

# Prosecuting Juveniles in the Adult Criminal Justice System

Key Issues and Recommendations for Arizona  
June 2003





# Prosecuting Juveniles in the Adult Criminal Justice System

Key Issues and Recommendations for Arizona  
June 2003



Children's Action Alliance

Children's Action Alliance (CAA) is a non-profit, non-partisan research, education and advocacy organization dedicated to opening the doors of opportunity to all of Arizona's children and families.

**President**

Jacque Steiner

**Board of Directors**

Laura Treman Almquist

Nadine Mathis Basha

David Bodney

Fred DuVal

Kay Ekstrom

Armando Flores

Jaime P. Gutierrez

Nora Hannah

Derrick Johnson

Martin E. Latz

Steven W. Lynn

Bruce Merrill, Ph.D.

Jack Pfister

Steve Roman

The Honorable Dan Schweiker

Brenda Sperduti

Jerry M. Ward

Carolyn Warner

Christine Wilkinson

David Wolfenden

**Executive Director**

Carol Kamin, Ph.D.



# Contents

---

<b>I.</b>	Introduction and Overview	4
<b>II.</b>	The National Context: Prosecuting Juveniles in the Adult Criminal Justice System	6
<b>III.</b>	The Arizona Context: Prosecuting Juveniles in the Adult Criminal Justice System	14
<b>IV.</b>	Policy Options	21
<b>V.</b>	Recommendations	30
	Appendices	33
	Endnotes	42

This project is supported by grants from

**The John D. and Catherine T. MacArthur Foundation**

in association with the

Center for the Study of Youth Policy,

University of Pennsylvania.

Special thanks to Tom McKenna, Project Advisor

**The Margaret T. Morris Foundation**

and

**The Annie E. Casey Foundation, Inc**

A black and white close-up photograph of a person's face, focusing on the right eye and the bridge of the nose. The eye is looking slightly to the right. The lighting is soft, highlighting the texture of the skin and the details of the eye.

## I. Introduction & Overview


The ability to treat a juvenile law violator as an adult criminal offender has been available in nearly all states since the inception of the juvenile court. This option was usually reserved for the most serious, chronic and/or older offenders that juvenile court judges felt could not be handled in the juvenile justice system. Over the past decade, a significant shift occurred in our nation's juvenile justice philosophy. For a variety of reasons, including rapid increases in the juvenile crime rate in the 1970s and fears about growing ranks of serious juvenile offenders in the 1980s and 1990s, states shifted from the

historical rehabilitative model of juvenile justice to a more punitive approach for some serious offenders.<sup>1</sup> This transformation has been quick and dramatic. Between 1992 and 1997, legislatures in 44 states (including Arizona) and the District of Columbia enacted provisions to expedite the removal of young offenders to criminal court.

To evaluate the dramatic policy shifts in Arizona beginning in 1996 and to address concerns regarding the outcomes for juveniles in the adult system, Children's Action Alliance (CAA) convened the Juvenile Justice Advisory Committee in October 2001.

The Committee examined issues surrounding the transfer of juveniles to adult court and explored options for system improvement.<sup>2</sup> The purpose of the committee was to identify key issues surrounding the treatment of juvenile offenders as adults and help CAA set priorities for future juvenile justice advocacy efforts that could be initiated to promote positive changes.

The advisory committee consisted of key stakeholders from Arizona's criminal and juvenile justice systems, community leaders, and child advocates. Committee membership reflected a wide spectrum of perspectives and philosophies on the



issue of prosecuting juveniles as adults. This was done intentionally to ensure thoughtful debate and informed discourse. Two consultants helped facilitate committee meetings and prepared background information and research for committee members and CAA staff.

A total of five committee meetings were held beginning in October 2001 and ending in May 2002. These meetings were intended to permit the committee to:

- Examine the issues surrounding juvenile transfer nationally and in Arizona.

- Identify areas where changes in administrative practices and/or legislation may be warranted.

- Debate the potential benefits and drawbacks of possible changes.

This report summarizes the information examined by the committee regarding prosecuting juveniles as adults. Where applicable and available, the report cites relevant research and statistics to clarify pertinent issues. However, it has been a challenge to obtain mean-

ingful information regarding juveniles in the criminal justice system. There are important gaps in national research and little to no research has been done in Arizona since the landmark reforms of 1996 and 1997. Furthermore, current efforts to accurately track the numbers and types of cases handled in the adult system, and their outcomes, are grossly inadequate.



## The National Context: Prosecuting Juveniles in the Adult Criminal Justice System

### Age of Jurisdiction

In most states, the juvenile court has original jurisdiction over all youth charged with a law violation who are younger than age 18 at the time of the offense, arrest, or referral to court. One of the ways states have tried to address concerns about juvenile crime is by modifying the age of juvenile court jurisdiction. In Connecticut, New York, and North Carolina, for example, original juvenile court jurisdiction in delinquency matters now ends at age 16. Arizona remains one of 35 states where juvenile court jurisdiction in delinquency matters extends through age 17.

### Pathways to Adult Court

Provisions for handling juveniles in criminal courts fall into three general categories: *constitutional/statutory exclusion, prosecutorial discretion and judicial waiver.*<sup>3</sup>

#### **Constitutional/Statutory Exclusion:**

State statute and/or a state's constitution exclude certain juvenile offenders from juvenile court jurisdiction. Under these provisions, cases originate in criminal rather than juvenile court. Statutory exclusion is also known as *legislative exclusion*.

#### **Prosecutorial Discretion:**

Both criminal and juvenile courts share original jurisdiction for certain cases, and the prosecutor has discretion to file such cases in either court. Transfer under these provisions is also known as *concurrent jurisdiction, prosecutor waiver, or direct file*.

#### **Judicial Waiver:**

The juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. States may use terms other than judicial waiver. Some call the process *certification, remand, or bind over* for criminal prosecution. Others *transfer* or *decline* rather than waive jurisdiction. The state prosecutor may request judicial waiver (this is also known as "discretionary waiver").

There is a wide variation among the states regarding criteria for prosecutorial discretion with some emphasizing offense categories, others the age of the juvenile involved, and still others the extent and seriousness of the juvenile's offending history. Generally, the minimum level of seriousness necessary to trigger prosecutorial discretion appears to be lower than the level that requires statutory exclusion.<sup>4</sup>

Exhibit 1 displays transfer provisions in all fifty states.<sup>5</sup> As indicated, Arizona utilizes all provisions except mandatory judicial waiver.<sup>6</sup>

**Exhibit 1 - State Provisions for Prosecuting Juveniles as Adults**

	Judicial waiver			Concurrent jurisdiction	Statutory exclusion	Reverse waiver	Once an adult always an adult
	Discretionary	Presumptive	Mandatory				
Total number of States:	46	15	14	15	28	23	31
Alabama	■				■		■
Alaska	■	■			■		■
Arizona	■	■		■	■	■	■
Arkansas	■			■		■	■
California	■	■					■
Colorado	■	■		■		■	
Connecticut			■				
Delaware	■		■		■	■	■
Dist. Of Columbia	■	■		■			■
Florida	■			■	■		■
Georgia	■		■	■	■	■	
Hawaii	■						■
Idaho	■				■		■
Illinois	■	■	■		■		
Indiana	■		■		■		■
Iowa	■				■	■	■
Kansas	■	■					■
Kentucky	■		■			■	
Louisiana			■	■	■		
Maine	■						■
Maryland	■				■	■	
Massachusetts				■	■		
Michigan	■			■			■
Minnesota	■	■			■		■
Mississippi	■				■	■	■
Missouri	■				■		■
Montana	■			■	■		
Nebraska				■		■	
Nevada	■	■			■	■	■
New Hampshire	■	■					■
New Jersey	■	■					
New Mexico					■		
New York					■	■	
North Carolina	■		■				
North Dakota	■	■	■				■
Ohio	■		■				■
Oklahoma	■			■	■	■	■
Oregon	■				■	■	■
Pennsylvania	■	■			■	■	■
Rhode Island	■	■	■				■
South Carolina	■		■		■	■	
South Dakota	■				■	■	■
Tennessee	■					■	■
Texas	■						■
Utah	■	■			■		■
Vermont	■			■	■	■	
Virginia	■		■	■		■	■
Washington	■				■		■
West Virginia	■		■				
Wisconsin	■				■	■	■
Wyoming	■			■		■	

■ In States with a combination of transfer mechanisms, the exclusion, mandatory waiver, or concurrent jurisdiction provisions generally target the older juveniles and/or those charged with the most serious offenses, while those charged with relatively less serious offenses and/or younger juveniles may be eligible for discretionary waiver.

Source: Authors' adaptation of Torbet and Szymanski's State legislative responses to violent juvenile crime. 1996-97 update

## Minority Youth in Adult Courts

For many years, states have been trying to address the disproportionate numbers of minority youth in their juvenile justice systems. Minority over representation is also evident in the transfer population. The reasons for these disproportionate numbers are complex and may involve a number of factors. It is important to distinguish between "over representation," "disparity," and "discrimination:"

**"Over representation"** refers to a situation in which a larger proportion of a particular group is present at various stages within the juvenile justice and/or adult systems than would be expected based on their proportion in the general population.

**"Disparity"** means that the probability of receiving a particular outcome (for example, being detained in a short-term facility vs. not being detained) differs for different groups. Disparity may in turn lead to over representation.

**"Discrimination"** occurs if and when juvenile justice or adult system decision-makers treat one group of juveniles differently from another group of juveniles based wholly, or in part, on their gender, race, and/or ethnicity.

Disparity and over representation can result from factors other than discrimination. Factors relating to the nature and volume of crime committed by minority youth may, or may not, explain disproportionate

## **Response of Adult Probation Systems to Juveniles**

Case studies<sup>13</sup> in Wisconsin, New Mexico, and Minnesota indicate that handling juveniles in adult probation systems has produced unanticipated burdens for adult probation departments, including increased workloads and problems created by the “in between” status of juveniles in the adult system. In many cases, juveniles sentenced to criminal sanctions may not be old enough to drive, find suitable employment, sign a lease or make decisions independent of their families – making it very difficult to comply with typical conditions of adult probation (i.e., getting to work and holding a job; paying fees, fines, and/or restitution; living in a safe residence apart from other criminals; and other related conditions). Officials in the three states also reported that juveniles, unaccustomed to the strict reporting requirements imposed by adult probation (including intensive supervision conditions in many cases), often violated terms of their probation and quickly found themselves in prison for their full terms.

## **Length of Incarceration of Transferred Youth**

Two primary assumptions seem to underlie legislation passed in many states making it easier to try juvenile offenders as adults:<sup>14</sup>

- Young offenders will receive sentences in the adult system which are harsher and more proportional to their crimes, and
- The threat of this harsher punishment will result in lowered juvenile crime rates.

The limited amount of research<sup>15</sup> on lengths of prison sentences (confinement) received by juveniles convicted in criminal court versus those who remained in the juvenile justice system indicates youth convicted in criminal court (particularly serious and violent offenders) are indeed more likely to be incarcerated and receive longer sentences than juveniles retained in the juvenile system. However, many youth imprisoned in the adult system actually serve only a fraction of their sentences and, in many cases, less time than they would have served in juvenile facilities.

## **Impact of Transfer on Recidivism**

During the last decade, a number of researchers examined outcomes (e.g., recidivism measures) for youth processed in adult courts, including youth on adult probation or parole. These studies reflect state-based analysis, not national data. For the most part, these studies presented mixed findings and were limited by difficulties controlling for greater severity of offenders within transfer populations. However, the most recent study results reported by the state of Florida<sup>16</sup> offers greater precision in matching youth and offenses to address criticisms of the quality of earlier research. Through an exhaustive case file review process, pairs of juveniles were matched - one juvenile had been transferred to adult court and the other youth held in the juvenile system. Youth were matched based on age, gender and race, as well as prior offense history, including factors such as victim injury, property damage or loss, use of weapons, and gang membership. The study reveals that youth transferred to adult criminal court were more likely to commit

# Juveniles prosecuted as adults reoffend more to or higher than comparable youths

## **Deterrent Effects of Juvenile Transfer**

The limited amount of research on the deterrent effects of the laws indicates that deterrent effects are minimal or nonexistent. In Bishop's comprehensive analysis of the effects of transfer on juvenile crime, she states:<sup>20</sup>

**"There is no evidence that transfer has any general deterrent value: the enactment and implementation of well-publicized transfer legislation does not appear to decrease the incidence of target offenses. Similarly, there is no evidence that transfer has marginal specific deterrent benefits over processing in the juvenile system. The existing research indicates that juve-**

**niles prosecuted as adults reoffend more quickly and at rates equal to or higher than comparable youths retained in the juvenile system. When transfer is applied broadly to offenders who are neither particularly serious nor particularly chronic, any short-term incapacitative gains appear to be quickly offset."**

## **National Report Recommendations**

Research on this issue has spurred some national recommendations from prominent professionals. Although youth violent crime has decreased in Arizona and across the nation since the mid-1990s, no research attributed this phenomena to prosecuting youth as adults.

In 2001, the U.S. Surgeon General<sup>21</sup> reported on youth violence, characterizing as a myth the "Getting tough with juveniles by trying them in adult criminal courts" approach. The report states:

**Waivers to adult court can have particularly harmful effects on delinquent youths. The idea behind this approach, "adult time for adult crime," was widely accepted into practice in the 1990s, when youth violence escalated dramatically. Evaluations of these programs suggest that they increase future criminal behavior rather than deter it, as advocates of this approach had hoped.**

# quickly and at rates equal retained in the juvenile system.



**Moreover, placing youths in adult criminal institutions exposes them to harm. Results from a series of reports indicate that young people placed in adult correctional institutions, compared to those placed in institutions designed for youths, are eight times as likely to commit suicide, five times as likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent as likely to be attacked with a weapon.**

Another report from the American Academy of Child and Adolescent Psychiatry<sup>22</sup> addresses concerns that waivers of juveniles to criminal courts do not provide the individualized approach and services

that is needed to respond to youth. The Academy recommends that:

- 1.** Waiver to adult court should not be automatic or a presumption in the handling of juvenile cases. While further study is necessary, current research indicates that automatic waiver does not achieve the desired goals and may be potentially harmful to the community and the involved youth.
- 2.** Any waiver to adult court should consider the individual case and the community, and not be based solely on the type of offense. Consideration of the case

should include the mental health of the youth and its bearing on the charges. This may require consultation from mental health professionals.

- 3.** Further study must be devoted to explore other alternatives to waiver to adult court in order to develop a more effective juvenile justice system.



## The Arizona Context: Prosecuting Juveniles in the Adult Criminal Justice System<sup>23</sup>

Prior to 1996, juvenile offenders in Arizona could be transferred to adult court for prosecution through judicial waiver. This transfer could happen only upon decision of the juvenile court judge after a transfer hearing. Judges considered a combination of factors including the seriousness of the charges, the juvenile's record, the age of the offender and whether the juvenile could be adequately served in the juvenile justice system. Since the juvenile court must relinquish juveniles from custody as soon as they turn age 18<sup>24</sup>, transfers were more common for "older juveniles" who would not have much rehabilitation time in the juvenile system.

Arizona's age of jurisdiction and transfer pathways changed as the result of a ballot initiative in 1996 (Proposition 102). The proposition created three new categories of juvenile transfer through constitutional exclusion:

### **Constitutional Exclusion:**

**Mandatory Crime:** The constitution now mandates that any juvenile age 15 or older accused of murder, forcible sexual assault, armed robbery or "other vio-

lent offenses" shall be prosecuted as an adult. "Other violent offenses" are defined in statute.

**Mandatory Chronic:** The constitution now mandates that any juvenile age 15 or older who is a "chronic felony offender" be prosecuted as an adult. "Chronic felony offender" is defined by statute.

**Mandatory Prior:** The constitution now mandates that juveniles who have been previously convicted in adult court and have been accused of a criminal offense and have a historical prior felony conviction must be returned directly to adult court for any subsequent charges of crimes or violations of probation. "Historical prior felony conviction" is defined by statute.

The Arizona Legislature subsequently passed enabling legislation (Senate Bill 1446 – Chapter 220, Laws of 1997). The legislation defines the constitutional terms of

"other violent offense," "chronic felony offender" and "historical prior felony conviction."

The 1997 legislation also created a new transfer pathway through prosecutorial discretion.

### **Prosecutorial Discretion:**

This legislation further expands the number of juveniles who can be transferred by allowing county attorneys to file adult charges on any juvenile who is 14 or older and a chronic offender, and any juvenile who is 14 or older and charged with a list of specified offenses.

The pathway of judicial waiver continues.

### **Judicial Waiver:**

Transfers may occur by decision of the juvenile court judge after a hearing as provided in ARS §8-327.

A.R.S. §8-302 allows for a case that was originally filed in the criminal court to be transferred back to the juvenile court on motion of the prosecutor if the offense alleged is under prosecutorial discretion as provided in A.R.S. §13-501.B.

## Competency of Juveniles to Stand Trial

Arizona's competency statutes rely on the defendant's capacity to understand the nature of the criminal trial and to assist in the defense. Arizona's juvenile and adult competency tests are summarized below:

### Juvenile Competency<sup>25</sup>

- Definition of incompetence does not require mental disease or defect
- No presumption of restorability
- Time limit for restorability is 240 days (8 months).

### Adult Competency<sup>26</sup>

- Definition of incompetence requires mental disease or defect
- Presumption of restorability
- Time limit for restorability is up to 21 months.

Beyond this basic competency standard, in judicial waiver cases<sup>27</sup> a judge considers adolescent developmental issues, psychosocial factors, ability to understand the results of his/her actions and amenability to treatment in determining in which court a youth should be prosecuted. Such information is confidential to be used only for the transfer decision. Arizona's constitutional exclusion and prosecutorial discretion pathways for prosecuting juveniles as adults do not provide an opportunity to consider these factors except when presented to the prosecutor by the defense in urging that a discretionary direct file case should go back to juvenile court.<sup>28</sup>

## Arizona Transfer Statistics

Exhibit 3 shows that during FY 2002<sup>29</sup> about half of the juveniles prosecuted in adult courts were subject to constitutional exclusion.<sup>30</sup> Just over 34% involved prosecutorial discretion, and 17% involved judicial waiver.

**Exhibit 3: Pathways for Juveniles Filed in Adult Court FY 2002 in Arizona**

<i>Constitutional Exclusion</i>	<b># of Juveniles</b>	<b>% of Total</b>
Mandatory	186	32%
Mandatory - Prior	32	6%
Mandatory - Chronic	62	11%
		<hr/>
		49%
<i>Prosecutorial Discretion</i>	197	34%
<i>Judicial Waiver</i>	98	17%
	<hr/>	
<b>Total</b>	<b>575</b>	<b>100%</b>

Data from the Maricopa County Juvenile Court and Pima County Attorney's offices over a longer period of time show a different pattern with a higher percentage of cases resulting from judicial waiver and a lower percentage from prosecutorial discretion. (These two counties handle over 80 percent of the state's juvenile and criminal cases). The data shown in Exhibits 4 and 5 reflect filings for periods starting in January 1997 through different end dates in 2001.<sup>31</sup> As shown, 3,393 juvenile cases were prosecuted in the adult system in the two counties during these periods.<sup>32</sup>

In addition to the information in Exhibits 4 and 5, the Maricopa County Juvenile Court provided statistics covering the county's decision in prosecutorial discretion cases.<sup>33</sup> From January 1997 through June 2001, there were 2,976 referrals<sup>34</sup> (eligible for prosecutorial discretion through A.R.S. §13-501.B.) that

resulted in charges being filed in either the juvenile or criminal court in Maricopa County.<sup>35</sup> The numbers below reflect the actions taken by the Maricopa County Attorney's Office on these filings:

- 797 complaints were filed in criminal court 27%
- 2,179 juvenile delinquency petitions were filed 73%

These numbers indicate that the Maricopa County Attorney's Office exercised its discretion to file in adult criminal court in just over one-fourth of these cases.

**Exhibit 4**

<b>Maricopa County</b>		
<i>January 1997 - June 2001</i>		
Constitutional Exclusion	1150	43%
Prosecutorial Discretion	797	30%
Judicial Waiver	730	27%
	<hr/>	
Total	2677	100%

**Exhibit 5**

<b>Pima County</b>		
<i>January 1997 - March 2001</i>		
Constitutional Exclusion	373	52%
Prosecutorial Discretion	181	25%
Judicial Waiver	162	23%
	<hr/>	
Total	716	100%

The Maricopa County Attorney's Office reports using the following general guidelines in exercising its discretion in these matters, though each case is determined on its own merits:

- The nature of the offense.
- The age of the juvenile.
- The juvenile's delinquent history including previous probation violations, failures to appear, and efforts to complete conditions of probation (e.g., paying restitution and completing work hours).
- The remorse of the juvenile
- The juvenile's amenability to treatment.

The Pima County Attorney's Office also provided information regarding the county's history of prosecutorial discretion cases. From January 1997 through December 14, 2001, 1,278 referrals<sup>36</sup> were eligible for A.R.S. §13-501 filing and "reviewed" by the county attorney following submittal by law enforcement. As shown, less than 20 percent of these referrals resulted in discretionary filings in adult court:

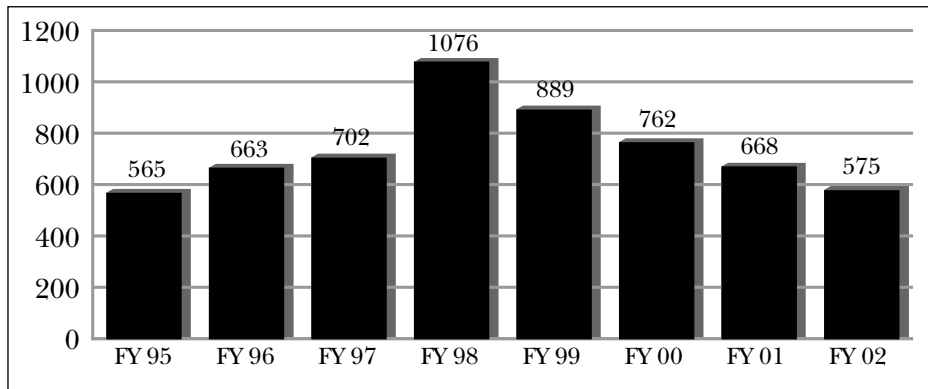
- 246 complaints were filed in criminal court 19%
- 1,030 juvenile delinquency petitions were filed 81%

### Transfer Trends

While the numbers of juveniles processed through Arizona's adult courts increased substantially from FY 1995 through FY 1998, the numbers have dropped for the past four fiscal

years.<sup>37</sup> This is reflected in Exhibit 6 which displays the number of juveniles in Arizona who were referred for adult criminal court prosecution during fiscal years 1995 - 2002.<sup>38</sup> The decline in Arizona is consistent with patterns reported in other states. There has not been any comprehensive research revealing the reasons for the decline.

Exhibit 6 – Juveniles Referred for Adult Prosecution in Arizona (FY 1995 - 2002)



### The Proportion of Juvenile Offenders Tried as Adults

In Arizona, the best data available<sup>39</sup> indicate that in FY 1998, 14,907 juveniles received dispositions to juvenile probation, juvenile intensive probation, juvenile corrections, or adult court. Of these, 1,076 juveniles went to adult court, or seven percent (7%) of all juveniles receiving dispositions during that period. These proportions have dropped since then with under four percent (3.8% or 575 of 14,975 juveniles) of all juveniles with similar dispositions receiving dispositions to adult court during FY 2002.

## Offense Types

The type of offense a juvenile is charged with and the type of offense that a juvenile is ultimately convicted of can vary significantly. Factors like plea-bargaining, the prosecutor's evaluation of evidence, and other variables can contribute to these variations.

Charging and conviction data were obtained from the Maricopa County Juvenile Court (Exhibit 7) and the Pima County Attorney's Office (Exhibit 8). These two agencies track these data differently.<sup>40</sup> In a fair number of cases, the charges and convictions do not involve the most serious type of offenses involving those against persons or with a weapon.

## Characteristics of youths tried as adults<sup>41</sup>

### Age

Nationally and in Arizona, the majority of youth prosecuted in adult courts are males between the ages of 15 and 17.<sup>42</sup> Exhibit 9 illustrates age distributions of youth prosecuted in the criminal justice system in Arizona during FY 2002.

### Minority Youth in Adult Court

Exhibit 10 shows statewide numbers and percentages for youth in Arizona receiving direct filings in or judicial waiver/transfer to adult courts during FY 2002,<sup>43</sup> by race and ethnicity. As indicated, Hispanic and African American youth are over represented in both the direct filing and transfer groups.

Exhibit 7: Maricopa County - Top Five Offense Types  
Juveniles charged as adults and convicted in criminal court 1997 through 2001

Charges			Convictions		
Armed robbery	16.9%	316 cases	Armed robbery	12.3%	227 cases
Residential burglary	13.2%	248 cases	Theft-felony	9.2%	169 cases
Aggravated assault with weapon	9.9%	186 cases	Aggravated assault	8.4%	154 cases
Aggravated assault	8.9%	166 cases	Aggravated assault with weapon	7.9%	145 cases
Theft means of transportation	5.2%	98 cases	Burglary 2-residential	4.1%	76 cases

Exhibit 8: Pima County - Top Five Offense Types  
Juveniles were charged as adults and convicted in criminal court 1997 through 2001

Charges			Convictions		
Burglary and attempted	15%	110 cases	Burglary and attempted	10%	74 cases
Aggravated assault	14%	102 cases	Aggravated assault	9%	62 cases
Theft	10%	73 cases	Theft	8%	55 cases
Armed robbery	9%	68 cases	Armed robbery	6%	42 cases
Aggravated assault with weapon	6%	43 cases	Robbery and attempted robbery	4%	29 cases

Exhibit 9 – Juveniles in Arizona's Adult Courts by Age (FY 2002)

Age	Constitutional Exclusion and Prosecutorial Discretion (Direct Filed)	Judicial Waiver (Transferred)	Total	Percentage
8	0	0	0	
9	0	0	0	
10	0	0	0	
11	0	0	0	
12	0	0	0	
13	0	1	1	00.17 %
14	17	0	17	2.96 %
15	58	3	61	10.61 %
16	129	11	140	24.35 %
17	259	76	335	58.26 %
Unknown	14	7	21	3.65 %
<b>Total</b>	<b>477</b>	<b>98</b>	<b>575</b>	<b>100.00%</b>

## Sentencing Options in Arizona

Arizona does not have blended sentencing options (See page 8). Moreover, not all blended sentencing options available nationally would be constitutional in Arizona. A 1979 Arizona Supreme Court ruling limits the juvenile court's jurisdiction to youth younger than age 18.

However, in 1997, A.R.S. §13-921.D. was enacted and allows the criminal court as a condition of adult probation to order the defendant to participate in services that are available to the juvenile court. The recognition and interpretation of this statute seems to vary across the state. Funding limitations also restrict the ability of the court to use this provision.

## Funding for Services

State funding for services for transferred youth has been limited at best. This is also true across the country. In Arizona, for FY 1998 (the year Arizona enacted sweeping transfer reforms), the state legislature appropriated \$1 million to the County Jail Juvenile Improvement Fund (to enhance sight and sound separation capabilities) and \$989,000 for adult intensive probation supervision (in anticipation of more juveniles being placed on adult IPS). No state funds were specifically appropriated for treatment services for transferred youth.

Subsequently, the Administrative Office of the Courts (AOC) allocated a portion of the Juvenile Probation Services Fund (JPSF)<sup>45</sup> to help adult probation departments provide at least some services for juveniles. The amount allocated by the AOC to adult probation departments for FY 2002 appears in Exhibit 11.

Exhibit 10 – Youth in Arizona's Adult Courts by Ethnicity (FY 2002)

<b>Ethnicity:</b>	<b>Constitutional Exclusion and Prosecutorial Discretion (Direct Filed )</b>	<b>Judicial Waiver</b>	<b>Total (Percentage)</b>	<b>Percent of Juvenile Population in AZ 1999<sup>44</sup></b>
Hispanic	235 (49%)	47 (48%)	282 (49%)	23%
African American	49 (10%)	6 (6%)	55 (10%)	4%
Anglo	157 (33%)	41 (42%)	198 (34%)	65%
Native American	27 (6%)	3 (3%)	30 (5%)	6%
Asian/Pacific Islander	2 (<1%)	1 (1%)	3 (<1%)	2%
Other	1 (<1%)	0	1 (<1%)	N/A
Unknown	6 (1%)	0	5 (<1%)	N/A
<b>Total</b>	<b>477</b>	<b>98</b>	<b>575 (100%)</b>	<b>100%</b>

Exhibit 11 – Juvenile Probation Services Fund.

<b>County</b>	<b>Approved Budget FY 2002</b>
Apache	\$ 1,000
Cochise	5,000
Coconino	5,000
Gila	6,000
Graham	15,000
Greenlee	1,000
La Paz	1,000
Maricopa	720,750
Mohave	17,950
Navajo	3,500
Pima	183,000
Pinal	2,000
Santa Cruz	1,000
Yavapai	10,000
Yuma	10,000
<b>Grand Total</b>	<b>\$982,200</b>

In the previous state fiscal year (2001), more than half of the JPSF monies allocated to adult probation departments was utilized to pay for residential treatment; the majority of these funds paid for 30 youth in state licensed residential treatment facilities intended for children with serious mental health problems. With the small amount of remaining funds, adult probation was forced to place youth who could not return home in a small number of group homes or independent living programs. Other offenders received a very limited number of counseling sessions and, when possible, psychological evaluations were conducted to determine youth eligibility for the state's overburdened mental health system.

The expenses for services in county jails are borne by the counties themselves. County jails do not receive JPSF funds. Interviews and site visits to county jail facilities in Maricopa and Pima counties indicat-

ed that education, substance abuse groups, anger management, and life-skills classes are some of the services provided by both counties. Identified unmet needs include expanded mental health and psychological services for juvenile inmates as well as increased funding for educational positions and programs.

Services for youth prosecuted as adults are extremely limited at the national and state levels. This stems from a variety of factors related to serving adolescents in a system designed to serve adults. Research in a number of states, and comments from key criminal justice officials in Arizona, reveal that costs, legal requirements involving parents, lack of family involvement, community notification laws, and other barriers prevent access to services. Mandatory school attendance requirements for youth under age 16 also present important challenges for adult jails, prisons, and probation departments.

With very few exceptions,<sup>46</sup> adult jails in Arizona are not equipped to respond to the special needs of juveniles. There are many reasons for this including the extra costs associated with providing age-appropriate or developmentally-appropriate services and the belief of some key law enforcement leaders that jails should not accommodate the unique needs of juveniles lest they detract from the presumed deterrent value of harsher conditions. Transportation issues, a shortage of qualified providers within adult jail systems, and facility limitations (e.g., the need to keep juveniles sight and sound separated from adult offenders)<sup>47</sup> also contribute to some extent to inadequacies in services for juveniles in the adult system. Additionally, there is extremely limited, if any, training for jail personnel related to juvenile issues and needs.

Probation departments face additional challenges as they struggle to enforce conditions of probation that often include requirements for

probationers to obtain suitable housing (many transferred youth are not old enough to sign a lease or mature enough to live on their own), and maintain employment (again, some transferred youth are not old enough to work while many others have severe vocational deficiencies). These barriers contribute to high probation failure rates among transferred juveniles (estimated at or above 50 percent in Maricopa and Pima coun-

ties<sup>48</sup>). In Arizona, most transferred youth are placed on adult probation. Adult probation officers have been among the first to recognize that the system is not equipped to handle the special circumstances of these youth.

Exhibit 12 describes the limited range of available services for juveniles placed on adult probation in Arizona's two most populous counties, and briefly describes some of the key challenges faced by Arizona's two largest

adult probation departments (APD). A limited number of notable programs are indicated in italics.


The lack of adequate services and related problems encountered in Arizona are quite similar to those identified in other states. Nationally, services are extremely limited. An extensive review of the transfer literature only mentions a small number of isolated programs in some states, none of which have been thoroughly evaluated.

**Exhibit 12 – Key Service Issues Faced by Adult Probation in Maricopa & Pima Counties**

Services	Maricopa and Pima Counties
Mental Health: <sup>49</sup> Psychiatric/Medication Monitoring, Individual/Group Treatment	Counseling/Psychiatry services available on a limited basis. Cost is a factor as are issues related to treating juveniles (i.e. needing parental permission). Counseling services are extremely limited. <i>Pima County Adult Probation Department (APD) estimates that at least 80% of juveniles have diagnosed mental disorders.</i>
Sex Offender Treatment: Assessment Procedures, Individual/Group Therapy	Real problems include: Services are very costly to provide; youth should not participate in treatment with adults; different assessments for juveniles than for adults; notification regulations for sex offenders at release, etc. Juvenile sex offenders require special supervision, and use a large share of limited treatment dollars. <i>APD's try to work with juvenile probation providers but notification and other concerns severely limit resources.</i>
Education Services	Ongoing challenges include costs, special education needs, and parental involvement/permission requirements. Education programs are not developmentally appropriate. The vast majority of juveniles have experienced repeated educational failures, often require special education, and, if under 16, must attend school. Juveniles are entitled to public education to age 18, and up to age 22 if in special education. <i>The Pima County Superintendent's Office created a special program for youth in the Pima County Jail. At the Madison Street Maricopa County Jail, education programs are limited to 3 hours per day and do not provide an option for obtaining a diploma.</i>
Substance Abuse Treatment (Inpatient and Outpatient)	Problems and very limited resources due to few residential programs, high costs, high frequency of chronic substance abuse in families, family involvement in multiple systems (e.g. Child Protective Services, Regional Behavioral Health Authorities, etc.), parental permission for treatment needed and transportation problems. Juveniles should not participate in treatment services with adult offenders. Chronic substance abuse is prevalent among juveniles handled in adult court.

# IV.

## Policy Options



The advisory committee explored policy and administrative options identified by committee members, CAA staff, and the project consultants. Committee members were encouraged to brainstorm and debate the positive and negative aspects of each option, including the impact of possible changes on:

- Fairness/Due process
- Fiscal and staffing resources
- Rehabilitation versus punishment
- Community protection
- Over-representation of minority youth
- Competency of youth

This process resulted in the following list of options followed by an overview of the option and its pros and cons.

1. Allow reverse waiver (remand) from the adult criminal court to the juvenile court on either party's motion.
2. Allow blended sentences.
3. Allow/mandate juvenile disposition, if conviction in criminal court is of a non-waivable offense.
4. Eliminate / review statutory scheme for mandatory imprisonment for juveniles transferred to adult court.
5. Amend ARS §13-501.B.
6. Create a Youthful Offender type system for 18-21, 23 or 25 year olds.
7. Improve/enhance services and improve transitions for juveniles under the age of 18 in and leaving jails and prisons, especially as it relates to securing mental health care, housing, education and employment opportunities.
8. Provide training statewide to defense attorneys and prosecutors related to transfer issues.

# Option 1

## **Allow reverse waiver (remand) from the adult criminal court to the juvenile court on either party's motion.**

Currently, the law only authorizes a judge to send an ARS §13-501.B. case back to juvenile court "on motion of the prosecutor." In addition to this provision, an amendment could be considered to allow a youth who has been subject to a discretionary direct file in the adult court the opportunity to prove through a hearing that juvenile court jurisdiction would be more appropriate. This provision would place the burden on the moving party to pay for experts, evaluations and associated costs.

For instance, add language to A.R.S. §8-302.B. such as, "If during the pendency of a criminal charge in any court of this state the court determines that the defendant is a juvenile who is subject to prosecution as an adult pursuant to section 13-501, subsection B, on motion of the prosecutor OR AFTER HEARING, IF THE COURT FINDS REMAND IS APPROPRIATE, the court shall transfer the case to the juvenile court ...."

Examples from other states:

- Any party can appeal an order granting or denying transfer from one court to another:

Arkansas

New York

(not allowed in certain violent offenses)

- Minor is presumed to be not a fit and proper subject for treatment as a juvenile, but is entitled to present evidence to the contrary.

California

Nevada

(showing of exceptional circumstances)

Pennsylvania

South Carolina

South Dakota

Wisconsin

- Attorney General may transfer a case from criminal court to juvenile court without a hearing; motion to transfer back to juvenile court by defendant allowed, but a hearing is required.

Delaware

Georgia

Nebraska

### **Pros**

- Would allow in discretionary file cases the court to consider the appropriateness of adult prosecution on request of either party.
- Would allow neutral judicial review of prosecutorial decision.
- Would allow for the judge to take an individualized look at the youth including situational circumstances, history of delinquent behavior, amenability to treatment, and appropriateness of placements.
- Would allow more focus prior to prosecution on the "few kids" who maybe should not be in the adult system.

- Would be an opportunity to better assess youth competency and circumstances (e.g., psychological evaluations, time for consideration, etc.).

- Could work best if option restricted to certain criteria (e.g., age of youth, etc.).

### **Cons**

- Would obligate defense attorneys to request a hearing in most cases.
- Would "bog down" system with defense requests for hearing.
- Would interfere with discretion of the prosecutor.
- Would seriously impact budget, resources, and time if done for all or most youth.
- Could be a problem if handled in the adult criminal court system as uninformed decisions could occur due to the court's lack of familiarity with juvenile programs, services, and other relevant issues.

## Option 2

### Allow blended sentences.

Although there are a number of different blended sentencing options available in other states, only two options would be constitutionally allowable in Arizona. Arizona Constitutional provisions prevent juvenile courts from sentencing youth beyond age 18 to either juvenile or adult correctional programs. However, Arizona's criminal courts are not prohibited from imposing a juvenile sanction on offenders in adult courts under the age of 18.

#### A) Criminal Inclusive

*(i.e., allow the criminal court to impose both juvenile and adult correctional sanctions. The adult sanction is suspended, but is reinstated if the terms of the juvenile sanction are violated or revoked.)*

#### Pros

- Would be an incentive for youth to succeed in rehabilitation or treatment

program as the court would withhold or suspend adult consequences.

- May not cost any more since youth are in the adult correctional system anyway.
- Could allow decisions to occur at a special transfer-type hearing. A month before youth turns 18, the court or other body could review youth's progress and "continued risk to the community."
- Would allow more flexibility to match services to the individual youth – if a juvenile goes through the adult court process, you could match the juvenile's needs to the appropriate treatment and correctional system and services.

#### Cons

- Would require more court hearings to determine disposition at age 18.
- Would expose juveniles to the harsher adult system (both pre-

trial and awaiting disposition) and then allow them to enter the juvenile system; negatively affecting the juveniles held only in the juvenile system.

- Could strain limited resources of the juvenile system (who pays?).
- Could result in disruption of treatment if youth is treated in a juvenile program and then transferred to the adult system.

#### B) Criminal Exclusive

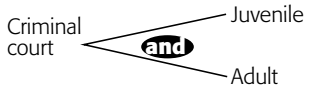
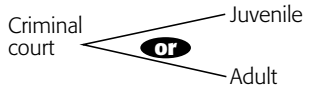
*(i.e., allow the criminal court to impose a sanction involving either the juvenile or adult correctional systems.)*

#### Pros

- Would provide another sentencing option for the court.
- Would work best if you could extend jurisdiction past age 18, which is now prohibited by the Arizona Constitution.

#### Cons

- Would restrict time for treatment and rehabilitation due to Arizona's Constitutional limitation of juvenile court jurisdiction beyond age 18.
- Could be a problem as uninformed decisions could occur due to the criminal court's lack of familiarity with juvenile programs, services, and other relevant issues.
- Would add costs and strain on limited juvenile justice resources.
- Would offer little or no motivation for youth that know they will be going to the adult system.

	<b>Criminal-Inclusive Blend</b>	<b>Criminal-Exclusive Blend</b>
Sanction Option	<p>The criminal - inclusive blend would allow the criminal court to impose both juvenile <b>and</b> adult correctional sanctions. The adult sanction is suspended, but is reinstated if the terms of the juvenile sanction are violated and revoked.</p> 	<p>The criminal - exclusive blend would allow the criminal court to impose a sanction involving <b>either</b> the juvenile <b>or</b> adult correctional systems.</p> 
States	<p>Arkansas Iowa Missouri Virginia<sup>50</sup></p>	<p>California Colorado<sup>51</sup> Florida Idaho</p> <p>Michigan Oklahoma Virginia West Virginia</p>

## Option 3

### **Allow/mandate juvenile disposition, if conviction in criminal court is of a nonwaivable offense.**

If conviction in criminal court is of a nonwaivable offense, two sanction options could be considered.

- 1) A juvenile be required to petition the court for consideration of a juvenile sanction, or
- 2) The court be mandated to consider a juvenile disposition during sentencing. (The original transfer law passed in 1997 allowed for this to occur, but it was later deleted from the law).

#### Examples from other states

- With statutory exclusion requiring direct file, if convicted of a lesser offense or after a plea bargain in criminal court, the juvenile may attempt to show his amenability to treatment as a delinquent, and receive a disposition under the juvenile code.  
Alaska
- If conviction is of a nonwaivable offense, then youth must be returned to juvenile court for disposition.  
Oregon  
Vermont

#### **Pros**

- Would allow a juvenile to show his/her amenability to treatment in the juvenile justice system as the Alaska model allows.

#### **Cons**

- Would seriously dampen or prevent plea agreements to nonwaivable offenses.
- Could create more serious sanctions for juveniles if plea bargaining to a nonwaivable offense were unavailable.





## Option 4

### **Eliminate / review statutory scheme for mandatory imprisonment for juveniles transferred to adult court.**

Mandatory imprisonment schemes for certain offenses were created with adults in mind. In contrast, the juvenile justice system, with a more rehabilitative model, takes into account the individual circumstances and needs of the juvenile offender.

The adult sentencing scheme is developmentally harsher for juveniles who have yet to reach 18 years of age. Consideration could be given for judicial discretion in these sentencing schemes or for a different mandatory sentencing scheme for juveniles.

SB 1029 (Chapter 311; Laws of 2002) creates a Sentencing Commission to be staffed by the Legislature and includes lawmakers, judges, corrections and law enforcement officials, academics, probation officials, victims' and prisoners' advocates, an attorney general representative and others from the legal profession. The Commission must review Arizona's sentencing structure, including laws, policies, practices and fiscal impact, and recommend changes to the criminal code and any other aspects of sentencing that are necessary to ensure appropriateness of sentencing. The Commission will make a report by December 31, 2003.

#### **Pros**

##### **Changing the sentencing scheme for both juveniles and adults:**

- Would allow needed evaluation of fairness of sentencing schemes for both adults and juveniles.

##### **Changing the sentencing scheme for juveniles only:**

- Would allow evaluation, perhaps individual evaluation, of sentencing "fairness" in light of age and maturity of youth.
- Would allow evaluation of sentencing in terms of needs of youth (e.g., education, job-readiness, mobility/transportation, housing issues.)
- Could allow evaluation of sentencing in terms of individual competency and youth development issues.
- Would allow an examination of sentencing in light of youth/family involvement issues.

#### **Cons**

- Could result in harsher sentencing for juveniles rather than more lenient structures.
- Would open up the issues of mandatory lifetime probation and prison terms for sex offenders, which would be opposed by advocates for sexually abused child victims.
- Could widen the net and bring more juveniles into the adult criminal justice system if sentences were not as harsh.
- Could increase crime if sentences are reduced or more flexible, and if sentences do deter juvenile crime.

## Option 5

### Amend A.R.S. §13-501.B.

A.R.S. §13-501.B. gives the county attorney discretion to file certain felony cases in adult criminal court. The legislature has the ability to add or delete crimes and circumstances to this list. Consideration could be given to changing the age level or deleting/adding certain crimes or circumstances from A.R.S. §13-501.B.

### An amendment or change could provide:

- Change to the classification and types of crimes that would allow juveniles to be prosecuted as adults based on prosecutorial discretion.
- Change to the age range of juveniles that could be prosecuted as adults based on prosecutorial discretion.
- Require psychological exams be conducted prior to prosecutors making decisions; could be restricted to certain ages and/or offenses (e.g., 14 year olds charged with sexual offenses).
- Encourage that more information be gathered about cases and juveniles allowing better decision-making for certain offenders (e.g., on a voluntary basis for first time offenders or 14 year old offenders).
- Change the definition of "chronic offender," thereby, not catching non-violent youth unnecessarily in the adult system.

### Arizona – Concurrent Jurisdiction Prosecutor Direct File (A.R.S. §13-501.B.)

Offense Category	Minimum age	Offense Detail
Certain Felonies	14	<ul style="list-style-type: none"> <li>■ <b>Class 1 felonies</b> - Examples: First and second degree murder. (Constitutional Exclusion for youth aged 15 or older)</li> <li>■ <b>Class 2 felonies</b> - Examples: Attempted murder, manslaughter, drive by shooting, molestation of a child, armed robbery, arson of an occupied structure, possession of more than 25 pounds of marijuana or transport for sale of more than two pounds, theft of more than \$25,000.</li> <li>■ <b>Class 3 felonies</b> - Involving a violation of any of a number of listed criminal code chapters (relating to preparatory offenses, homicide, assault, kidnapping, sexual offenses, trespass and burglary, property damage, arson, robbery, organized crime and fraud).</li> <li>■ <b>Class 3, 4, 5 or 6 felonies</b> - Involving or knowingly infliction of serious injury or use of a deadly weapon or dangerous instrument; aggravated driving under the influence; any felony committed by a child with two or more previous felony adjudications.</li> <li>■ Any offense joined to/arising out of the same set of facts as any of the above offenses.</li> </ul>

## Pros

- Could limit direct file to those youth aged 15 and older as approved by the voters in 1996.
- Could limit the prosecutor's discretion to only violent offenses.
- Could be an opportunity to change the definition of "chronic offender" and therefore, not catch youth who are non-violent in the adult system.
- Could allow for more judicial oversight of transfer decisions, if certain youth/offenses are excluded from prosecutorial discretion, but still allow transfer by the juvenile court after a hearing.

- Could allow for more time to make decisions based on psychological evaluations and more information about youth circumstances.
- Could require more time to make decisions and require psychological evaluations on certain youth/offenses prior to making a decision.

## Cons

- Re-examining this issue, could result in juveniles younger than 14 being prosecuted as adults based on the discretion of the prosecutor. (i.e., original proposed legislation allowed youths 12 and older).

- If limiting prosecutorial discretion to youth 15 and older, would affect very few youth as only 18 14-year olds were direct filed in adult court (includes constitutional exclusion and prosecutorial discretion).
- Would affect prosecutors' discretion, and for the most part, a relatively low percentage of youth are being prosecuted as adults from those that meet the guidelines (27% of eligible youth in Maricopa County; 19% of eligible youth in Pima County).



## Option 6

### **Create a Youthful Offender type system for 18-21, 23 or 25 year olds.**

California Youth Authority is the primary example of this type of program.

The California Youth Authority (CYA) was created by law in 1941, and provides institutional training and parole supervision for juvenile and young adult offenders.

The Youth Authority is a department in the Youth & Adult Correctional Agency, whose Secretary reports directly to the Governor and serves on his Cabinet.

The CYA receives its youthful offender population from court commitments – from both the juvenile and criminal courts.

About 15 percent of the incarcerated offenders are young adults sentenced to the California Department of Corrections (CDC) whom the courts have ordered housed by the Youth Authority. Those who do not complete their sentence while in the CYA are then transferred to state prisons. Unlike the adult prison cases, offenders committed directly to the Youth Authority do not receive determinate sentences. Their parole release is determined by the Youthful Offender Parole Board (YOPB), a separate administrative body.

In practice, the period of incarceration is determined by the severity of the commitment offense and the offender's progress toward parole readiness.

The Youth Authority's jurisdiction for most serious felony offenders, both juvenile and young adult, ends on the offender's 25th birthday.

#### **Pros**

- Would allow young offenders to be held with other young offenders.
- Would allow programs to be geared to youth.

#### **Cons**

- Would be expensive to administer – no state money available.
- Would recreate programs from the juvenile and adult correctional systems.
- Would require a change in the constitution if the new authority would allow offenders from the juvenile system to also be held in a youth authority.
- Could widen the net as more juveniles may be prosecuted as adults if a specific program for young offenders were available.

## Option 7

### **Improve / enhance services and improve transitions for juveniles under the age of 18 in and leaving jails and prisons, especially as it relates to securing mental health care, housing, education and employment opportunities.**

There is insufficient funding of services for juveniles in the adult system. Adult probation does not have enough money to serve juveniles needing treatment. Treatment for juvenile sex offenders, in particular, is very costly.

Some youth leave jails or prisons while still minors. Oftentimes these youth need unique transitional services especially if parents are unavailable or unable to assist in the transitions. For example, mental health care may be unavailable immediately as eligibility for AHCCCS takes too long; juveniles getting treatment and medications while imprisoned may lose this care and with no medication, serious behavioral issues may resurface placing the youth at further risk of criminal behavior. Another example is the youth who cannot return home, but is too young to sign a lease and/or has no resources to secure housing.

#### **Pros**

- Could increase the success rate of juveniles in the adult probation/correctional system.

#### **Cons**

- Could duplicate services already available in the juvenile system.
- Could widen the net if more programs/services were available, more juveniles may be prosecuted as adults.
- Could take away needed resources from the juvenile justice system.

## Option 8

### **Provide training statewide to defense attorneys and prosecutors related to transfer issues.**

Two issues have been raised which could be handled through training.

1. Educate the defense bar about talking with prosecutors and requesting that a case be remanded back to juvenile court when appropriate.
2. Charging decisions are made differently by each

county prosecutor's office. This means that a youth with a similar history and charged with a similar crime may be prosecuted as an adult in one county but treated as a juvenile in another county.

#### **Pros**

- Would promote more consistency in practice.
- Would assist contract defense attorneys in knowing all the possible ins and outs of the court and correctional system options.

#### **Cons**

- Could be resisted by county attorneys who have their own policies and procedures and have little interest in statewide training.
- Would cost time and money to develop and implement.
- Would need to be on-going if it were to be effective.
- Would probably cost private attorneys money to attend.

- **Within Constitutional limits, amend A.R.S. §13-501.B. regarding juveniles prosecuted as adults to allow more cases to be assessed through judicial waiver hearings rather than permitting transfer decisions to be made solely by prosecutors (prosecutorial discretion) without the consideration of the juvenile's developmental and psychological profile. Amendments should include:**

Limiting prosecutorial discretion to cases involving violent offenses.

Limiting prosecutorial discretion to cases of juveniles age 15 and older, rather than age 14 and older. This would parallel the constitutional provision for mandatory transfer.

Changing the definition of chronic offenders to limit the class and type of felonies that could be counted as chronic (currently allowed are any felony offenses).

Require cases of 14-16 year olds charged with sexual offenses (excluding forcible sexual assault) to be assessed through a judicial waiver hearing, thus, permitting psychological exams and juvenile sex offender assessments prior making a decision on transfer.

- **Pass legislation to allow for Criminal-Inclusive Blended Sentencing that permits the criminal court to impose both juvenile and adult correctional sentences on juveniles prosecuted and convicted in criminal court. This allows the adult sanction to be suspended, but also allows it to be reinstated if the terms of the juvenile sanction are violated and revoked.**

- **Study the criminal sentencing ranges and allow more flexibility to judges when sentencing juveniles convicted as adults. The sentencing ranges should allow more flexibility based on a juvenile's developmental and psychological profile and needs.**

Support and follow the work of the Sentencing Commission, established by legislation passed in 2002, as it evaluates sentences for juveniles prosecuted as adults.

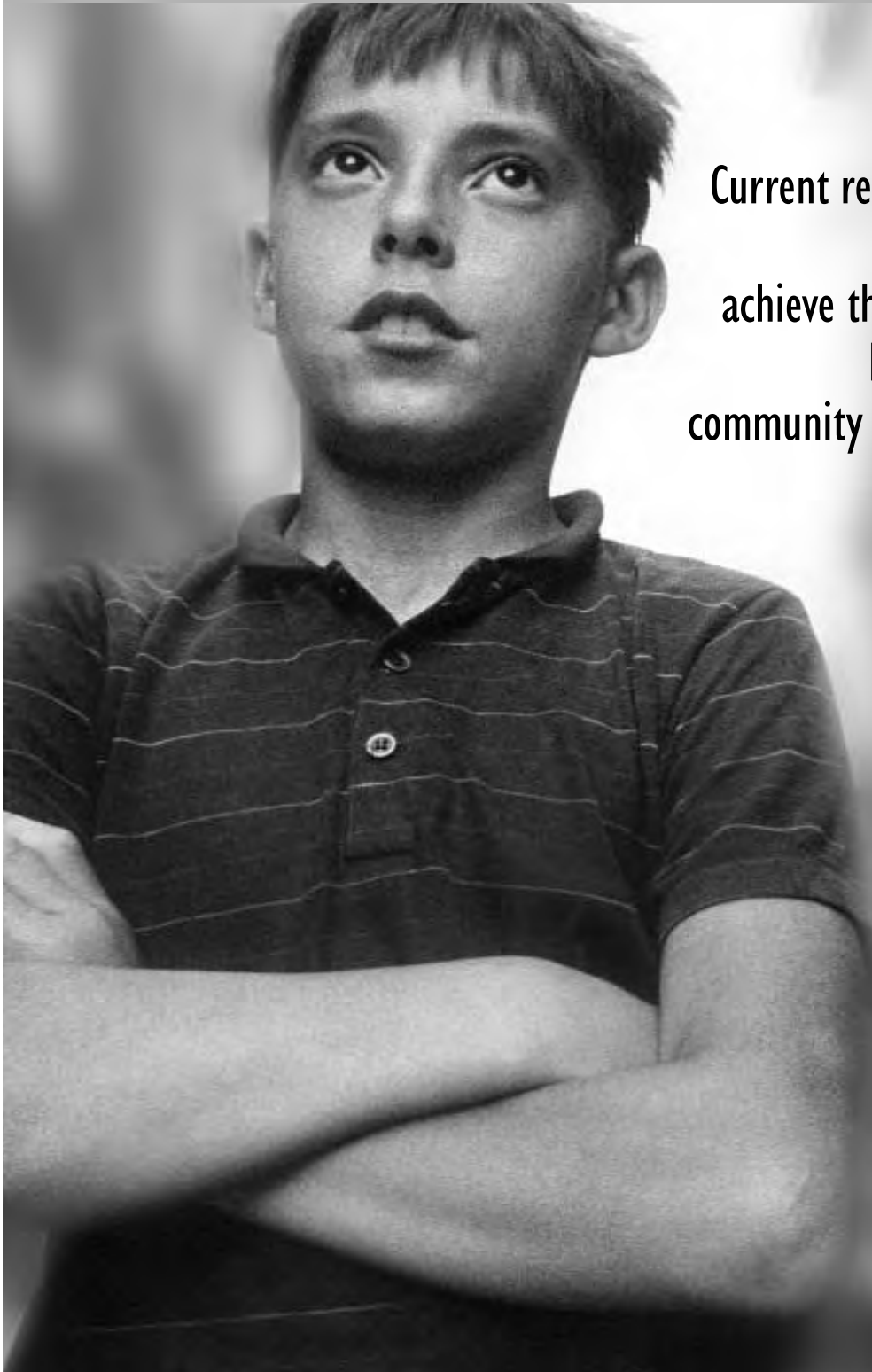
- **Create inter-agency probation units in Maricopa and in Pima Counties to integrate juvenile and adult probation services for juvenile offenders prosecuted as adults and under the age of 18; include local behavioral health and developmental disabilities service systems, if possible; share staff, pool resources, provide training on youth development issues and needs, etc.**
- **Provide additional fiscal resources, but not at the expense of the juvenile justice system, to support sufficient and effective programming for juveniles in the adult criminal justice system as allowed through A.R.S. §13-921.**

- **Encourage local and state probation/correctional programs to follow up with possible federal initiatives to enhance resources for transitional services for serious and violent juvenile offenders.**

- **Encourage the Arizona Bar Association and the Arizona Prosecuting Attorneys' Advisory Council to provide continuing legal education (CLE) training on systems issues and available options regarding prosecuting juveniles. The training could include decision-making criteria, youth development and competency issues, working with prosecutors to initiate a remand back to juvenile court when most appropriate, and sentencing issues.**

- **Encourage state and county authorities to improve the uniform tracking of the number of cases of juveniles prosecuted in the adult system, the sentences imposed and served, and outcomes for youth.**





Current research indicates that automatic waiver does not achieve the desired goals and may be potentially harmful to the community and the involved youth.

## Appendix A Constitutional Exclusion

### Constitution of Arizona

Judicial Department  
Article 6, Section 15

#### **Jurisdiction and authority in juvenile proceedings**

Section 15. The jurisdiction and authority of the courts of this state in all proceedings and matters affecting juveniles shall be as provided by the legislature or the people by initiative or referendum.

Legislative Department  
Article 4, Part 2, Section 22

#### **Juvenile justice; certain chronic and violent juvenile offenders prosecuted as adults; community alternatives for certain juvenile offenders; public proceedings and records**

Section 22. In order to preserve and protect the right of the people to justice and public safety, and to ensure fairness and accountability when juveniles engage in unlawful conduct, the legislature, or the people by initiative or referendum, shall have the authority to enact substantive and procedural laws regarding all pro-

ceedings and matters affecting such juveniles. The following rights, duties, and powers shall govern such proceedings and matters:

1. Juveniles 15 years of age or older accused of murder, forcible sexual assault, armed robbery or other violent felony offenses as defined by statute shall be prosecuted as adults. Juveniles 15 years of age or older who are chronic felony offenders as defined by statute shall be prosecuted as adults. Upon conviction all such juveniles shall be subject to the same laws as adults, except as specifically provided by statute and by article 22, section 16 of this constitution. All other juveniles accused of unlawful conduct shall be prosecuted as provided by law. Every juvenile convicted of or found responsible for unlawful conduct shall make prompt restitution to any victims of such conduct for their injury or loss.
2. County attorneys shall have the authority to defer the prosecution of juveniles who are not accused

of violent offenses and who are not chronic felony offenders as defined by statute and to establish community-based alternatives for resolving matters involving such juveniles.

3. All proceedings and matters involving juveniles accused of unlawful conduct shall be open to the public and all records of those proceedings shall be public records. Exceptions shall be made only for the protection of the privacy of innocent victims of crime, or when a court of competent jurisdiction finds a clear public interest in confidentiality.

## **Statutory Exclusion with Certain Definitions in ARS §13-501.A. and G. Prosecutorial Discretion (ARS §13-501.B.)**

### **ARS §13-501. Persons under eighteen years of age; felony charging; definitions**

- A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age and is accused of any of the following offenses:
1. First degree murder in violation of section 13-1105.
  2. Second degree murder in violation of section 13-1104.
  3. Forcible sexual assault in violation of section 13-1406.
  4. Armed robbery in violation of section 13-1904.
  5. Any other violent felony offense.
  6. Any felony offense committed by a chronic felony offender.
  7. Any offense that is properly joined to an offense listed in this subsection.
- B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age and is accused of any of the following offenses:
1. A class 1 felony.
  2. A class 2 felony.
  3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.
  4. A class 3, 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.
- C. A criminal prosecution shall be brought against a juvenile in the same manner as an adult if the juvenile has been accused of a criminal offense and has a historical prior felony conviction.
- D. At the time the county attorney files a complaint or indictment the county attorney shall file a notice stating that the juvenile is a chronic felony offender. Subject to subsection E of this section, the notice shall establish and confer jurisdiction over the juvenile as a chronic felony offender.
- E. Upon motion of the juvenile the court shall hold a hearing after arraignment and before trial to determine if a juvenile is a chronic felony offender. At the hearing the state shall prove by a preponderance of the evidence that the juvenile is a chronic felony offender. If the court does not find that the juvenile is a chronic felony offender, the court shall transfer the juvenile to the juvenile court pursuant to section 8-302. If the court finds that the juvenile is a chronic felony offender or if the juvenile does not file a motion to determine if the juvenile is a chronic felony offender, the criminal prosecution shall continue.
- F. Except as provided in section 13-921, a person who is charged pursuant to this section shall be sentenced in the criminal court in the same manner as an adult for any offense for which the person is convicted.
- G. For the purposes of this section:
1. "Accused" means a juvenile against whom a complaint, information or indictment is filed.
  2. "Chronic felony offender" means a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult.
  3. "Forcible sexual assault" means sexual assault pursuant to section 13-1406 that is committed without consent as defined in section 13-1401, paragraph 5, subdivision (a).
  4. "Historical prior felony conviction" has the same meaning prescribed in section 13-604.
  5. "Other violent felony offenses" means:
    - (a) Aggravated assault pursuant to section 13-1204, subsection A paragraph 1.
    - (b) Aggravated assault pursuant to section 13-1204, subsection A paragraph 2 involving the use of a deadly weapon.
    - (c) Drive by shooting pursuant to section 13-1209.
    - (d) Discharging a firearm at a structure pursuant to section 13-1211.

## Transfer Between Juvenile and Criminal Courts

### **ARS §8-302. Transfer between juvenile and criminal courts**

A. If during the pendency of a criminal charge in any court of this state the court determines that the defendant is a juvenile who is not subject to prosecution as an adult pursuant to section 13-501, the court shall transfer the case to the juvenile court, together with all of the original accusatory pleadings and other papers, documents and transcripts of any testimony relating to the case. On transfer, the court shall order that the defendant be taken to a place of detention designated by the juvenile court or to that court itself or shall release the juvenile to the custody of the juvenile's parent or guardian or any other person legally responsible for the juvenile. If the juvenile is released to the juvenile's parent or guardian or any other person legally responsible for the juvenile, the court shall require that the parent, guardian or other person bring the juvenile to appear before the juvenile court at a designated time. The juvenile court shall then proceed with all further proceedings as if a petition alleging delinquency had been filed with the juvenile court under section 8-301 on the effective date of the transfer. This subsection does not apply to a juvenile who is subject to prosecution pursuant to section 13-501 but who is convicted of an offense not listed in section 13-501.

B. If during the pendency of a criminal charge in any court of this state

the court determines that the defendant is a juvenile who is subject to prosecution as an adult pursuant to section 13-501, subsection B, on motion of the prosecutor the court shall transfer the case to the juvenile court, together with all of the original accusatory pleadings and other papers, documents and transcripts of any testimony relating to the case. On transfer, the court shall order that the juvenile be taken to a place of detention designated by the juvenile court or to that court itself or shall release the juvenile to the custody of the juvenile's parent or guardian or any other person legally responsible for the juvenile. If the juvenile is released to the juvenile's parent or guardian or any other person legally responsible for the juvenile, the court shall require that the parent, guardian or other person bring the juvenile to appear before the juvenile court at a designated time. The juvenile court shall then proceed with all further proceedings as if a petition alleging delinquency had been filed with the juvenile court under section 8-301 on the effective date of the transfer.

C. During the pendency of a delinquency action in any court of this state, on the motion of the prosecution and before the adjudication hearing, the court shall dismiss without prejudice any count in the petition charging an offense for which the juvenile is subject to prosecution as an adult pursuant to section 13-501 to allow criminal charges to be filed.

D. If a juvenile reaches eighteen years of age during the pendency of a delinquency action or before completion of the sentence in any court in this state for an act that if committed by an adult would be a misdemeanor or petty offense or a civil traffic violation, the court shall transfer the case to the appropriate criminal court, together with all of the original accusatory pleadings and other papers, documents and transcripts of any testimony relating to the case and any sentencing order. The appropriate criminal court shall then proceed with all further proceedings as if a uniform Arizona traffic ticket and complaint form or a complaint alleging a misdemeanor or petty offense or a civil traffic violation had been filed with the appropriate criminal court pursuant to section 13-3903 or the Arizona rules of criminal procedure, the rules of procedure in traffic cases or the rules of procedure in civil traffic violation cases.

## Judicial Waiver

### **ARS §8-327. Transfer hearing**

- A. The state may request an order of the juvenile court transferring jurisdiction of the criminal prosecution of any felony filed in the juvenile court to the criminal division of the superior court.
- B. On request of the state that a juvenile be transferred, the court shall hold a transfer hearing before the adjudication hearing.
- C. If the judge finds by a preponderance of the evidence that probable cause exists to believe that the offense was committed, that the juvenile committed the offense and that the public safety would best be served by the transfer of the juvenile for criminal prosecution, the judge shall order that the juvenile be transferred for criminal prosecution to the appropriate court having jurisdiction of the offense. The judge shall state on the record the reasons for transferring or not transferring the juvenile for criminal prosecution.
- D. The court shall consider the following factors in determining if the public safety would be served by the transfer of a juvenile for criminal prosecution:
1. The seriousness of the offense involved.
  2. The record and previous history of the juvenile, including previous contacts with the courts and law enforcement, previous periods of any court ordered probation and the results of that probation.
  3. Any previous commitments of the juvenile to juvenile residential placements and secure institutions.
  4. If the juvenile was previously committed to the department of juvenile corrections for a felony offense.
  5. If the juvenile committed another felony offense while the juvenile was a ward of the department of juvenile corrections.
  6. If the juvenile committed the alleged offense while participating in, assisting, promoting or furthering the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.
  7. The views of the victim of the offense.
  8. If the degree of the juvenile's participation in the offense was relatively minor but not so minor as to constitute a defense to prosecution.
  9. The juvenile's mental and emotional condition.
  10. The likelihood of the juvenile's reasonable rehabilitation through the use of services and facilities that are currently available to the juvenile court.
- E. At the conclusion of the transfer hearing, the court shall make a written determination whether the juvenile should be transferred to the criminal division of the superior court for criminal prosecution. The court shall not defer the decision as to the transfer. If the court determines that the juvenile should not be transferred to the criminal division of the superior court, the court shall set an adjudication hearing.

## Probation and Services for Juveniles Prosecuted as Adults

### **ARS §13-921. Probation for defendants under eighteen years of age; dual adult juvenile probation**

- A. The court may enter a judgment of guilt and place the defendant on probation pursuant to this section if all of the following apply:
1. The defendant is under eighteen years of age at the time the offense is committed.
  2. The defendant is convicted of a felony offense.
  3. The defendant is not sentenced to a term of imprisonment.
  4. The defendant does not have a historical prior felony conviction as defined in section 13-604.
- B. If the court places a defendant on probation pursuant to this section, all of the following apply:
1. Except as provided in paragraphs 2, 3 and 4 of this subsection, if the defendant successfully completes the terms and conditions of probation, the court may set aside the judgment of guilt, dismiss the information or indictment, expunge the defendant's record and order the person to be released from all penalties and disabilities resulting from the conviction. The clerk of the court in which the conviction occurred shall notify each agency to which the original conviction was reported that all penalties and disabilities have been discharged and that the defendant's record has been expunged.
  2. The conviction may be used as a conviction if it would be admissible pursuant to section 13-604 as if it had not been set aside and the conviction may be pleaded and proved as a prior conviction in any subsequent prosecution of the defendant.
  3. The conviction is deemed to be a conviction for the purposes of sections 28-3304, 28-3305, 28-3306 and 28-3320.
  4. The defendant shall comply with sections 13-3821 and 13-3822.
- C. A defendant who is placed on probation pursuant to this section is deemed to be on adult probation.
- D. If a defendant is placed on probation pursuant to this section, the court as a condition of probation may order the defendant to participate in services that are available to the juvenile court.
- E. The court may order that a defendant who is placed on probation pursuant to this section be incarcerated in a county jail at whatever time or intervals, consecutive or nonconsecutive, that the court determines. The incarceration shall not extend beyond the period of court ordered probation, and the length of time the defendant actually spends in a county jail shall not exceed one year.
- F. In addition to the provisions of this section, the court may apply any of the provisions of section 13-901.

**Appendix B**  
**Maricopa County – Offenses for Which Juveniles CHARGED with as Adults**

	Frequency	Percent	Valid Percent	Cumulative Percent
Aggravated Assault - Domestic Violence	7	.4	.4	.4
Aggravated Assault	166	8.9	8.9	9.2
Aggravated Assault with Weapon	186	9.9	9.9	19.2
Arson - Occupied Structure	8	.4	.4	19.6
Arson - Unoccupied Structure - Felony	1	.1	.1	19.7
Assault - Domestic Violence	1	.1	.1	19.7
Burglary - Possession Tools - Felony	1	.1	.1	19.8
Burglary 1 - Armed	48	2.6	2.6	22.3
Burglary 2 - Residential	248	13.2	13.2	35.6
Burglary 3 - Non-residential	57	3.0	3.0	38.6
Child Abuse - Felony	2	.1	.1	38.7
Child Molest	61	3.3	3.3	42.0
Contraband Drugs	1	.1	.1	42.0
Criminal Damage - Aggravated - Felony	4	.2	.2	42.3
Criminal Damage - Felony	9	.5	.5	42.7
Criminal Trespass	1	.1	.1	42.8
Dangerous Drugs	38	2.0	2.0	44.8
Drive By Shooting	65	3.5	3.5	48.3
Driving While Intoxicated	2	.1	.1	48.4
Drugs on School Grounds	1	.1	.1	48.5
Escape	3	.2	.2	48.6
False Report	1	.1	.1	48.7
Felony Flight	4	.2	.2	48.9
Forgery - Felony	12	.6	.6	49.5
Fraud	28	1.5	1.5	51.0
Gang/Syndicate Participation	26	1.4	1.4	52.4
Hindering Prosecution	2	.1	.1	52.5
Illegal Vapors	4	.2	.2	52.7
Kidnap	31	1.7	1.7	54.4
Murder/Homicide/Manslaughter	66	3.5	3.5	57.9
Narcotics - Possess/Sell	73	3.9	3.9	61.8
Possess Marijuana	6	.3	.3	62.1
Possess Marijuana for Sale	12	.6	.6	62.8
Possess Stolen Property - Felony	8	.4	.4	63.2
Resisting Arrest	6	.3	.3	63.5
Robbery - Armed	316	16.9	16.9	80.4
Robbery	39	2.1	2.1	82.5
Sexual Abuse - Felony	74	4.0	4.0	86.4
Sexual Assault - Felony	26	1.4	1.4	87.8
Shoplifting - Felony	1	.1	.1	87.9
Shoplifting - Misdemeanor	1	.1	.1	87.9
Theft - Felony	41	2.2	2.2	90.1
Theft - Misdemeanor	1	.1	.1	90.2
Theft Means of Transportation	98	5.2	5.2	95.4
Theft of Vehicle - Felony	18	1.0	1.0	96.4
Threats - Felony	5	.3	.3	96.6
Threats - Misdemeanor	1	.1	.1	96.7
Unlawful Use Transportation - Felony	16	.9	.9	97.5
Weapons Misconduct - Felony	45	2.4	2.4	99.9
Weapons Misconduct - Misdemeanor	1	.1	.1	100.0
Total	1872	100.0	100.0	

## Maricopa County – Offenses for Which Juveniles were CONVICTED as Adults

	Frequency	Percent	Valid Percent	Cumulative Percent
No Conviction/No Data	283	15.4	15.4	15.4
Aggravated Assault - Domestic Violence	2	.1	.1	15.5
Aggravated Assault - Participate	1	.1	.1	15.5
Aggravated Assault	154	8.4	8.4	23.9
Aggravated Assault with Weapon	145	7.9	7.9	31.8
Arson - Unoccupied Structure - Felony	5	.3	.3	32.1
Assault - Simple	1	.1	.1	32.1
Burglary - Possession Tools - Felony	24	1.3	1.3	33.4
Burglary 1 - Armed	24	1.3	1.3	34.7
Burglary 2 - Residential	76	4.1	4.1	38.9
Burglary 3 - Non-residential	32	1.7	1.7	40.6
Child Abuse - Felony	2	.1	.1	40.7
Child Molest	60	3.3	3.3	44.0
Criminal Damage - Aggravated-Felony	4	.2	.2	44.2
Criminal Damage - Felony	17	.9	.9	45.1
Criminal Damage - Misdemeanor	1	.1	.1	45.2
Criminal Trespass	36	2.0	2.0	47.1
Dangerous Drugs	21	1.1	1.1	48.3
Discharge Firearm - Non-Residential Bldg.	2	.1	.1	48.4
Disorderly Conduct	21	1.1	1.1	49.5
Dist Peace - Domestic Violence	1	.1	.1	49.6
Drive By Shooting	34	1.8	1.8	51.4
Driving While Intoxicated	3	.2	.2	51.6
Drug Paraphernalia	14	.8	.8	52.3
Escape	2	.1	.1	52.4
Felony Flight	6	.3	.3	52.8
Firearms Possession by a Minor	4	.2	.2	53.0
Forgery - Felony	7	.4	.4	53.4
Fraud	19	1.0	1.0	54.4
Gang/Syndicate Participation	16	.9	.9	55.3
Hindering Prosecution	2	.1	.1	55.4
Illegal Vapors	1	.1	.1	55.4
Kidnap	16	.9	.9	56.3
Leaving an Accident	1	.1	.1	56.4
Lewd Behavior - Felony	1	.1	.1	56.4
Murder/Homicide/Manslaughter	40	2.2	2.2	58.6
Narcotics - Possess/Sell	44	2.4	2.4	61.0
Obstruct Government Operations	1	.1	.1	61.0
Possess Marijuana	14	.8	.8	61.8
Possess Marijuana for Sale	9	.5	.5	62.3
Resisting Arrest	8	.4	.4	62.7
Robbery - Armed	227	12.3	12.3	75.1
Robbery	59	3.2	3.2	78.3
Sexual Abuse - Felony	51	2.8	2.8	81.0
Sexual Assault - Felony	13	.7	.7	81.7
Shoplifting - Felony	1	.1	.1	81.8
Theft - Felony	169	9.2	9.2	91.0
Theft - Misdemeanor	4	.2	.2	91.2
Theft Means of Transportation	44	2.4	2.4	93.6
Theft of Vehicle - Felony	24	1.3	1.3	94.9
Threats - Felony	20	1.1	1.1	96.0

*Continued*

### Maricopa County – Offenses for Which Juveniles were CONVICTED as Adults

	Frequency	Percent	Valid Percent	Cumulative Percent
Threats - Misdemeanor	2	.1	.1	96.1
Unlawful use of Telephone	1	.1	.1	96.1
Unlawful Use Transportation - Felony	32	1.7	1.7	97.9
Unlawful Use Transportation - Misdemeanor	3	.2	.2	98.0
Weapons Misconduct - Felony	34	1.8	1.8	99.9
Weapons Misconduct - Misdemeanor	2	.1	.1	100.0
Total	1840	100.0	100.0	

### Pima County – Offenses for Which Juveniles CHARGED as Adults

Sorted by Charge	Initial Charges	Final Charges
Aggravated Assault Domestic Violence	3	0
Leaving Scene of Accident	1	0
Resisting Arrest	2	0
Forgery and Fraud	4	1 -
Child Abuse	1	1 -
Arson	2	1 -
Drugs - Conspiracy	2	1 -
Kidnapping	6	2 -
Manslaughter (& attempted)	7	3 -
Drugs - Paraphernalia	3	4 1%
Attempted Homicide	13	4 1%
Drugs - Possession	27	5 1%
Drive-By Shooting	26	6 1%
Aggravated Robbery	15	6 1%
Homicide	17	6 1%
Endangerment	3	7 1%
Criminal Damage (& Trespass)	2	9 1%
Drugs - Sale	23	10 1%
Assault (& attempted)	4	11 2%
Fleeing Law Enforcement	9	11 2%
Sex Crimes	27	12 2%
Drugs - Solicitation	0	13 2%
Weapon Offenses	20	13 2%
Others	11	21 3%
Aggravated Assault with Weapon	43	21 3%
Robbery (& attempted)	17	29 4%
Armed Robbery	68	42 6%
Theft	73	55 8%
Aggravated Assault	102	62 9%
Burglary (& attempted)	110	74 10%
Charges Dismissed or Pending	75	286 40%
Total Charges	716	716 100%

**Appendix C**  
**Juveniles Prosecuted in Arizona's Adult Courts by County (FY 2002)**

County	Constitutional/Statutory Exclusion & Prosecutorial Discretion	Judicial Waiver	Total	Percent of State Total
Apache	0	0	0	0.00
Cochise	4	1	5	0.87
Coconino	10	1	11	1.91
Gila	1	15	16	2.78
Graham	1	0	1	0.17
Greenlee	0	0	0	0.00
La Paz	0	0	0	0.00
Maricopa	296	51	347	60.35
Mohave	12	2	14	2.43
Navajo	5	4	9	1.57
Pima	112	10	122	21.22
Pinal	14	2	16	2.78
Santa Cruz	4	5	9	1.57
Yavapai	5	7	12	2.09
Yuma	13	0	13	2.26
Total	477	98	575	100%
Percent of Total:	80.7%	19.3%	100%	



4001 North Third Street, Suite 160 | Phoenix, Arizona 85012 | (602) 266-0707 | Fax (602) 263-8792 | Web: [www.azchildren.org](http://www.azchildren.org) | Email: [caa@azchildren.org](mailto:caa@azchildren.org)  
2850 North Swan Road, Suite 160 | Tucson, Arizona 85712 | (520) 795-4199 | Fax (520) 319-2979 | Email: [jacks3@mindspring.com](mailto:jacks3@mindspring.com)