id., § 737(2). A defendant's willful violation of the probation conditions imposed in a discharge order is an offense for which the defendant may be convicted summarily. Id., § 740. The Board expressly included probation as one of the types of penal dispositions that support a conclusion that a defendant has been convicted. Ozkok, I.D. 3044, slip opinion at 9.

The conditional discharge satisfies the Board's Ozkok standards. A court may order a conditional discharge only after a plea,

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2. The Attorney General may appeal from the discharge order as if it were an acquittal. Can. Rev. Stat., 1985, supra, § 736(3).

verdict, or finding of guilt. Can. Rev. Stat., supra, § 736(1); Ozkok, supra. The accompanying probation is a punitive restraint on the defendant's liberty. Can. Rev. Stat., supra, § 737(2); Ozkok, supra. Finally, a willful violation of probation may result in the court's revocation of probation and entry of a conviction, without a retrial of the defendant's guilt on the original offense. Can. Rev. Stat., supra, § 736(4); Ozkok, supra., at 9-10.

2. An alien may not be excluded based on a Canadian conditional discharge order unless the alien's right to direct appeal is exhausted or waived

A defendant in a Canadian criminal proceeding may appeal from an order granting a conditional discharge as if the order were a conviction. Can. Rev. Stat., supra, § 736(3)(a). A conviction is not final for immigration purposes until direct appeal is exhausted or waived. Marino v. INS 537 F.2d 686 (2d Cir., 1976). Thus, an alien may not be denied admission based on a Canadian conditional discharge if the appeal time has not yet expired or if the alien's direct appeal remains pending.

3. An alien may not be excluded based on a Canadian conditional discharge order relating to a crime involving moral turpitude, if the order is the alien's only conviction

An alien convicted of a crime involving moral turpitude is excludable from the United States. INA, § 212(a)(9), 8 U.S.C. 1182(a)(9). This exclusion ground does not apply, however, if an alien has only one conviction for a crime involving moral turpitude and if the sentance actually imposed on the alien did not exceed a term of imprisonment in excess of six months. Id. No term of imprisonment is imposed on an alien granted a conditional discharge under Canadian law. Can. Rev. Stat., supra, § 736(1). Thus, a single Canadian conviction for a crime involving moral turpitude that results in a grant of conditional discharge does not make an alien excludable from the United States.

RAYMOND R. XXXXXXXX
General Counsel

Memorandum

APPENDIX 3

Subject	Date
LEGAL OPINION: Treatment of Juvenile Drug Offenses for Immigration Purposes	DEC 3 - 1991

To

H. Edward Odom
Chief, Advisory Opinions Division
Department of State

From

Office of the
General Counsel

Issue Presented

Whether a juvenile alien who has been convicted of a minor drug offense in a foreign country is, thereafter, excludable under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (Act) and is, therefore, inadmissible to the United States.

Summary Conclusion

An alien who commits a minor drug offense while under the age of eighteen and who is convicted of that offense in a foreign country is a juvenile delinquent for immigration purposes. The alien is not excludable under section 212(a)(2)(A)(i)(II) of the Act and is not inadmissible to the United States because of that conviction.

Analysis

In order for a foreign conviction to serve as a basis for a finding of inadmissibility, the conviction must be for conduct deemed criminal by United States standards. Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978).

An act of juvenile delinquency[1] is not a crime in the United States and an adjudication of delinquency is not a conviction for

[1] Juvenile delinquency is defined by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031, as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

a crime within the meaning of the Act. Matter of Ramirez-Rivero, 18 I&N Dec. 135 (BIA 1981).

The Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. 5031 et seq., governs whether a foreign offense is to be considered a delinquency or a crime by United States standards. Matter of Ramirez-Rivero, supra. According to section 5302 of the FJDA,

> [A] juvenile alleged to have committed an act of juvenile delinquency . . . shall not be proceeded against in any court of the United States unless . . . the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841) [drug trafficking crimes], or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)) [drug importation/exportation crimes], or section 922(p) of this title [firearm offenses]. . . . .

Therefore, a minor drug offense, such as simple possession, is a delinquency and not a crime in the United States if committed by a person under the age of eighteen. It follows then that a foreign conviction for a minor drug offense committed by a juvenile would be considered a delinquency and not a crime for U.S. immigration purposes.

Conclusion

An alien who was convicted of a minor drug offense in a foreign country who was under the age of eighteen at the time of the commission of the offense has not been convicted of a crime for U.S. immigration purposes and is, therefore, not excludable under section 212(a)(2)(i)(II) of the Act or inadmissible to the United States for such offense.

Grover Joseph Rees III
General Counsel

troit, Mich., in a letter to the ...
the Laws dated June 24, 1944. Words "an offense against the" was changed to "the v[illegible]ion of a" without change of substance.

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

EDITORIAL NOTES

Savings Provisions of Pub.L. 98–473, Title II, c. II. See section 235 of Pub.L. 98–473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended, set out as a note under section 3551 of this title.

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

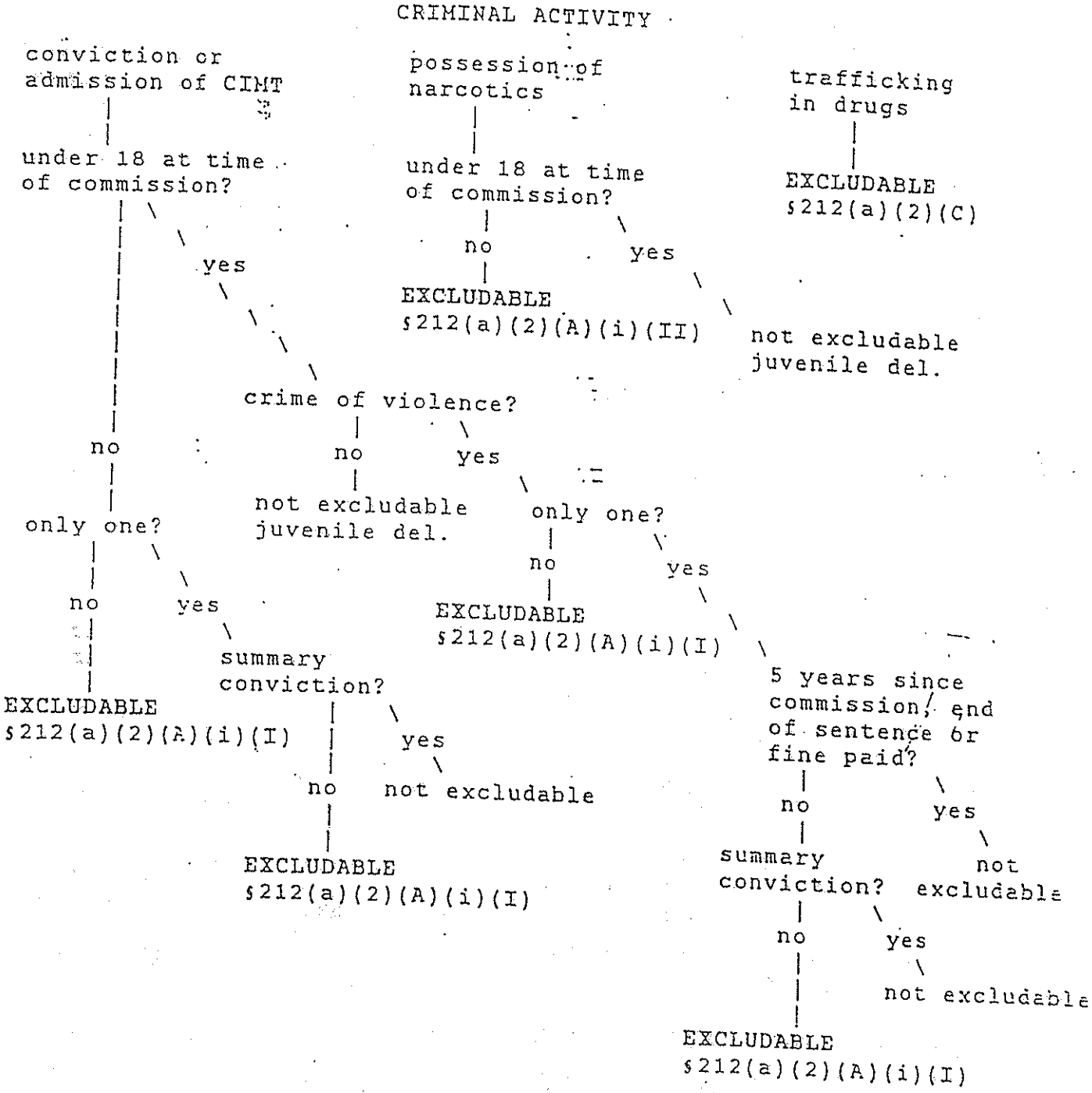
A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), or section 922(p) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

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

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

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice; however, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

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


CRIMINAL ACTIVITY
conviction or admission of CIMT
under 18 at time of commission?
yes
no
crime of violence?
yes
no
not excludable juvenile del.
only one?
yes
no
summary conviction?
yes
no
not excludable
EXCLUDABLE §212(a)(2)(A)(i)(I)
EXCLUDABLE §212(a)(2)(A)(i)(I)
possession of narcotics
under 18 at time of commission?
yes
no
EXCLUDABLE §212(a)(2)(A)(i)(II)
not excludable juvenile del.
only one?
yes
no
EXCLUDABLE §212(a)(2)(A)(i)(I)
trafficking in drugs
EXCLUDABLE §212(a)(2)(C)
5 years since commission, end of sentence or fine paid?
yes
no
not excludable
summary conviction?
yes
no
not excludable
EXCLUDABLE §212(a)(2)(A)(i)(I)

1, 218, 287, 331, 371, 471, 472, 473, 474, 475, 7, 478, 479, 480, 481, 482, 483, 484, 485, 486, 8, 489, 490, 491, 492, 493, 494, 495, 496, 497, 9, 505, 506, 507, 508, 509, 594, 595, 598, 600, 4, 605, 608, 611, 612, 703, 752, 755, 756, 792, 4, 795, 796, 797, 798, 798A, 799, 915, 917, 3, 954, 956, 957, 958, 959, 960, 961, 962, 963, 65, 966, 967, 1001, 1017, 1024, 1073, 1301, 1381, 1382, 1542, 1543, 1544, 1546, 1584, 1621, 1761, 1821, 1991, 2151, 2152, 2153, 2154, 2155, 2157, 2199, 2231, 2234, 2235, 2274, 2275, 2277, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, 2422, 2423, 2424, 3042, 3059, 3105, 3109, 3187, 3500.

The term "Canal Zone", as used in the sec- of this title which by their terms apply to and the Canal Zone, and as used in subsection (a) is section, includes the area designated as the l Zone by sections 1 and 2 of Title 2, Canal Code; and it also includes the corridor over the United States of America exercises juris- on pursuant to the provisions of Article IX of General Treaty of Friendship and Cooperation een the United States of America and the ublic of Panama, signed March 2, 1936, to the ot that the application, to the corridor, of the ons mentioned in this subsection, and of those ified in subsection (a) of this section, is consist- with the nature of the rights of the United es in the corridor as provided by treaty.

) The definitions of the terms prescribed by ions 5 and 10, or other sections of this title, are lified to effectuate the applicability of the sec- s enumerated by subsection (a) of this section nd within the Canal Zone.

amended Aug. 5, 1953, c. 325, 67 Stat. 366; Oct. 18, 2, Pub.L. 87-845, § 3(a), 76A Stat. 698; June 22, 1968, .L. 90-357, § 59, 82 Stat. 248; Nov. 29, 1990, Pub.L. -647, Title XXXV, § 3519(c), 104 Stat. 4923.)

SENATE REVISION AMENDMENT

his amendment, adding a new section 14, together h amended section 5 will clarify the applicability of leral criminal statutes within the Canal Zone. It was ticularly desired by the Governor of the Canal Zone l the compiler of the Canal Zone Code. The Governor the Canal Zone, in a letter dated September 22, 1945, d filed with the House Judiciary Committee, advised: "General criminal laws of the United States are now plicable to the Canal Zone only if applicability is indi- ted by language expressly referring to the Canal Zone, to possessions of the United States, or to territory bject to the jurisdiction of the United States, etc. ... ie bill in its present form would have undesirable ef- cts insofar as concerns the continued operation of the anal Zone Criminal Code and Code of Criminal Proce- ure, established by Congress as titles 5 and 6 of the anal Zone Code, enacted by act of June 19, 1934 (ch. 667, 3 Stat. 1122), and also would perhaps have undesirable effects insofar as concerns the continued operation of the body of general criminal laws which are now applicable."

EDITORIAL NOTES

References in Text. Section 608 of this title, referred to in subsec. (a), was repealed.

§ 15. Obligation or other security of foreign government defined

The term "obligation or other security of any foreign government" includes, but is not limited to, uncanceled stamps, whether or not demonetized.

(Added Pub.L. 85-921, § 3, Sept. 2, 1958, 72 Stat. 1771.)

§ 16. Crime of violence defined

The term "crime of violence" means—

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(Added Pub.L. 98-473, Title II, § 1001(a), Oct. 12, 1984, 98 Stat. 2136.)

§ 17. Insanity defense

(a) Affirmative defense.—It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) Burden of proof.—The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

(Added Pub.L. 98-473, Title II, § 402(a), Oct. 12, 1984, 98 Stat. 2057, § 20, redesignated Pub.L. 99-646, § 34(a), Nov. 10, 1986, 100 Stat. 3599.)

§ 18. Organization defined

As used in this title, the term "organization" means a person other than an individual.

(Added Pub.L. 99-646, § 38(a), Nov. 10, 1986, 100 Stat. 3599, and amended Pub.L. 100-690, Title VII, § 7012, Nov. 18, 1988, 102 Stat. 4395.)

EDITORIAL NOTES

Codification. Pub.L. 100-690, Title VII, § 7012, Nov. 18, 1988, 102 Stat. 4395, amended the directory language of section 38 of Pub.L. 99-646 by substituting "section