Children’s Action Alliance is an independent voice for Arizona children at the state capitol and in the community. CAA works to improve children’s health, education and security through information and action.

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We thank the members of the Children’s Action Alliance Juvenile Justice Advisory Committee for their input in discussing and debating best practices and policies for youth offenders in Arizona. We are very grateful for the help and cooperation of many knowledgeable professionals and community stakeholders within and outside of the criminal and juvenile justice systems who shared data and information, hosted tours of facilities housing youth offenders, and provided assistance and direction for this report.

Beth Rosenberg, CAA Director of Child Welfare and Juvenile Justice, and Dana Wolfe Naimark, CAA President and CEO, prepared the report with the assistance of consultant, Rachael D. Lord, MSW, and MSW intern, Kari Joyce.
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- Develop more suitable sanctions for youth who are sentenced in adult court.

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Clear research in juvenile and criminal justice gives Arizona opportunities to make our state policies smarter and safer. Fourteen years ago, Arizona joined many states in shifting away from the historical rehabilitative model of juvenile justice to a more punitive approach that broadened the scope of who should be prosecuted as an adult. Although these policies were intended to deter and prevent youth crime, the weight of current evidence points to the opposite conclusion. A large body of research has found that prosecuting youth as adults is not an effective way to decrease recidivism (re-arrest) and is responsible for increased youth victimization. This means that prosecuting youth as adults makes it less likely that they will be rehabilitated and become productive members of society. In light of this research, now is the time for Arizona to reconsider these laws.

In 1996, Arizona voters passed a ballot initiative amending the state constitution to require automatic adult prosecution for children fifteen years old and older charged with certain violent crimes. The initiative also required that “chronic felony offenders” and youth who have been previously convicted in adult court be automatically prosecuted as adults for new charges. The following year, the state legislature passed a law that defined “chronic felony offender” and other key terms in a way that provided for more youth to be automatically transferred to the adult court. They also gave county attorneys the sole discretion to prosecute many more children as adults – children as young as 14 accused of a wider variety of crimes, including non-violent offenses.

In the past decade, thousands of children in Arizona have been shut out of rehabilitation in the juvenile justice system because they have been prosecuted in the adult system. In 2009 alone, there were over 600 youth prosecuted as adults. More than one-quarter (29%) of these youth were not charged with violent offenses, but were charged with property or misdemeanor crimes. Forty percent of youth were charged automatically in adult court based on the nature of the crime they were charged with and their age; another 16% were automatically charged in adult court based on their age, offense, and offense history. More than one-third (37%) of the youth were charged at the
sole discretion of the prosecutor. In fact, less than 10% of youth were transferred to adult court after a hearing in which a juvenile court judge had the opportunity to examine all of the circumstances in the case. Youth of color are particularly harmed by these laws: more than half of the youth prosecuted as adults were Hispanic and 17% were African American.

Twenty years of experience and research on the increased use of prosecuting juveniles as adults in states around the country point to three major reasons to keep more youth in the juvenile justice system.

1. Transferring youth to the adult system actually increases recidivism and criminal behavior, rather than prevents it. Independent reviews of multiple research studies have been completed by the Centers for Disease Control and Prevention and the Office of Juvenile Justice Delinquency and Prevention in the U.S. Department of Justice (under President George W. Bush). Both came to the same conclusion: transferring youth to the adult criminal system results in greater youth crime, including violent crime.

2. Adolescent brain development makes current transfer policies ineffective. The brain begins its final stages of maturation during adolescence and continues to develop well into a person’s early 20s. The prefrontal cortex, which governs reasoning, advanced thought and impulse control is the last area of the human brain to mature. As a result, adolescents are likely to engage in more risky behavior than adults. Their immature brain functioning means they are much less likely to think about consequences of their behavior before they act. Many youth are not legally competent to stand trial because they cannot fully understand the proceedings or their legal rights. The U.S. Supreme Court has confirmed in two rulings (Roper v. Simmons and Graham v. Florida) that the immaturity of youth diminishes their legal culpability for their offenses. Most youth “age-out” of their criminal behavior and they also have a great capacity to be rehabilitated if given the opportunity.

3. Youth in adult settings are at greater risk of physical assault, sexual violence and suicide than youth who remain in the juvenile justice system. Overall, the adult criminal justice system is not designed to protect, vulnerable youth from the risks associated with incarceration in facilities designed for adults.

Arizona and other states are starting to reexamine the punitive measures passed in the 1990s. In 2007, Arizona state legislators changed the rules related to certain prosecutorial discretion cases for youth charged with sex offenses. If prosecutors charge these cases in adult court, the defense can call for a “reverse remand” hearing and a criminal court judge can decide based on certain criteria whether the case should stay in adult court or be moved back to juvenile court. More recently in 2010, Arizona state legislators clarified that cases of youth directly filed by prosecutors in adult court must be based on the child’s age at the time of his alleged offense, not on his age at the time charges are filed. Although these two recent changes are heading in the right direction, more work needs to be done.

The evidence is clear that state policy can keep Arizona youth and communities safer by keeping more youth in the juvenile justice system rather than the adult criminal justice system. With enhancements to the decision-making process, Arizona can reduce recidivism, save unnecessary expenses, and lead to more youth becoming law-abiding, productive citizens. Children’s Action Alliance recommends the following ten policy changes to help Arizona avoid unintended, undesirable and unjust consequences in cases of youth being prosecuted as adults.

**Modify the age of juvenile court jurisdiction to ensure youth get the services they need.**

- **Raise the minimum age of juvenile court jurisdiction from age 8 to age 10**
  Most younger children are incompetent to stand trial and the needs of these younger children are better met through family support services than through the juvenile delinquency system.

- **Extend juvenile court jurisdiction beyond age 18**
  This will allow more time for age and developmentally appropriate treatment and rehabilitation of older youth in the juvenile justice system.
Make changes to the transfer laws to prevent youth from ending up in the adult system inappropriately.

- Permit reverse remand hearings for youth who are subject to discretionary prosecution in the adult court
  
  Currently, reverse remand hearings are available only for youth charged with sex offenses. This change would extend that option to all offenses with prosecutorial discretion.

- Refine the definition of a chronic felony offender to include only youth who had at least one offense that involved display of a deadly weapon or serious personal injury
  
  The Arizona State Constitution requires that chronic felony offenders age 15, 16 or 17 be automatically charged in adult court; state law now gives prosecutors the discretion to direct file such youth at age 14.

- Limit prosecutorial discretion to cases involving personal injury crimes and to youth aged 15 and older
  
  This change would put prosecutorial discretion more in line with the age and type of offenses the voters decided on in the 1996 ballot initiative.

Change the custodial interrogation procedures to be age and developmentally appropriate.

- Require electronic recording of custodial interrogations of youth
  
  Youth’s cognitive and social immaturity makes them much more vulnerable than adults to police interrogation tactics. Electronic recording is the most efficient way to objectively assure the voluntariness and reliability of youth statements. It also benefits the prosecution and law enforcement as it protects police against false claims of coercion.

- Require attorney presence during custodial interrogations of youth
  
  Research has confirmed that youth are not capable of fully understanding their Miranda rights. Especially important for youth who are subject to interrogations for offenses that would allow them to be direct filed to the adult criminal court, this requirement will protect a youth’s constitutional rights and avoid false or coerced confessions.

Develop more suitable sanctions for youth who are sentenced in adult court.

- Provide for judicial discretion in sentencing youth convicted in the adult criminal court
  
  so youth are not automatically subject to mandatory minimums that were designed for adults.

- Allow youth tried as adults to be held in juvenile facilities instead of adult jails or prisons
  
  This would better protect youth from victimization while incarcerated and match their situation with facilities and services designed for youth.

- Allow for the periodic review of life sentences imposed on youth offenders
  
  This would recognize that youth do not have the same legal culpability as adults for their offenses. The review would give young people a chance to show their maturity and rehabilitation and obtain their release.

Transferring youth to adult court results in “greater subsequent crime, including violent crime.”

* U.S. Centers For Disease Control, 2007
BACKGROUND AND INTRODUCTION

The ability to treat a child as an adult criminal offender has been possible in nearly all states since the inception of the juvenile court in the early 1900s. 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.

For a variety of reasons, including rapid increases in the juvenile crime rate in the 1970s and growing fears about the 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 that broadened the scope of who should be prosecuted as an adult.

This transformation was dramatic and quick. Between 1992 and 1999, nearly every state and the District of Columbia enacted provisions to lower age requirements, broaden the scope of transfer and expedite the transfer of many young offenders to the criminal court.

To evaluate the policy shifts in Arizona beginning in 1996 and to address concerns regarding the outcomes for youth in the adult system, Children’s Action Alliance (CAA) convened a Juvenile Justice Advisory Committee in October 2001. Based on discussions and debate within that committee, CAA issued a report in June 2003, *Prosecuting Juveniles in the Adult Criminal Justice System: Key Issues and Recommendations for Arizona*. The 2003 report provided a foundation for greater recognition of the issues and problems associated with the changes in Arizona state law.

Since 2003, there has been a great amount of national research, two momentous U.S. Supreme Court decisions, and some changes to state laws that recognized the negative impact on public safety and youth from this significant shift in justice philosophy and practice. There has also been considerable focus on reforms needed in both juvenile and criminal justice systems to be more fiscally responsible and focused on best practice. As a result, CAA reconvened its Juvenile Justice Advisory Committee in 2005 to engage in a discussion and build a foundation of inter-disciplinary knowledge about Arizona’s juvenile justice laws, policies and practices. The Committee membership reflects a wide spectrum of perspectives and philosophies and consists of key stakeholders from Arizona’s criminal and juvenile justice systems including judicial officers, prosecutors, defense attorneys, court administrators, probation officers, juvenile corrections administrators, community-based providers and community leaders.

During the past several years, CAA’s Juvenile Justice Advisory Committee has discussed national research findings and current practices in Arizona. Informed by the discussion and debate of CAA’s Juvenile Justice Committee, CAA now releases this follow-up report, *Improving Public Safety by Keeping Youth Out of the Adult Criminal Justice System*, which provides the most recent data about youth tried as adults in Arizona and proposes several policy recommendations focused on enhancing community safety and securing better futures for youth.

We are grateful to the Committee members for their input and insight. The findings and recommendations in this report are those of Children’s Action Alliance.

The National Landscape on Youth Prosecuted as Adults

During the 1970s, rapid increases in the juvenile crime rate and the public’s fears about growing ranks of serious juvenile offenders hit the mainstream media. During a ten-year period (1985 through 1995), the rate of serious violent crime, including murder, rape, and aggravated assault, doubled for juveniles aged 15 years and older. This increase in juvenile crime led to increased public fear and paranoia fed by media reports and was influenced by a widely read article by criminal behaviorist, John Dilulio, about the coming “super-predator.” Dilulio’s article described “adolescents bent on murder, rape, assault, burglary, and drug dealing.” He wrote of the “vacant stares” and “remorseless eyes” of the incarcerated juveniles of the 1990s, youth who gave off a “buzz of impulsive violence.” This “super-predator” rhetoric and accompanying media hype led to a shift in public policy away from rehabilitation and towards punishment of juveniles. At that time, the majority of states, including Arizona, made significant changes in state law to allow for the prosecution of
many more youth as adults and subject them to an adult criminal justice system.

Between 1992 and 1999:

- 27 states extended the reach of judicial waiver laws, lowering age requirements or otherwise broadening eligibility
- 13 states enacted new presumptive waiver laws
- 35 states created or expanded automatic transfer laws
- 11 states strengthened prosecutors’ role in transfer, either expanding or enacting new prosecutorial discretion laws

This “super-predator” theory was questioned by many including Franklin E. Zimring, University of California at Berkeley law professor, who in 2001 declared that Dilulio’s predictions “were utter madness.” Dilulio himself later denounced his early assertions, telling the New York Times that he “would have shouted” for crime prevention rather than increased incarceration if he “knew then what [he] knows now.”

Youth Crime Rates Have Been Falling

The rise in juvenile crime rates did not continue. Exhibit 1 shows juvenile arrest rates from the year 1980-2008 and clearly indicates that, after peaking in 1996, juvenile crime rates have decreased substantially, declining by 30% by 2008.

Similarly, juvenile arrest rates for violent crimes increased between 1980 and 1994, but fell quickly in subsequent years. Murders committed by juveniles more than doubled between 1987 and 1993, and it was speculated that the rate would continue to grow. “However, the juvenile arrest rate for murder then declined, more quickly than it had increased. In 2003, juvenile arrests for murder were at a 30-year low.” Likewise, the juvenile arrest rate for forcible rape fell substantially and consistently over the same time period. By the year 2008, the rate of juvenile rape had fallen 38% below the 1980 level and 57% below its 1991 peak. Juvenile arrest rates for aggravated assault doubled between 1980 and 1994 and then dropped 43% between 1994 and 2008, erasing most of the increase from the prior ten years. By 2008, the arrest rate reached its lowest point in more than 25 years. Exhibit 2 shows the decline in juvenile arrest rates for murder, rape and aggravated assault from 1980-2008.

There is debate about the explanation for the spike in the youth crime rate during the 1980s and early 1990s. Many experts attribute the increase to social trends, including “economic disparity, adult drug dealers using youth as pawns, and easy access to guns.”

There is also discussion about what caused the subsequent decline in the juvenile crime rate. While some policymakers claim that the decrease in youth crime rates resulted from moving more youth into the adult system, this is not supported by the evidence. Amy Vorenberg, professor of law at Franklin Pierce Law Center, succinctly summarizes the conclusion of many researchers:
The cause and effect of the more punitive laws do not appear to be a leading factor in the decline, as the shift in the law came after the crime rate had already stabilized and begun a downward trend.\textsuperscript{10}

In addition, a large body of research has found that transferring youth to the adult system actually increases recidivism and criminal behavior, rather than preventing it. This research is discussed in “Prosecuting Youth as Adults Leads to Increased Crime” (see page 16).

Factors that do appear to influence the decline in the youth crime rate include community policing efforts, reducing crack dealing and access to guns, increased mental health efforts, youth mentoring, and conflict-resolution programming.\textsuperscript{11} Vorenberg, points to some of these societal shifts as the cause for the declining crime rates:

Theories abound about the cause of the downward decline in juvenile crime in the mid-1990s and include a more robust job market, the growth of community policing, market and policy changes dealing with illegal drugs and firearms, and even the legalization of abortion twenty years earlier.\textsuperscript{12}

\textbf{Minority Youth are Overrepresented in the Adult System}

For many years, states have been trying to address the disproportionate numbers of minority youth in their justice systems. Research clearly indicates that disproportionate minority contact occurs at all points in the juvenile and criminal justice systems and that minority and non-minority youth receive different treatment within the systems. Minority over representation is evident in the population of youth who are prosecuted in the adult system.

A 2007 study of eighteen of the country’s largest court jurisdictions found that youth of color are disproportionately impacted by policies transferring youth to adult court. The overwhelming majority of cases (83\%) that were filed in adult courts involved youth of color. African-American youth constituted 62\% of the transferred youth, and 19\% of transferred youth were Hispanic. With the exception of two counties in the study, youth of color constituted between 60\% and 100\% of all youth prosecuted as adults in the 40 counties included in the study.\textsuperscript{13}

In 2007, a report by the National Council on Crime and Delinquency (NCCD) indicated that youth of color are disproportionately represented at every stage of the juvenile justice system.\textsuperscript{14} The NCCD report found that of the 4,100 youth placed in state prisons in 2002, 73\% were minority youth - mainly African-American and Hispanic. This remained true across all offense types.\textsuperscript{15}

Data on the national level and for specific jurisdictions throughout the country demonstrate conclusively that youth of color are transferred to adult courts far in excess of their proportion in the youth population and in excess of their proportion of the overall cases processed by juvenile justice systems.\textsuperscript{16}

As reported by the Campaign for Youth Justice, Exhibit 3: Minority Youth Comparisons depicts the increasingly harsher penalties for minority youth starting from the juvenile system moving to commitments of youth to adult prisons.

\textbf{Exhibit 3: Minority Youth Comparisons}

<table>
<thead>
<tr>
<th>Minority Youth Are More Likely To Be:</th>
<th>African-American Youth Are\textsuperscript{2}</th>
<th>Latino Youth Are\textsuperscript{3}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petitioned in Juvenile Court</td>
<td>20% more likely than white youth</td>
<td>4% more likely than white youth</td>
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<tr>
<td>Adjudicated Delinquent</td>
<td>Slightly less likely than white youth</td>
<td>16% more likely than white youth</td>
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<tr>
<td>Detained</td>
<td>43% more likely than white youth</td>
<td>28% more likely than white youth</td>
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<tr>
<td>Receive Out-of-Home Placement</td>
<td>23% more likely than white youth</td>
<td>41% more likely than white youth</td>
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<tr>
<td>Judicially Waived to Adult Criminal System</td>
<td>13% more likely than white youth</td>
<td>43% more likely than white youth</td>
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<tr>
<td>Committed to Adult Prison</td>
<td>9 times higher for black youth than for white youth</td>
<td>40% more likely to be admitted to adult prison</td>
</tr>
</tbody>
</table>

YOUTH IN THE ADULT SYSTEM: CURRENT PRACTICES

Juvenile courts have historically maintained the means to remove certain offenders from the juvenile justice system and “transfer” them into the adult criminal court system. During the 1990s, as a reaction to increasing youth crime which reached its peak in 1994, legislatures in a majority of states enacted new or revised transfer laws in order to deter youth crime and strengthen and broaden sanctions for serious youth offenders. In general, these transfer laws lowered the minimum age for youth to be prosecuted in the adult criminal system, increased the number of crimes which are eligible for transfer, and expanded prosecutorial discretion to make transfer decisions.17

Pathways to Adult Court

Provisions for handling youth in criminal courts fall into three general categories: constitutional/statutory exclusion, prosecutorial discretion and judicial waiver.18

Constitutional/Statutory Exclusion

State statute and/or a state’s constitution exclude certain youth offenders from juvenile court jurisdiction. Under these provisions, cases originate in criminal rather than juvenile court. Statutory exclusion laws are also known as legislative exclusion or automatic waiver laws.

Prosecutorial Discretion

In some states, both criminal and juvenile courts share jurisdiction over certain cases, and the prosecutor has discretion to file such cases in either court. Transfer under this provision is also known as concurrent jurisdiction or prosecutor waiver. There is wide variation among states regarding criteria for prosecutorial discretion. Some states emphasize offense categories, others the age of the youth involved, and still others emphasize the youth’s offending history.

Judicial Waiver

In most states, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to the adult criminal court. States may use terms other than judicial waiver such as discretionary waiver, certification, remand, or bind over for criminal prosecution. Others use the terms transfer or decline rather than waive jurisdiction.

Some states provide for Presumptive Judicial Waiver where a youth needs to present evidence to the judge to rebut presumption of transfer based on criteria set in law. Mandatory Judicial Waiver requires a judge to confirm that the statutory provisions for waiver are met.

In addition, many states have one or more of the following laws affecting youth transferred to the adult criminal justice system:

Once an Adult Always an Adult

Once an Adult Always an Adult are state laws which require that youth who were previously tried as adults be criminally prosecuted for all subsequent offenses, regardless of severity.

Reverse Waiver/Reverse Remand

Reverse Waiver/Reverse Remand laws allow youth whose cases are being tried in the adult criminal court to petition to have them transferred back to the juvenile court.

Exhibit 4 displays transfer mechanisms in all 50 states as of the 2008 legislative session. As indicated, Arizona utilizes all provisions except presumptive and mandatory judicial waiver.19
<table>
<thead>
<tr>
<th>State</th>
<th>Judicial Waiver</th>
<th>Prosecutorial Discretion</th>
<th>Statutory Exclusion</th>
<th>Reverse Waiver</th>
<th>Once An Adult</th>
<th>Always An Adult</th>
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<td>Discretionary</td>
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Exhibit 4: Transfer Mechanisms In All 50 States

Adapted from Griffin, P. National Center for Juvenile Justice. Legal Boundaries Between the Juvenile and Criminal Justice Systems in the United States. Publication is forthcoming in 2010. Table information is as of the end of the 2008 legislative session. *Arizona – Reverse Waiver Hearings are allowed only in certain sex offense cases.
Juvenile Court Jurisdiction

At what age and for how long youth are within the jurisdiction of the juvenile justice system makes a difference as to what sanctions they may receive.

Age of Jurisdiction

In a majority of states, the upper age limit of original juvenile court jurisdiction is 17. This means that the juvenile court has original jurisdiction over all youth charged with a law violation before they turn age 18 (at the time of the offense, arrest, or referral to court). Law violations occurring on or after the youth reaches their 18th birthday are handled by the criminal court system. One of the ways states have historically tried to address concerns about juvenile crime is by modifying the age of juvenile court jurisdiction. In 13 states, original juvenile court jurisdiction in delinquency matters extends through age 15 or 16. Arizona remains one of 38 states where original juvenile court jurisdiction in delinquency matters extends through age 17. Exhibit 5 displays the upper age of original juvenile court jurisdiction by state as of the 2009 legislative session.

Extended Juvenile Court Jurisdiction

Various states have extended juvenile court jurisdiction over youth for rehabilitative purposes. Extending juvenile court jurisdiction allows states to continue to provide placement and services for specific youth who may have more extensive treatment needs or pose a risk to community safety beyond the offender’s 18th birthday. The majority of states (32 total) utilizing this option end juvenile jurisdiction at age 20. (The offender’s 21st birthday is the cut-off for placement and services offered by the juvenile justice system.) However, a handful of states including California, Montana, Oregon and Wisconsin extend jurisdiction through age 24. There are benefits to extended jurisdiction including meeting rehabilitative and community safety goals in an age and more developmentally appropriate setting. Arizona does not have such extended juvenile court jurisdiction. This limits the ability to provide treatment and rehabilitative services in the juvenile justice system to youth offenders beyond the age of 18. Exhibit 6 shows age limits for retention of juvenile court jurisdiction as of the 2008 legislative session.

Exhibit 5: Upper Age of Original Juvenile Court Jurisdiction

<table>
<thead>
<tr>
<th>Age</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>New York and North Carolina</td>
</tr>
<tr>
<td>16</td>
<td>Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin</td>
</tr>
</tbody>
</table>

Note: Table information is as of the end of the 2009 legislative session.
* Connecticut’s upper age of original jurisdiction rose from age 15 to age 16 in 2010 and will rise to age 17 effective 2012.
** In Illinois, the upper age rose from 16 to 17 for those accused of misdemeanors only, effective 2010.
Adapted from Griffin, P. National Center for Juvenile Justice. Legal Boundaries Between the Juvenile and Criminal Justice Systems in the United States. Publication is forthcoming in 2010.

Exhibit 6: Age Limits on Retention of Juvenile Court Jurisdiction

<table>
<thead>
<tr>
<th>Age Limit</th>
<th>Jurisdiction</th>
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</thead>
<tbody>
<tr>
<td>Prior to 21st Birthday</td>
<td>Alaska, Arizona, Iowa, Kentucky, Mississippi, Nebraska, North Dakota, Oklahoma, Rhode Island and Tennessee</td>
</tr>
<tr>
<td>Beyond 21st Birthday</td>
<td>California, Colorado, Florida, Hawaii, Kansas, Montana, New Jersey, Oregon and Wisconsin</td>
</tr>
</tbody>
</table>

Note: Extended jurisdiction may be restricted to certain offenses or juveniles. Table information is as of the end of the 2008 legislative session.
* In 2007, Rhode Island lowered its jurisdictional retention limit from the 21st to the 19th birthday.
** In 2008, Vermont raised its jurisdictional retention limit for certain juveniles from the 18th to the 21st birthday.
Adapted from Griffin, P. National Center for Juvenile Justice. Legal Boundaries Between the Juvenile and Criminal Justice Systems in the United States. Publication is forthcoming in 2010.
**Sentencing Policies**

States use a variety of sentencing policies for youth.

**Blended Sentencing**

In addition to prosecuting youth as adults, many states have sought more flexible sentencing options. Twenty-six states, not including Arizona, have enacted a variety of “blended sentencing” structures allowing a combination of juvenile and adult treatment and/or punishment options. These blended sentencing laws give courts more flexibility in sanctioning youth and can be placed into two general categories:

*Juvenile Court Blended Sentencing*: The juvenile court has the authority to impose adult criminal sanctions. All states utilizing this option give youth facing possible criminal sanctions the same basic procedural rights afforded to criminal defendants, most notably the right to be tried by a jury.

*Criminal Court Blended Sentencing*: Criminal courts are allowed to impose sanctions otherwise available only to youth offenders handled in juvenile court. This option “gives juveniles prosecuted in criminal court the possibility of a juvenile disposition.”

Exhibit 7 shows the types of blended sentencing options across different states.

Fifteen states have juvenile blended sentencing laws that empower juvenile courts to impose adult criminal sanctions on certain categories of serious juvenile offenders. Juvenile transfer laws usually authorize the court to sentence the youth to a suspended adult sentence combined with a juvenile disposition. The court will reevaluate the youth’s progress and rehabilitation efforts at a specific point (such as reaching the age of 18). If the youth has shown that he is able to re-enter society, the criminal sentence will be dropped. If the youth has not been amenable to treatment and remains an apparent threat to society, he will be sent to the adult criminal system to serve out the remainder of the adult criminal sentence.

Seventeen states have criminal blended sentencing laws under which criminal courts may impose juvenile court sanctions. Criminal blended sentencing gives youth defendants an opportunity

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**Exhibit 7: Blended Sentencing Provisions**

<table>
<thead>
<tr>
<th>Blended sentencing option</th>
<th>State</th>
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<tbody>
<tr>
<td>Juvenile-exclusive blend:</td>
<td>New Mexico</td>
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<tr>
<td>The juvenile court may impose a sanction involving either the juvenile or adult correctional systems.</td>
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<tr>
<td>Criminal court</td>
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<tr>
<td>Juvenile</td>
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<td>Adult</td>
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| Juvenile-inclusive blend:                        | Connecticut, Kansas, Minnesota, Montana |
| The juvenile court may impose both juvenile and adult correctional sanctions. The adult sanction is suspended pending a violation and revocation. |                        |
| Criminal court                                   |                         |
| Juvenile                                        |                        |
| Adult                                           |                        |

| Juvenile-contiguous blend:                      | Colorado, Massachusetts, South Carolina, Texas |
| The juvenile court may impose a juvenile correctional sanction that may remain in force after the offender is beyond the age of the court’s extended jurisdiction, at which point the offender may be transferred to the adult correctional system. |                        |
| Juvenile Court                                  | Juvenile — Adult       |

| Criminal-exclusive blend:                       | California, Florida, Idaho, Michigan, Oklahoma, Virginia, West Virginia |
| The criminal court may impose a sanction involving either the juvenile or adult correctional systems. |                        |
| Criminal court                                   |                         |
| Juvenile                                        |                        |
| Adult                                           |                        |

| Criminal-inclusive blend:                       | Arkansas, Iowa, Missouri, Virginia |
| The criminal court may impose both juvenile and adult correctional sanctions. The adult sanction is suspended, but is reinstated if the terms of the juvenile sanction are violated and revoked. |                        |
| Criminal court                                   |                         |
| Juvenile                                        |                        |
| Adult                                           |                        |

Note: Blends apply to a subset of juveniles specified by state statute.  
1 Applies to those designated as “aggravated juvenile offenders.”  
2 Applies to those designated as “youthful offenders.”  
3 Applies to those designated as “violent juvenile felony offenders.”  
Source: Authors’ adaptation of Torbet and Szymanski’s State legislative responses to violent juvenile crime. 1996-97 update.
to succeed in the juvenile justice system. Often criminal courts will make blended sentencing decisions based on the youth’s prior history and circumstances as well as their perceived amenability to treatment. Similar to juvenile blended sentencing, the suspended adult sentence is conditional on the youth’s behavior and can be reinstated if the youth does not conform to treatment and rehabilitation standards.

**Length of Incarceration of Transferred Youth**

The limited amount of research on lengths of prison sentences (confinement) received by youth 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 youth 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, serve less time than they would have served in juvenile facilities. One study reported that 40% of youth tried in adult court were released to adult probation without receiving either sanctions (for community protection) or rehabilitative support.\(^{25}\)

Of youth under age 18 admitted to prison, the study found:

- 8% are released before their 18\(^{\text{th}}\) birthday,
- 75% of youth are released before the age of 22, and
- 93% of youth will have served their minimum sentences before reaching the age of 28.\(^{26}\)

A 1996 study in Texas found that for all offenses except rape, the average prison time actually served was approximately 27% of the sentence imposed (in some cases, shorter than the possible sentence in a juvenile center).\(^{27}\) In Fagan’s 1996 study comparing youth offenders in New York and New Jersey, he found that while adolescents convicted in criminal court were more likely to be sentenced to incarceration, the periods of incarceration were nearly identical to confinement periods displayed by similar youth processed in the juvenile justice system.\(^{28}\)
U.S. Supreme Court Weighs in on Sentencing Youth in the Adult System

In 2005, the United States Supreme Court ruled in *Roper v. Simmons* that the death penalty could not be applied to youth because they are less mentally and emotionally developed than adults, and thus less culpable for their actions. On May 17, 2010, in a Florida case involving a youth who was sentenced to life without the possibility of parole for a non-homicide offense, the U.S. Supreme Court applied the same reasoning in *Graham v. Florida* that it had in *Roper*. In *Graham*, the Court held that it is unconstitutional to sentence someone under age 18 for life in prison without parole – a final and irrevocable judgment – for a crime where no death occurred. The court ruled that “a life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity.” The Court did not rule that these youth should be released immediately, but that there must be some realistic opportunity to obtain release before the individual’s life ends. What the offender must show in that situation, according to the opinion, is “demonstrated maturity and rehabilitation.”

Prior to the *Graham* ruling, in 11 states, including Florida, courts were able to impose a sentence of life without the possibility of parole for youth offenders in non-homicide cases. Twelve states either forbid life without parole for juveniles or presently have no such youth offenders that are known to be serving that sentence. The court did not specifically lay out a process for sentence review, therefore, courts and policy-makers must now determine how and when reviews must occur.

The latest Supreme Court decision did not impact Arizona directly as Arizona does not have a sentence of life without parole for non-homicide offenses. However, in Arizona, there are 36 people convicted for murder or felony murder while under the age of 18 serving sentences of life without the possibility of parole or review by The Arizona Board of Executive Clemency (also known as “natural life”).

**RESEARCH FINDINGS AND PERSPECTIVES**

Although it is difficult to ascertain the actual numbers of youth in the adult criminal system due to issues of collecting national data on this population, “an estimated over 200,000 youth are tried, sentenced or incarcerated as adults each year across the United States.” On any given day, nearly 7,500 youth are locked up in adult jails and more than 2,700 youth are locked in adult prisons. Within the last decade as juvenile transfer legislation has expanded the number of youth eligible for transfer, the reach of the adult criminal justice system has come under scrutiny. Research has found that juvenile transfer is an ineffective and harmful policy. Prosecuting juveniles as adults is not an effective way to decrease recidivism (re-arrest), has a questionable effect on crime deterrence, and is responsible for increased youth victimization – all impacting the ability of transferred youth to be...

**Arizona State Law – Sentences of Natural Life and Life**

A person sentenced to natural life is not eligible for commutation, parole, work furlough, work release, or release from confinement on any basis. (A.R.S. §13-752)

If a person is sentenced to life, the person shall not be released on any basis until having served 25 years if the murdered person was 15 or more years of age and 35 calendars years if the murdered person was less than 15 years of age. (A.R.S. §13-751)

rehabilitated and become productive members of society. Decisions to prosecute juveniles as adults should be limited in scope and based on key factors in individual cases, rather than sweeping policies for three major reasons:

1. Transferring youth to the adult system actually increases recidivism and criminal behavior, rather than prevents it.

2. Adolescent brain development makes current transfer policies ineffective.

3. Youth in adult settings are at greater risk of physical assault, sexual violence and suicide than youth who remain in the juvenile justice system.

The following section presents a discussion of each of these findings.

**Prosecuting Youth as Adults Leads to Increased Crime**

Juvenile transfer legislation is largely based on the idea that imposing harsher (adult) penalties on youth will either deter youth from committing crime in the first place or decrease subsequent offending behavior (recidivism). However, research has failed to establish that juvenile transfer legislation is linked to deterrence or decreased recidivism. The facts show the opposite: transfer may increase both the likelihood and severity of future offending behavior.

**Increased Recidivism of YouthProsecuted as Adults**

As reported in 2007, the Centers for Disease Control and Prevention (CDC) Task Force on Community Preventive Services sponsored an independent review of transfer research and concluded that the evidence provided is strong enough to maintain that transfer results in “greater subsequent crime, including violent crime, among transferred youth.”

The CDC Task Force found “little evidence supports the idea that transfer laws deter juveniles in the general population from violent crime.” The CDC Task Force, therefore, recommends against policies facilitating the transfer of youth from juvenile to adult criminal justice systems. “To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.”

A 2008 Bulletin from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), under President George W. Bush’s administration, provides a summary of over twenty years of extensive research on the effects of juvenile transfer laws. This research provides clear evidence that transfer laws increase recidivism, with an emphasis on violent reoffending, by transferred youth when compared to similar youth retained in the juvenile justice system.

The OJJDP findings indicate that there is “sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism.”

Both the CDC and OJJDP found that criminally prosecuted youth reoffended more quickly, and more often and more violently than comparable youth retained in the juvenile justice system. Juvenile transfer is actually counter-productive to the desired effect of state transfer legislation.

The National Center for Juvenile Justice summarized:

*Six well-designed studies, all with large sample sizes, employing a variety of different methodologies and measures of offending, and focusing on a range of jurisdictions, populations, and transfer mechanisms, have all agreed in finding higher overall recidivism rates among juvenile offenders who were prosecuted as adults than among similarly situated youth retained in the juvenile system.*

**Little Evidence of Enhanced Deterrence**

The threat of adult time does not make communities safer. States which have moved most aggressively to use the threat of adult court to deter youths from committing crime have not seen noticeable improvements. New York State changed its waiver law in 1978 to allow youths as young as 14 to be charged as adults for violent offenses, but violent crime rates among New York City youths did not decline in comparison to Philadelphia, which had no such transfer law.
Another study points out that when Idaho passed a new law in 1981 requiring transfer for all violent offenders ages 14 and above, the state’s juvenile crime rate increased. The rate decreased in both Montana and Wyoming, where the juvenile courts retained jurisdiction over most violent juvenile offenders.36

OJJDP concludes that although juvenile transfer law is “based largely on the assumption that more punitive, adult criminal sanctions will act as a deterrent to juvenile crime... the bulk of the empirical evidence suggests that transfer laws have little or no deterrent effect.”43

There is some question regarding how informed youth are regarding transfer laws and the effect this knowledge would or would not have on their decision-making. “Juveniles’ psychosocial immaturity, including their tendency to focus on the short-term benefits of their choices, may reduce the likelihood that they will perceive the substantial risk of being arrested or punished as an adult.” Without sufficient knowledge of youths’ awareness of transfer laws and whether they believe that transfer laws will be enforced against them, it is impossible to adequately measure the impact of transfer as a general deterrent to youth crime.

Juveniles Serving Adult Probation

Youth sentenced in the adult criminal system are often released into the adult probation system “without age-appropriate services and supports to help them to become productive.”44 It is clear that adult probation systems are not designed for youth.

State-based research has indicated that handling youth in adult probation systems has produced unanticipated burdens for adult probation departments, including increased workloads and problems created by the “in between” status of youth in the adult system.45 Typical conditions of probation for adults may be inappropriate for youth, making it difficult for them to comply and succeed. These conditions may include holding down a job, paying fines or restitution, and living separate from family members. However, youth do not have the same capacity to own a car to get to work, to find and keep a job, or to sign a lease or make decisions independently of their families. Probation departments report that youth have difficulty adapting to the strict reporting requirements imposed by adult probation (including intensive supervision conditions in many cases). They often violate terms of their probation and are quickly returned to prison to serve out their full terms.

Adolescent Brain Development Makes Transfer Policies Ineffective

Adolescents are different from adults – cognitively, emotionally and socially – in ways that bear on their criminal responsibility, their competence to stand trial as defendants, and the appropriate venue (juvenile court or adult court) for the adjudication of their crimes.

Criminal behavior by youth is influenced by their brain development. Most likely due to the immature brain development or under-development in youth under the age of 18, adolescents show a lack of decision-making ability and are greatly susceptible to peer influences. The brain begins its final stages of maturation during adolescence and continues to develop well into a person’s early 20s, concluding around the age of 25.46 Neurodevelopmental MRI studies have indicated that frontal lobe development is one of the last areas of the brain to reach maturity.

Frontal lobe impairment has been associated with greater impulsivity, difficulties in concentration, attention, and self-monitoring, and impairments in decision-making. . . Late maturation of the frontal lobes is also consistent with electroencephalogram (EEG) research showing that the frontal executive region matures from ages 17 to 21 – after maturation appears to cease in other brain regions.47

The frontal lobe (under)development of adolescents and changing chemical balances in the adolescent brain can cause adolescents to
engage in increasingly risky behavior – or sensation seeking.\textsuperscript{48} The prefrontal cortex, which governs reasoning, advanced thought and impulse control is the last area of the human brain to mature.\textsuperscript{49} Therefore, adolescent brains lack the processes necessary to execute high level thinking – namely, reasoning, decision-making, judgment, expression of emotions and impulse control.\textsuperscript{50} As a result of underdeveloped frontal lobes, youth rely on the parts of the brain that house the emotional centers when making decisions, causing them to engage in more risky behavior than adults.

This also means that adolescents are less able to see long term consequences of crime, and pay more attention to the possibility of reward than the possibility of costs – like arrest.\textsuperscript{51} They will respond to criminal justice policy in ways that are different from adults.

**Many Youth May Not Be Competent to Stand Trial in Adult Court**

In the U.S. justice system, an adult or youth offender may be deemed incompetent to stand trial, legally unable to defend himself or herself. In reference to adult criminal offenders, competence is defined as “an individual’s ability to understand the nature and procedures of the trial, to consult with and assist his attorney, and to make decisions about important matters such as plea agreements. An offender is deemed incompetent to stand trial if he is impaired in the ability to reason or comprehend.”\textsuperscript{52} Within the juvenile court, competency is also defined as the youth’s ability to understand the proceedings and be able to consult with his attorney in regard to his defense.

A youth with a serious mental health diagnosis or developmental delay would, in most courts, be found incompetent to stand trial. However, youth competence goes beyond the absence of a mental impairment. A 2003 study reported that one-quarter of youths who had been found ‘incompetent’ to stand trial had not been diagnosed with either a mental illness or a developmental delay.\textsuperscript{53} This suggests that there is recognition by the courts of “immaturity as a legitimate basis for adolescents’ impaired competence-related abilities.” This recognition is “consistent with concerns expressed by developmental psychologists that some adolescents may have impaired functional capacities in a legal context due to immature judgment and decision making.”\textsuperscript{54}

Age alone does not indicate incompetence; research has shown that adolescents attain cognitive and social competencies at different rates and therefore at different ages. Regarding competence, research has shown:

- There is ample evidence to raise concerns regarding the competence of adolescents under age fifteen to participate in criminal trials… a third or more of fifteen-and sixteen-year olds do not have accurate conceptions of what a “right” [such as a Miranda Right or a right to an attorney] is…a significant fraction of adolescents should not be assumed competent to protect their own interests in adversarial legal settings.\textsuperscript{55}

- Impaired legal capacities in youth may also stem from normal developmental differences between adolescents and adults. In other words, even when adolescents do not have mental disorders or mental retardation, they may lack adequate legal capacities simply because their cognition and psychosocial capacities are still developing and have not reached their adult potential.\textsuperscript{56}

Research has also confirmed that, in addition to differences between adolescent and adult decision-making, there are differences between decision-making in early (under age 14) and late adolescence. A recent report states that “children, especially those younger than 13, are not able to put facts together and draw logical conclusions, and do not properly account for the consequences of their decisions and actions… it is not until late in adolescence, between 15 and 18 years of age, that an individual is capable of hypothesizing what might happen in the future.”\textsuperscript{57} According to The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, children under the age of 14 “are as poorly prepared to participate in their trials as adults with severe mental illness.”\textsuperscript{58}

**Many Youth May Have Diminished Culpability**

Although immature in thoughts and actions, the crimes of youth offenders should not be excused.\textsuperscript{59} It is crucial, however, that their level of culpability be taken into consideration when examining
sentencing options because children are "less culpable for their criminal behavior than adults." 60

The legal culpability of youth may be mitigated by their age and immaturity. Mitigation applies to persons engaging in harmful conduct who are blameworthy enough to meet the minimum threshold of criminal responsibility, but who deserve less punishment than a typical offender would receive.61

Because youth culpability is mitigated by the youth’s developmental stage when a crime is committed and the inherent frontal lobe differences that exist between adolescents and adults, youths cannot be believed to be as culpable as adults.

In a 2008 publication, the MacArthur Research Network on Adolescent Development and Juvenile Justice outlined characteristics that are linked to decision making.62 It found that adolescents are less likely to think about future consequences, more likely to take great risks and make impulsive decisions, and are more vulnerable to coercion by peers than adults. Developmental psychology research clearly “supports the view that several characteristics of adolescence distinguish young offenders from adults in ways that mitigate culpability. These adolescent traits include deficiencies in decision-making ability, greater vulnerability to external coercion, and the relatively unformed nature of adolescent character.”63

This diminished culpability has been accepted and confirmed by two U.S. Supreme Court decisions, the 2005 Roper decision and the 2010 Graham decision.

In 2005, in the case of Roper v. Simmons, the U.S. Supreme Court abolished the juvenile death penalty determining that executing youthful offenders who committed murder while younger than 18 is “cruel and unusual punishment.” Authoring the majority opinion, Justice Anthony Kennedy noted that “juveniles are more vulnerable or susceptible [than adults] to negative influences and outside pressures, including peer pressure... This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.” Justice Kennedy went on to cite scientific and sociological studies on the “underdeveloped sense of responsibility found in youth.”64 By employing the most current research on brain development, competence and culpability of adolescents, the U.S. Supreme Court clearly recognized that adolescents have a diminished capacity for decision-making, increased impulsivity, and are more vulnerable (than adults) to coercion and peer pressure.

The U.S. Supreme Court confirmed these findings in its May 2010 decision in Graham v. Florida regarding youth sentenced to life without the possibility of parole for non-homicide cases. As compared to adults, the court noted that juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.”65 Accordingly, “juvenile offenders cannot with reliability be classified among the worst offenders.” Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults.66

Youth Often Age Out of Criminal Behavior Without Long Term Sanctions

In the 2008 Future of Children Journal on Juvenile Justice, Elizabeth S. Scott and Laurence Steinberg note that most adolescents “literally grow out of their antisocial tendencies as individual identity becomes settled.” They note that
“seventeen year-olds commit more crimes than any other age group – thereafter, the crime rates decline steeply.”

This phenomenon of decreased offending and eventually of ending all offending behavior by youths has been referred to as the “aging-out” of crime. This aging-out is illustrated in Exhibit 8 which shows the U.S. Crime Index By Age. Index crimes include eight crimes with a standardized definition across states. As shown in Exhibit 8, crime rates peak in late adolescence and drastically decline thereafter. Criminologists and sociologists attribute the decline in crime rate by age to a number of factors, including that poor judgment and deficient decision-making in adolescence lead to experimentation and risky behavior. Once individuals assume normal adult roles of employee, spouse and parent that demand their time and energy, these factors begin to weigh more heavily than anti-social peer pressure.

Laurence Steinberg, Ph.D., who served as Director of the MacArthur Foundation Research Network, concludes that youth should be kept out of the adult criminal system whenever possible and that “most youth who commit criminal offenses will abandon illegal behavior at roughly the same age as they exit adolescence.” The research on outcomes and youth behavior show it is unnecessarily expensive and counterproductive to sentence many youth to long terms of incarceration or probation when their offending behavior would end without that as they mature.

Youth in adult settings are at greater risk of physical assault, sexual violence and suicide than youth who remain in the juvenile justice system. Research conducted on youth in correctional settings consistently found that younger inmates “who lack the experience to cope with the predatory environment within prisons are at greatest risk for physical and sexual assault.” In addition, aggressive physical and verbal behavior may be prison “norms” which adolescents may subscribe to due to their susceptibility to peer pressure and their need to develop an identity and place within the social hierarchy of the prison.

Youths incarcerated in adult facilities are reported to be:

- Three times more likely to be beaten by prison staff than youth in a juvenile facility; and 50% more likely to be assaulted with a weapon than youth confined to a juveniles-only institution.
- Five times more likely to be sexually assaulted than those held in a juvenile facility.
- At a substantially greater risk for suicide: One study found the suicide rate for youth in adult facilities is “five times higher than the rate of the general adult inmate population and eight times the rate for adolescents held in juvenile facilities.” Another study found that the suicide rate of juveniles in adult jails is 7.7 times higher than that in juvenile detention centers.

Overall, the adult criminal justice system is not designed to protect young, immature, physically and emotionally vulnerable youth from the risks associated with incarceration. Youth incarcerated with adults are victimized at a higher rate due to their physical size and inability to protect themselves as compared to adult prisoners. “Because they are physically diminutive, they [juveniles] are subject to attack... They will become somebody’s ‘girlfriend’ very, very fast.” Youth who are sent to the adult prison system also face additional risk factors including victimization by prison staff, lack of medical attention for sexual assault and other injuries, and under-reporting or lack of documentation for incidents that occur while incarcerated.
ARIZONA YOUTH IN THE ADULT SYSTEM: CURRENT PRACTICES AND TRENDS

Prior to 1996, the ability to treat a juvenile law violator as an adult criminal offender had been available in Arizona only through a judicial transfer hearing. This option was usually reserved for the most serious, chronic and/or older offenders who juvenile court judges felt could not be handled in the juvenile justice system. After several years of defeated legislative attempts to expand the adult prosecution of youth, a voter initiative (Proposition 102) entitled “Adult Time; Adult Crime” was placed on the ballot in 1996 and passed. The initiative mandated that youth aged 15 and older who are accused of the most serious violent offenses be tried in adult criminal court, and also gave authority to the legislature to amend these provisions further.

The next year, 1997, the Arizona State Legislature passed legislation to implement the voter initiative. The new state law went far beyond the ballot measure and gave county prosecutors the discretion in charging youth as young as 14 years old in adult court for a variety of offenses, including non-violent offenses. See Appendix A, Crimes Chart - Arizona Youth in the Adult Criminal Justice System for a quick overview at what age, and for what offenses, adult criminal court jurisdiction is allowed in mandatory and prosecutorial discretionary cases.

The practice of trying and incarcerating juveniles as adults is influenced by the fact that in Arizona the juvenile justice system is restricted to youth under the age of 18. Arizona does not extend dispositional / treatment jurisdiction beyond the age of 18. Therefore, older youth who commit any crime are more likely to be prosecuted in the adult criminal justice system because there is little time and really no avenue for sufficient rehabilitative services or community transition supports in the juvenile system.

As a result of the 1996 voter initiative, the Arizona Legislature has the authority, as do the voters of Arizona, to amend any law that addresses age of jurisdiction or other provisions regarding juvenile justice policy. The express language of the Arizona Constitution now states:

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.


Pathways to Adult Court in Arizona

There are three categories of juvenile transfer in Arizona: Constitutional / Legislative Exclusion, Prosecutorial Discretion, and Judicial Waiver / Transfer

1. Constitutional / Legislative Exclusion

Mandatory

The constitution mandates that any juvenile age 15 or older accused of murder, forcible sexual assault, armed robbery or “other violent offenses” be prosecuted as an adult. “Other violent offenses” are defined in statute as any criminal act that results in death or physical injury or any criminal use of a deadly weapon or dangerous instrument. Specific crimes are cited.


Mandatory Chronic (aka “Three strikes and you are out”)

The state constitution mandates that any juvenile age 15 or older who is a “chronic felony offender” be prosecuted as an adult. “Chronic felony offender” is defined in statute as any juvenile age 15, 16 or 17 who has two prior felony adjudications in juvenile court and is arrested for a third felony.


Mandatory Prior (aka “Once an adult always an adult”)

The state constitution mandates that juveniles who have been previously convicted in adult court and have been accused of a new 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 adult probation.

A.R.S. §13-501.C.
2. Prosecutorial Discretion

Discretionary Charge

State law gives county attorneys the sole discretion to file adult charges on any juvenile who is 14 or older and charged with a list of specified offenses. A.R.S. §13-501.B.

Discretionary Chronic

State law gives county attorneys the sole discretion to file adult charges on any juvenile who is aged 14 and determined to be a chronic offender. “Chronic felony offender” is defined in statute as a juvenile who has two prior felony adjudications in juvenile court and is arrested for a third felony. A.R.S. §13-501.B.5. and G.2.

File Back

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.

Constitutional / Legislative Exclusion and Prosecutorial Discretion cases are within the sole decision-making authority of prosecutors and are termed “direct file” cases.

3. Judicial Waiver / Transfer

Transfers may occur by decision of the juvenile court judge after a hearing as provided in A.R.S. §8-327. In making the transfer decision, the judge must find, by a preponderance of the evidence, that probable cause exists to believe that the offense was committed by the juvenile, and that public safety would best be served by the transfer of the juvenile for criminal prosecution. The juvenile court judge takes into consideration:

• The record and previous history of the juvenile.
• Previous commitments to juvenile residential placements and secure institutions and whether there was a pervious commitment to the Department of Juvenile Corrections (DJC) for a felony offense.
• If the juvenile committed another felony offense while the juvenile was a ward of the DJC.
• If the juvenile committed the alleged offense while participating in, assisting, promoting or furthering the interests of a gang.
• The views of the victim of the offense.
• 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.
• The juvenile’s mental and emotional condition.
• The likelihood of the juvenile’s reasonable rehabilitation through the use of services and facilities that are available to the juvenile court.

State Law Allows Certain Sex Offense Cases to Move Back to Juvenile Court

In 2007, a change was made to Arizona state law related to certain prosecutorial discretion cases for youth sex offenses. A.R.S. §13-504 now allows for a reverse waiver (aka reverse remand) hearing for youth charged with a sex offense if the youth is in the adult criminal court as a result of prosecutorial discretion. If the defense believes the youth would be better served in juvenile court, a reverse waiver hearing may be requested. Hearings are also mandated on the court’s own motion or when charges are filed more than a year after the alleged offense occurred. At the hearing, the criminal court judge may transfer the youth back to juvenile court if the court finds by clear and convincing evidence that public safety and the rehabilitation of the youth would be best served by doing so. A.R.S. §13-504 outlines the following factors the court must consider in determining whether the public safety and youth’s rehabilitation would be served by transferring the youth to juvenile court.

• The seriousness of the offense involved.
• The record and previous history of the juvenile, including previous contacts with the court and law enforcement, previous periods of any court ordered probation and the results of that probation.
• Any previous commitments of the juvenile to juvenile residential placements or other secure institutions.
• Whether the juvenile was previously committed to the DJC.
• Whether the juvenile committed another felony offense while the juvenile was a ward of the DJC.
• Whether 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.

- The views of the victim of the offense.
- The degree of the juvenile’s participation in the offense was relatively minor but not so minor as to constitute a defense to prosecution.
- The juvenile’s mental and emotional condition.
- The likelihood of the juvenile’s reasonable rehabilitation through the use of services and facilities that are available to the juvenile court.

The factors the criminal court weighs are similar to those required in a Judicial Transfer Hearing, but the standard of evidence is different. For youth to be transferred to the criminal court through a Judicial Transfer Hearing, the evidence standard is “preponderance of evidence”. For a youth to be remanded from the criminal court to the juvenile court, the standard is “clear and convincing evidence”. Thus, it is easier to transfer a youth to the criminal court than to transfer a youth back to the juvenile court once a prosecutor files such a discretionary offense case in criminal court.

(See Appendix B for sections of the Arizona Constitution and Revised Statutes that pertain to transfer of youth to the adult criminal court.)

**Arizona Juvenile Court Jurisdiction**

Arizona’s juvenile justice jurisdiction ranges from age eight (8) through age seventeen (17) (age of jurisdiction ends on the youth’s 18th birthday). 82

Prior to 1979, the juvenile court had original jurisdiction of youth offenders younger than age 18, but could maintain jurisdiction of adjudicated youth until age 21 for treatment purposes. Accordingly, even if a youth was adjudicated at age 17, the juvenile system could continue custody and services up to age 21. In 1979, the Arizona Supreme Court ruled that the juvenile court must relinquish youth from custody when they reach age 18. 83 Because this ruling meant that the juvenile court, juvenile probation, and juvenile corrections would have less time to work with older juvenile offenders before release, the number of youth transferred to adult court increased dramatically. In fact, the number of transferred youth more than doubled between 1979 and 1980.

Legislation passed in 1997 (A.R.S. §8-341.N.) allows for extended treatment beyond age 18 if the youth is on probation and the court, the youth and prosecutor agree. However, there is no known record of this provision ever being utilized. Payment for treatment services may be one barrier as well as the fact that there is no legal advantage for youth to remain under the supervision of the court.

Children younger than the minimum jurisdictional age of eight are presumed to be incapable of criminal intent and are therefore exempt from criminal prosecution and punishment. In Arizona, a child who is “under eight years of age and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child” is considered to be a “Dependent Child” under A.R.S. §8-201.13(iv).

Currently in Arizona, children under the age of ten make up a small percentage of youth referred, detained and placed on probation. The majority of these children are diverted or dismissed from the juvenile justice system. In 2009, of all those 8 and 9 year olds referred, only 14% had petitions filed. That filing rate is two to three times as much for older youth (28% for 11 year olds and 41% for 17 year olds). Once a petition has been filed, an even smaller percentage of 8 and 9 year olds face the standard terms of probation. Only 7% of those 8 and 9 year olds who had a petition filed actually are placed on standard probation. That rate is astronomically higher for older youth, who

**The majority of youth prosecuted as adults do not have the benefit of an individualized decision by a judge about whether the case should be in juvenile or adult court.**
are three to nine times more likely to face the same consequence once a petition has been filed. Exhibit 9 shows the number of children aged 8 and 9 who were referred to and processed by the juvenile court during FY 2009.

**Arizona Statistics and Trends**

**Juvenile Crime and Violence Trends in Arizona**

Exhibit 10 shows juvenile arrest rates for violent crimes including murder, forcible rape and aggravated assault from 1994 through 2007. Following the national trend, in Arizona the juvenile crime rate peaked between 1994 and 1995 and has experienced a significant decline through 2003 when arrest rates for violent crimes leveled off. Exhibit 11 shows property crime arrest rates – including burglary, theft and motor vehicle theft – also declined significantly.

**Transfer Trends**

The numbers of youth processed through Arizona’s adult courts increased substantially from FY 1995 through FY 1998 (the years in which transfer legislation changed in Arizona). The numbers subsequently dropped over the next six years. Since FY 2004, numbers have slightly increased, without showing a conclusive trend. This is reflected in Exhibit 12, which displays the number of cases of youth in Arizona who were referred for adult criminal court prosecution during fiscal years 1997-2009. This shows a dramatic decline in rates of transfer from a high of 1,083 juveniles referred in 1998 to 518 in 2004, and up to 611 in FY 2009.
The best data available indicates that in FY 1998, 14,907 juvenile cases received dispositions to juvenile probation, juvenile intensive probation, juvenile corrections, or adult court. Of these, 1,083 juvenile cases went to adult court - 7% of all juvenile cases receiving dispositions during that period. These proportions have dropped since then with 4.6% (611 of 13,149 juveniles) of all juvenile cases with similar dispositions receiving dispositions to adult court during FY 2009. While this progress is encouraging, further reforms are still needed.

Exhibit 13 shows the percentage trends of pathways to adult court for youth transferred during FY 1998 - 2008. There has been a steady increase in use of constitutional exclusion (mandatory charges) between 2004 and 2009, contrasted with decreased use of judicial transfer since 2004.

Exhibit 14 shows the pathways used for juveniles filed in adult court over an eleven year time span in Arizona. As indicated, Constitutional Exclusion cases represent just more than half of the total numbers of youth filed in adult court. Prosecutorial Discretion cases accounted for slightly fewer than 35% of filings. Judicial Transfers have decreased significantly since 1998 (30% of filings) and represent a small percentage of the total number of filings in 2009 (7%).

Exhibit 15 represents the pathways that brought youth to the adult criminal court in FY 2009. In this year, 56% of the direct filings represented mandatory charges, 37% were prosecutorial discretionary charges, and only 7% were the result of Judicial Transfers.
Characteristics of CasesProsecuted In Adult
Criminal Court

Exhibit 16 shows that sixty-two percent (62%) of cases prosecuted in adult court involve Felonies Against Person while 23% involve Felonies Against Property. The type of offense a youth is charged with and the type of offense that a youth 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.

Nationally, and in Arizona, the majority of youth prosecuted in adult courts are males between the ages of 15 and 17. Exhibit 18 shows that 93% of the youth prosecuted as adults in FY 2009 were male.

Minority Youth in Adult Court

Minority over-representation within both the juvenile justice system and for youth transferred to the adult criminal system is a serious issue in Arizona. African-American youth are direct filed to adult court at nearly four times the rate of White youth; and Hispanic youth are direct filed at more than twice the rate of White youth.

In the adult court system, African-American and Hispanic youth together comprise nearly 80%
of all youth prosecuted as adults. Hispanic youth make up 40% of all the youth in Arizona, however they represent close to 60% of those prosecuted as adults. African-Americans are even more overrepresented: they comprise only 5% of the total youth population in Arizona, yet almost 18 percent in the adult court system.

Exhibit 19 shows the racial and ethnic breakdown of Arizona youth being direct filed or judicially waived to adult courts during FY 2009. As indicated, Hispanic and African-American youth are over-represented in both the Direct Filed and Judicial Waiver groups. As seen in Exhibit 20, percentages of youth being prosecuted in adult court who are either Hispanic or African-American have increased overall since 2000, while the percentage of White youth has decreased. Between 1998 and 2009, Hispanic youth constituted 34 to 40% of youth referred to the juvenile justice system, but 47 to 58% of those referred to adult court. Over the same time period, African-American youth constituted 6 to 8% of youth referred to the juvenile justice system, but 12 to 17% of those referred to adult court. Although the percentage of Arizona youth who are Hispanic has increased in recent years, this factor alone does not account for the increase in Hispanic youth prosecuted in criminal court.

<table>
<thead>
<tr>
<th>Age</th>
<th>Constitutional Exclusion and Prosecutorial Discretion (Direct Filed)</th>
<th>Judicial Waiver (Transferred)</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>11</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>12</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>13</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>14</td>
<td>14</td>
<td>1</td>
<td>15</td>
<td>2.5%</td>
</tr>
<tr>
<td>15</td>
<td>59</td>
<td>1</td>
<td>60</td>
<td>9.8%</td>
</tr>
<tr>
<td>16</td>
<td>157</td>
<td>2</td>
<td>159</td>
<td>26%</td>
</tr>
<tr>
<td>17</td>
<td>328</td>
<td>40</td>
<td>368</td>
<td>60.2%</td>
</tr>
<tr>
<td>Unknown</td>
<td>8</td>
<td>1</td>
<td>9</td>
<td>1.5%</td>
</tr>
<tr>
<td>Total</td>
<td>566</td>
<td>45</td>
<td>611</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Source: Juveniles Processed in the Arizona Court System FY2009, Arizona Administrative Office of the Courts, Juvenile Justice Services Division

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Constitutional Exclusion and Prosecutorial Discretion (Direct Filed)</th>
<th>Judicial Waiver (Transferred)</th>
<th>Total</th>
<th>Percentage Of Juvenile Population In AZ (2008) (Youth 8-17)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hispanic</td>
<td>334</td>
<td>21</td>
<td>355</td>
<td>58%</td>
</tr>
<tr>
<td>African-American</td>
<td>100</td>
<td>6</td>
<td>106</td>
<td>17%</td>
</tr>
<tr>
<td>White/Non-Hispanic</td>
<td>102</td>
<td>16</td>
<td>118</td>
<td>19%</td>
</tr>
<tr>
<td>Native American</td>
<td>17</td>
<td>2</td>
<td>19</td>
<td>3%</td>
</tr>
<tr>
<td>Asian/ Pacific Islander</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Unknown</td>
<td>9</td>
<td>2</td>
<td>9</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td>566</td>
<td>45</td>
<td>611</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Juveniles Processed in the Arizona Court System FY2009, Arizona Administrative Office of the Courts, Juvenile Justice Services Division

More than one-quarter of youth prosecuted as adults in Arizona were not charged with violent offenses but were charged with property or misdemeanor crimes.
Exhibit 21: Youth Committed to Arizona State Prison in 2009; Breakdown by Ethnicity

- Hispanic*: 73%
- African American: 15%
- Caucasian: 9%
- Native American: 4%
- Other: 3%

*Hispanic includes Mexican American and Mexican Nationals

As indicated in Exhibit 21, 73% of the minors in Arizona’s state prison in the past year were Hispanic youth (in comparison to 40% of Arizona’s youth population). Fifteen percent were African-American youth (in comparison to less than 5% of the youth population).

Competency of Youth 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
- 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
- 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 a judge considers adolescent developmental issues, psychosocial factors, ability to understand the results of his actions and amenability to treatment in determining in which court a youth should be prosecuted. The youth’s psychosocial history and treatment information is confidential and is used by the court only for the intent of making the transfer decision.

Consequences of Adult Prosecution

Unlike youth in the juvenile justice system, youth who have been convicted of a felony in the adult criminal justice system experience the loss of civil rights and privileges. This can severely impact the youth’s ability to obtain and maintain employment, continue educational goals, obtain housing and successfully reintegrate into the community. These youth also lose their civil liberties including the right to vote, hold public office, serve on a jury and hold certain business or professional licenses. Employment opportunities are limited for convicted felons in Arizona as private employers may refuse to hire anyone with a criminal record regardless of their qualifications. Youth may also be prohibited from entering the military due to losing the right to possess a weapon. Drug convictions in adult court affect food stamps and student loan eligibility. Restoration of civil liberties may occur only under limited circumstances.

Sentencing Options in Arizona

Youth prosecuted as adults are subject to the same sentencing guidelines as any adult convicted of a crime.

Although other states have enacted blended sentencing options, Arizona has not. Not all blended sentencing options (Juvenile-Exclusive, Juvenile-Inclusive or Juvenile-Contiguous blended sentencing) could be established in Arizona as the state does not allow jury trials in juvenile court and adult sentences could not be imposed by the juvenile court system.

A.R.S. §13-921.D. was enacted in 1997 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. Funding limitations restrict the ability of the court to fully use this provision.
Outcomes for Arizona Youth in the Adult Criminal Justice System

Arizona and most other states have great difficulty in tracking the outcomes of youth prosecuted as adults. Case records do not follow youth and computer systems do not track youth from the juvenile to the adult justice system. There are law enforcement records, separate juvenile and adult court records, separate juvenile and adult probation files, juvenile court social record files, jail and detention files, files of the Arizona Department of Juvenile Corrections, and files in the Department of Corrections. There is no system or common identifier that tracks youth throughout the justice system.

Arizona Administrative Office of the Courts Findings

The Arizona Administrative Office of the Courts (AOC), recently completed an Exploration of Juvenile Outcomes in Adult Court. AOC made a concerted effort to match juvenile files from the juvenile court with those in the Adult Probation Departments throughout the state.

The findings of the AOC report were limited as only youth with convictions could be tracked. Of 7,036 youth cases that had been direct filed or transferred over the course of the 11 years from July 1997 to June 2008, only 3,650 (51.8%) of the cases were successfully matched. Youth who had cases dismissed, acquitted or sent back to the juvenile court could not be tracked, but it is unknown whether this accounted for the more than 48% of the cases that could not be matched. The unmatched cases may be qualitatively different from the matched cases. Recognizing these critical limitations, a 778 case sample of the 3,650 youth cases were matched and presented the following results for youth prosecuted as adults:

- 88.17% of the youth received a sentence of probation only
- 2.7% received a sentence of prison only
- 8.74% were sentenced to prison and probation
- 0.13% had a jail term of less than one year
- 0.13% received unsupervised probation, and
- 0.13% of the cases the sentence was unknown

This breakdown emphasizes the significance of adult probation services for the youth population. More than 96% of the youth had sentences that included adult probation.

Pathways to Desistance Study Findings in Phoenix

The Pathways to Desistance study is an ongoing study of serious adolescent offenders from Phoenix, Arizona and Philadelphia, Pennsylvania. Offenders involved in the study were adjudicated youth between the ages of 14 and 17 years who had been adjudicated delinquent or found guilty of a felony offense (except less serious property crimes), as well as misdemeanor weapons offenses and misdemeanor sexual assault. The study involves a series of
interviews with the study participants for up to seven years post enrollment. The interviews are conducted with the youth as well as their parents and peers and the topics covered include individual factors such as maturity level and attitudes, as well as the social contexts they live in and the interventions they experience. At the time of the last report, all youth enrolled in the study were past the 60 month follow-up point.

Recently, study investigators have been exploring some issues regarding the subgroup of study participants from Phoenix who were transferred to the adult criminal system. Specifically, they have been trying to understand how transferred youth differ from each other and how transferred youth fare compared to those kept in the juvenile system.97

The following observations emerge from this work. Considering the transferred group as a whole:

- Those youth who were incarcerated served an average of 2/3 of their sentence.
- Half of the youth resumed anti social activity, 62% were re-arrested, and 88% returned to a facility. Youth who were incarcerated at the time of the study index petition returned to a facility more quickly than those given probation.
- Youth who had more prior petitions were associated with a quicker return to antisocial activity, quicker re-arrest, and a higher rate of re-arrest over time.
- Certain charges are associated with a quicker time to resuming antisocial activity and a quicker return to an institutional setting.
- Association with antisocial peers was related to a quicker time to resume anti-social activity and a quicker time to re-arrest.

Researchers assessed recidivism rates (re-arrest) of youth transferred to the adult system compared to those seen in youth offenders retained in the juvenile system. In a four year period after enrollment in the study, controlling for the number of days juveniles were released (i.e., number of days the juvenile would be eligible for rearrest/not in confinement), youth who were transferred to the adult criminal system were matched with youth who remained in the juvenile system on 59 factors (including demographic, family history, peer, legal, psychological, substance abuse, psychosocial maturity and prior adjustment factors). These variables were selected to account for the influence of individual, situational and development factors on juvenile crime. Using this matched sample, the Pathways study found:

- The effects of transfer were very different depending on the type of offense which qualified the juvenile for transfer.
- When compared with youth retained in the juvenile justice system, rates of re-arrest among transferred youth were higher for property and other felony offenses and lower for serious, violent felonies compared to the adolescents who looked just like them who were retained in the juvenile justice system.
- In its current inclusive form, the Arizona transfer laws do not improve public safety in the case of youth transferred as the result of a property offense. In fact, these laws allow for a higher rate of recidivism for these youth.

The Pathways researchers conclude:

Past wholesale characterizations of transfer policies as “good” or “bad” appear to be overly simplistic. A more realistic and constructive debate might therefore focus on where to “redraw the line” for determining transfer to do the most good and avoid the least harm.

These findings are reinforced by a forthcoming economic analysis (not specific to Arizona) of the effects of transfer laws on juvenile crime that finds transfer laws do not decrease total juvenile crime, juvenile property crime, or juvenile violent crime. In fact, statutory exclusion laws, and all transfer laws combined, actually have a net effect of increasing juvenile property crime.98

Programming for Youth in the Adult Criminal Justice System

Youth on adult probation constitute a miniscule number of those supervised by probation departments. In Maricopa County, as of the end of November 2009, there were 102 youth on adult probation of the 31,084 offenders being supervised.99 In Pima County, 34 transferred youth were on adult probation of 5,602 probationers as of August 6, 2010.100
Probation departments face challenges as they struggle to enforce conditions of probation that often are not designed for youth. For example, conditions may include requirements for probationers to obtain suitable housing, but many transferred youth are not old enough to sign a lease or mature enough to live on their own. Most youth depend on family members who also may be struggling to maintain housing and some youth cannot return home since their family is receiving Section 8 housing which prevents a felon from living in many housing developments. Probation conditions may also require youth to maintain employment, but some transferred youth are not old enough to work while many others have severe vocational deficiencies or as a convicted felon cannot find employment. Probationers are required to maintain contact with their probation officer, but some youth do not have easy access to a phone and may have difficulty maintaining telephone contact.

For most youth on adult probation, Maricopa County conducted a Juveniles Transferred on Probation (JTOP) Court review process. A criminal court judge was assigned to preside over this drug-court like process which involved a court hearing once a month to review the progress youth probationers were making on the terms of their probation. Youth and probation officers participated in this review process where “graduations” occurred for those successfully completing probation, rewards were issued for those youth doing exceptionally well, words of encouragement were given for those youth on the right path, sometimes jail terms (generally, for a week or less) were imposed for those not meeting the conditions of probation, or warrants for arrest were issued when a youth did not appear. Generally, youth were a part of the JTOP process for one year, but could remain on adult probation for a longer period of time.

In the fall 2010, JTOP court hearings were replaced by Project SAFE (Swift, Accountable, Fair Enforcement) court reviews in Maricopa County. Project SAFE is geared to focus only on transferred youth with issues in meeting their terms of probation. Hearings will be conducted swiftly and as needed; the judge will establish immediate consequences (e.g. community service, jail time or
other sanctions) as deemed appropriate to address the compliance issue.

Those youth on adult probation for sex offenses do not participate in the Maricopa County JTOP or Project SAFE court hearings. As allowed with the passage of SB 1628 in 2007 (A.R.S. §13-923), on the request of the probationer, the court will conduct a probation hearing at least once a year for a probationer who is under twenty-two years of age and who was convicted of a sex offense that occurred when the person was under eighteen years of age and that requires the probationer to register as a sex offender pursuant to A.R.S. §13-3821. At the court hearing, the court determines whether to continue, modify or terminate probation, sex offender registration or community notification. Prior to the passage of this law, youth convicted as adults of sex offenses were most often subject to lifetime probation, sex offender registration and community notification requirements. From September 2007 (when the law became effective) through June 2010, of 153 eligible youth in Maricopa County, 30 youth were terminated from probation, 19 youth no longer have community notification imposed, and 16 youth have been removed from sex offender registration requirements. In November 2009, Pima County reported that no youth on probation qualified for this annual review.

Facilities for Youth in the Adult Criminal Justice System

If incarcerated, youth charged or transferred to the adult criminal justice system are incarcerated in adult jails and prisons. Adult jails in Arizona are not equipped to respond to the special needs of youth. Reasons for this include the extra costs associated with providing developmentally appropriate services and the design that jails should serve as a punishment and deterrent to crime rather than provide treatment and rehabilitation services. Limited access to treatment, a shortage of qualified providers within adult jail systems, and facility limitations contribute to inadequacies in services for youth in the adult system. Additionally, in Maricopa and Pima Counties as well as the state prison, there is no specialized training for correctional officers related to youth issues and needs.

The Arizona State Constitution and state law require sight and sound separation of youth from adults. This protection is in place to safeguard youth from physical abuse, sexual assault and exploitation from adult prisoners. In FY 1998 (the year Arizona enacted transfer reforms), the state legislature appropriated $1 million to the County Jail Juvenile Improvement Fund to make facility modifications to ensure sight and sound separation. In the fall of 2009, tours of youth units of the Pima County Jail and the Arizona State Prison Complex in Tucson demonstrated compliance with sight and sound separation. In visits to Maricopa County Jail facilities, both the female and male youth are housed in pods separate from adults, but the youth regularly see and hear adults. The girls must walk through an adult female housing dormitory to their school classroom. Boys routinely walk in hallways with adult male inmates. Exposure to adult inmates places these youth in harm’s way and exposes them to adult criminal influences and behaviors.

The amount of time youth spend in jail facilities prior to their trial varies greatly. Some who are held for the most serious crimes may spend two years in jail before their trial is resolved. Jail visitation in Pima County and the boy’s section of Maricopa County is set up through video monitors. There is no physical contact allowed with family members. This helps the jails manage security needs, but does not take into account the physical contact and nurturing needs of youth. For girls in the Maricopa County jail, there is a visitation room; visitors can personally see youth, but physical contact is not permitted. Girls who give birth in jail, or are young mothers, have no opportunity to bond with their children or to learn how to be a mother.

Youth in the adult facilities are a very special population, but represent a small number of inmates in comparison to the adult population. This makes programming and staffing a challenge. In December 2009, 137 boys were in Arizona State Prison, as compared to the approximately 40,500 adult prisoners. In Maricopa County out of a jail population of more than 7,900 inmates there were 150 boys held in the Lower Buckeye Jail on October 7, 2009, and 12 girls held in the Estrella Jail on November 17, 2009. Youth also represent just a fraction of the adults imprisoned in Pima County. On August 9, 2010, there were 26 youth, including two girls, in the Pima County Jail with a total inmate
Youth as young as 14 years old were housed in these facilities.

Educational services in jails are varied. If under 16, youth must attend school, and they are entitled to a public education until age 18 (up to 22, if in special education). The vast majority of transferred youth have experienced repeated educational failures and many have previously dropped out of school. Hours of schooling vary. Pima County provides six hours of school a day; Maricopa County provides four hours; one of which is physical education. Some youth are permitted to work online for 6 hours per school day to obtain their high school diploma. For the first time in 2009, five youth in the Maricopa County jail received their high school diploma. Student to teacher ratios vary, and in Maricopa County, in part due to the lack of sufficient staff to monitor the students, youth are sometimes shackled to their desks while they are expected to learn. When Maricopa County youth are not in class, they are spending the vast majority of their time in their cells. In Maricopa County due to the set up of the housing pods and lack of sufficient staffing other than for school, boys in the general population are allowed approximately two hours out of their cell each day. Isolation and lack of programming does not provide the constructive treatment and rehabilitation services that these youth could benefit from.

Working with youth’s families while incarcerated and working toward release transition plans can be very difficult. A good number of parents themselves are incarcerated. Parents who are out of state or out of the country are usually inaccessible. Parents who do not have legal immigration status are explicitly not permitted to enter Maricopa County Jails.

The Arizona State Prison - Tucson Complex is home to the Minor’s Unit. Over the twelve month period from November 2008 through October 2009, the average daily population was 148 inmates, with an average intake of 11 inmates per month and an average of 11 departures per month. Of the 140 inmates who departed the Minors Unit during this time period, 25 (18%) were released while the other 115 inmates (82%) were moved to an adult unit at midnight on their 18th birthday. Of the inmates who were released prior to reaching their age of majority, three came back to the Minor’s Unit as Parole Violators. The average age of all inmates on the Minor’s unit is 16.5 - there were three 14 year olds sentenced to this prison in 2009. The average sentence is 4.7 years - sentences ranged from 6 months to Natural Life. Aggravated Assault is the most frequently committed offense (100 youth); followed by Armed Robbery (86 youth) and Kidnapping (24 youth). Maricopa County committed 200 youth, Pima County sent 55 youth, Pinal County sent 7 youth and the other counties combined sent an additional 7 youth.

The State Prison Minors Unit does not provide any Sex Offender Treatment programming, but does offer a variety of programs for substance abuse (i.e. Alcoholics Anonymous, Narcotics Anonymous, and Smart Recovery); this programming is facilitated by community volunteers. Other programming includes: Mandatory Literacy, GED classes, Rio Salado Community College via correspondence, conflict resolution, cognitive restructuring and an Impact to Crime Victims Class. Some youth have jobs at the prison including kitchen assistants and grounds keepers.
In 1996, Arizona voters passed a referendum that amended the state constitution to require that children fifteen years old and older charged with certain violent crimes be prosecuted as adults. The following year, the state legislature gave county attorneys the sole discretion to prosecute many more children as adults – children as young as 14 accused of a wider variety of crimes, including non-violent offenses. The legislature also defined “chronic felony offender” and other violent crimes that provided for more youth to be transferred to the adult court.

These changes in state law followed the national trend to put more youth in the adult court and prison system. Now, research around the country has proven that these policies harm public safety and have negative outcomes for youth. National research has now found that:

• Youth prosecuted as adults have worse outcomes than youth remaining in the juvenile justice system for similar crimes.

• There are crucial differences between adolescent and adult brain functioning. Adolescents are far less able than adults to gauge risks and consequences, control impulses, handle stress, and resist peer pressure, so policies of deterrence and punishment do not have the same effect for youth as they do for adults.

• Youth in adult correctional settings are vulnerable and are at greater risk of physical assault, sexual violence, and suicide.

Scientific evidence supports the fact that youth are indeed different from adults. Any criminal offense committed by a youth needs a sanction designed for youth. Adolescent brains and psychological makeup are still developing. Youth brains do not respond to punishment or deterrence in the same way adult brains do. Ongoing brain development makes youth receptive to rehabilitation and treatment. The vast majority of youth will mature out of criminal behavior as they age. This means that long-term sanctions have minimal, if any, benefit but very high costs.
Colorado: In 2006, legislation ended the use of life without parole sentencing for juveniles. (Previously, juveniles of any age could be sentenced to life without parole.) The maximum sentence that a youth may receive is now 40 years before parole consideration. (H.B. 1315) In 2010, legislation increased the minimum age from 14 to 16 at which youth are eligible to be charged in adult criminal court by a prosecutor without a transfer hearing. Exceptions are made for first degree murder, second degree murder, or a sex offense. The law establishes criteria that the district attorney must consider in determining whether to direct file charges against a juvenile, requires a 14-day period prior to filing a case in adult court, and allows a youth to provide information related to the criteria established. The district attorney must submit a written statement listing the criteria relied upon in deciding to direct file a case. (H.B. 1413)

Connecticut: Raise the Age legislation was enacted in 2008 which allowed 16 year olds to join the juvenile justice system in 2010 and 17 year olds in 2012 (as part of a staggered implementation initiative). Exceptions are Class A and Class B felonies, which include murder, kidnapping and certain degrees of sexual assault, arson, manslaughter, assault, larceny and robbery offenses. Prosecutors may petition to have other cases transferred. (H.B. 5215)

Delaware: State law had required adult jurisdiction for youth involved in first degree robbery or assault. In 2005, legislation passed that limited such jurisdiction to cases involving juvenile defendants that had a prior felony adjudication and where the robbery involved the display of a deadly weapon or serious injury is inflicted as part of the crime. (SB 200)

Indiana: This state removed its “once an adult, always an adult” statute for those juveniles convicted of a new misdemeanor, exempting youth from automatic transfer provisions. Previously, all youth who had been tried once in adult court were automatically transferred for all subsequent offenses. (H.B. 1122, effective July 1, 2008)

Mississippi: Effective January 1, 2011, state law will return most 17 year olds to the jurisdiction of the juvenile court. Youth charged with rape, murder, or armed robbery remain in adult criminal court. Prior to this legislation all 17 year olds were automatically prosecuted in adult court for any offense. (SB 2969, Laws of 2010)

Nevada: In 2009, Nevada raised the age at which a youth may be tried as an adult for certain offenses such as gun-related or violent sexual crimes from 14 to 16 years of age. Also, under the new law, if the youth has substance abuse, emotional, or behavioral problems that can be treated with services available in the juvenile justice system, the youth may remain in juvenile court for trial. (Assembly Bill 237)

Virginia: 2007 legislation changed Virginia’s “once an adult, always an adult” provision to exempt youth who have been charged, but not convicted, in adult court. (H.B. 3007) In addition, Virginia passed a law allowing criminal courts to use blended sentencing for youth convicted of capital murder. These blended sentences may allow juveniles to avoid adult sanctions if successful with the juvenile sanctions. (H.B. 2053) In 2010, legislation passed that creates a presumption that youth who are being tried as adults are to be held in juvenile detention centers pretrial and will only be placed in an adult jail if they are found by a judge to be a security or safety threat. (SB 259)
Children’s Action Alliance has studied and considered a wide range of policy options to improve public safety and outcomes for youth. Below are 10 policy recommendations that will help Arizona avoid unintended, undesirable or unjust consequences in cases of youth being prosecuted as adults, and provide more flexibility in dispositional and sentencing options. These policy changes will help better align current policy with the design of the constitutional changes passed by voters in 1996 – using adult criminal prosecution for the most serious and violent youth offenses.

These recommendations offer pragmatic policy improvements in Arizona’s current fiscal and political circumstances. In reviewing options, consideration was given to:

- Community protection
- Fairness and due process
- Fiscal and staffing resources
- Rehabilitation versus punishment
- Over-representation of minority youth
- Competency of youth
- The rights of victims

**Modify the age of juvenile court jurisdiction to ensure youth get the services they need.**

**Raise the minimum age of juvenile court jurisdiction from age 8 to age 10**

The current minimum age of juvenile court jurisdiction in Arizona is 8 years old. Children under age 10 make up a small percentage of youth referred, detained and placed on probation. The majority of children (aged 8 & 9) are incompetent to stand trial and are diverted or dismissed from the juvenile justice system. Fewer than 14% of 8 and 9 year olds referred to juvenile court have delinquency petitions filed; and fewer than 7% of 8 and 9 year olds are placed on juvenile probation. A child under age 8 who has committed a delinquent act is defined as a “dependent child” and can be placed through the court under the supervision of Child Protective Services for care and treatment (A.R.S. §8-201.13). Under current Arizona law (A.R.S. §8-291.10. H.), when a child is determined incompetent to stand trial, the court can order the child’s guardian ad litem to proceed with a dependency investigation.

Given the number of very young children who are incompetent to stand trial, the minimum age of juvenile court jurisdiction should be raised to age 10 in recognition of the limited competency and culpability of young children who commit delinquent acts. Raising the minimum age would allow these very young children to receive needed services within the context of their family. Best practice family interventions have been found to reduce the likelihood of future delinquent acts. Through the dependency system, services would focus on the young child and the family’s capacity to provide adequate structure, supervision and direction.

**Extend juvenile court jurisdiction beyond age 18**

Arizona would benefit from a mechanism for youth to remain in the juvenile justice system beyond the age of 18 for treatment and rehabilitation.

Forty-one states have some form of extended jurisdiction over youth for treatment and dispositional purposes. Extending juvenile court jurisdiction allows states to continue to provide placement and services for specific youth who may have more extensive treatment needs or pose a risk to community safety beyond their 18th birthday. The majority of states (32 total) utilizing this option end juvenile jurisdiction at age 20.

There are benefits to extended jurisdiction, including meeting community safety goals, sparing youth the influences and detrimental effects of the adult criminal justice system, and providing the opportunity for youth to complete the rehabilitative process. Without extended juvenile justice jurisdiction, a good number of Arizona youth, particularly those who are aged 16 or 17, are prosecuted as adults to ensure that consequences are given to their actions. As empirical evidence mounts highlighting the poor outcomes of juvenile offenders transferred to adult criminal justice system, Arizona should be questioning how juvenile crimes can be effectively managed in the juvenile court system.
Prior to 1979, Arizona provided extended juvenile court jurisdiction up to age 21. In 1979, the State Supreme Court ruled that the state’s constitution precluded juvenile court jurisdiction once a youth reached the age of 18. The Constitutional language was amended by voters in 1996. The Constitution now gives broad authority to the Arizona legislature and voters to promulgate all laws regarding juvenile matters.

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.

Ariz. Const. Art. VI, § 15

Hence, the Arizona Legislature has the authority, as do the voters of Arizona, to amend or promulgate any law that addresses the age of jurisdiction for the juvenile court.

Arizona should change its laws and extend juvenile dispositional jurisdiction to the age of 21 for rehabilitation and sanction purposes. Such a change would acknowledge immaturity as a mitigating factor in the delinquent behavior of youth, recognize the fact that youth may need a sanction (e.g., community service, restitution, probation services or juvenile corrections, etc.) that extends past age 18, and acknowledge that not all youth transferred to the adult system require the life-long consequences of an adult conviction. Increasing the jurisdictional age would also reduce the risk of recidivism (as compared to adult criminal justice sanctions) as well as promote rehabilitation (juvenile justice model) for youth returning to the community. The juvenile system is better able to recognize and deal with adolescent developmental factors and is better equipped to provide treatment and educational opportunities to youth, increasing their ability to transition to a productive adulthood upon release and keeping communities safer.

The recommendation would require additional resources in the juvenile justice system. Understanding Arizona’s current state budget crisis, this option may not be viable in the next couple of years, but exploring and planning for this option could begin immediately.
Make changes to the transfer laws to prevent youth from ending up in the adult system inappropriately.

Permit reverse remand hearings for youth who are subject to a discretionary direct file in the adult court

Since 1997, Arizona law has authorized a judge to send a discretionary case (A.R.S. §13-501. B.) filed in the adult court back to the juvenile court only on the motion of the prosecutor. There was no provision to allow for the defense or the court to request a reverse remand hearing to assess whether the case should be handled in the juvenile court rather than the adult criminal court. Currently, 25 states allow for reverse remand proceedings.

In 2007, the Arizona Legislature passed SB 1628 - Youthful Sex Offenders; Treatment. With this law change, when the county attorney uses discretion and charges a youth with a sex offense in the adult criminal court, the law allows the court or the defense to request a reverse remand hearing to determine if jurisdiction of the criminal prosecution should be transferred to the juvenile court. The court must weigh the facts of the case, community safety and prospects of the youth’s rehabilitation in the juvenile justice system in making its determination. The law also requires the court to hold a hearing if the alleged offense was committed more than twelve months before the date of the filing of the criminal charge.

There was some concern when this law passed that defense attorneys would often file for such reverse remand hearings and delay cases in the system. This has not proven to be the case. Since 2007, reverse remand hearings have been requested for only a handful of youth sex offense cases, and only two cases have been returned to the juvenile court. However, although specific data is not kept by the courts, there is a perception among stakeholders that county attorneys are being more deliberate in these case filings and more frequently changing their own decisions about whether to file in criminal court.

Allowing a reverse remand hearing for all types of discretionary cases, not just sex offenses, would provide an opportunity to consider the appropriateness of adult prosecution on the request of the defense or on the court’s own motion. As with youth charged with a sex offense, the court should be required to weigh the facts of the case, community safety and prospects of the youth’s rehabilitation in the juvenile justice system in making its determination.

This would help to ensure that only the most serious offenders are prosecuted in the adult criminal court. Reverse remand hearings could improve public safety as research shows that recidivism rates are lower for youth who are treated in the juvenile justice system than those sentenced in the adult criminal justice system.

Refine the definition of a chronic felony offender to include only youth who had at least one offense that involved display of a deadly weapon or serious personal injury

One of the 1996 Constitutional changes to Article IV, Part 2, Section 22, mandates the filing in adult court of any case involving a youth who is 15, 16 or 17, charged with a felony offense, and considered a “chronic felony offender”. In 1997, the legislature subsequently defined a “chronic felony offender” and also allowed prosecutors to file discretionary chronic felony offender charges against youth who are 14 years of age.

In current state law, “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. (A.R.S. §13-501.G.2.)

In 2009, 72 mandatory chronic felony cases of youth under the age of 18 were filed in adult court, representing 11% of all youth charges filed in adult criminal court. This mandate includes youth who have not been accused of a violent or injurious act. Adjudications for offenses such as shoplifting, forgery, unauthorized use of vehicle, failure to return rental property, possession of stolen property, stolen vehicle, and theft count as priors for the purposes of defining “chronic felony offender.” Although these are serious offenses, the intent of the 1996 initiative was to target violent offenders. The state law puts public safety at risk by prosecuting non-violent youth in the adult system where recidivism rates are higher than the juvenile system.

Restricting the definition of “chronic felony offender” to youth who have displayed a deadly
weapon or caused serious personal injury would allow the possibility for non-violent offenders to remain in juvenile court. Either through a Judicial Waiver Hearing or through Prosecutorial Discretion, cases could still be considered for prosecution in the adult criminal court. But a third non-violent felony offense would no longer be automatically prosecuted in adult court.

Limit prosecutorial discretion to cases involving personal injury crimes and to youth aged 15 years and older

A.R.S. §13-501.B. gives the county attorney discretion to file certain felony cases involving 14 year old youth in adult criminal court. The legislature has the ability to add or delete crimes and circumstances to this list. The Constitutional provision in 1996 focused on the most serious, violent offenses. However, the legislation that followed in 1997 broadened the ability of prosecutors to transfer younger and non-violent offenders to the adult system. Given the current research findings that transfer has substantial negative consequences for youth and community safety, especially for those youth involved in property offenses, the ability for prosecutors to direct file youth in adult court should be limited to personal injury offenses and to those youth aged 15 and older at the time of the alleged offense. With these amendments, prosecutors could still request transfer of youth through a Judicial Waiver Hearing.

Change the custodial interrogation procedures to be age and developmentally appropriate

Youth’s cognitive and social immaturity makes them much more vulnerable than adults to police interrogation tactics. In the 2005 U.S. Supreme Court’s Roper v. Simmons case, the Supreme Court acknowledged that children under the age of 18 are “categorically” different from adults. Psychological studies have shown that youth exhibit high levels of suggestibility and obedience to authority. Youth frequently engage in impulsive decision-making that is focused more on short-term gain than on long-term risk. This can lead them to say what they believe the police want to hear, rather than the truth, in the mistaken belief that they will be able to go home. Because adolescents’ level of psychological development inhibits their ability to assess long-term consequences, many youth do not understand the full range of consequences that flow from a decision to speak with police officers.

Most youth have been raised to respect and obey authority figures and thus will be extremely reluctant to defy police officers.

Recent findings underscore this point. In a soon-to-be-published article that examines 103 cases of wrongfully convicted youth, 31.1% of the cases involved false confessions; perhaps even more significantly, a police-induced false statement by any youth – whether it be the accused or a witness – played a role in 47.8% of the cases.

Two changes in Arizona law are recommended. These changes will better ensure the voluntariness and reliability of custodial interrogations of youth; recognize the age and developmental differences between young offenders and adults; make youth interrogation less subject to dispute; help ensure the protection of a youth’s constitutional rights; and provide more consistency in practice across the state.

Require electronic recording of custodial interrogations of youth

Electronically recording youth interrogations is recommended as the most efficient way to objectively assure the voluntariness and reliability of youth statements. Seventeen states, the District of Columbia, and many other local jurisdictions around the country have adopted statutes or court rules requiring at least certain types of interrogations to be electronically recorded. Electronic recording of interrogations enhances the truth-finding process by allowing objective review of the reliability of statements made by the suspect, which is ultimately the sole objective of any criminal or juvenile justice proceeding. Electronic recording benefits the prosecution and law enforcement as it protects police against false claims of coercion. Almost universally, police departments that have implemented electronic recording have liked the results.

In almost every DNA exoneration involving false confessions, the factual information in the confession was “contaminated” – that is, the information did not originate from the confessor. This contamination often occurred unintentionally by police officers through leading questions to the suspect. Existing methods of documenting
interrogations, such as handwritten notes taken by interrogators, can be incomplete. Police officers cannot be expected to recall the details from an intense interrogation, and the details are essential in evaluating the reliability of the statement and assuring the lack of contamination. Further, no human note-taker can capture nonverbal communications, such as facial expression, body language, and active demonstrations.\textsuperscript{127}

For child victims, the National Children’s Advocacy Center recommends recording child interviews to accomplish the goal of documenting an interview “as close to verbatim as possible.”\textsuperscript{128} Guidelines also caution against using leading or manipulative questions that might induce the child to answer with something other than the truth. In Arizona, there are 16 Family and Child Advocacy Centers throughout the state established to serve victims of child abuse, sexual and family violence.\textsuperscript{129} Electronic videotaping equipment has been installed in many local law enforcement jurisdictions and Child Advocacy Centers to minimize multiple interviews, to provide an accurate record of interviews, and to ensure interviews are developmentally and age appropriate. These same factors also favor applying the videotaping of interviews with suspected youth offenders.

**Require attorney presence during custodial interrogations of youth**

To ensure youth fully understand their Miranda rights and the consequences of their statements during custodial interrogations, Arizona should require attorney presence during custodial interrogations of youth, particularly for offenses that would allow a youth to be direct filed to the adult criminal court.

Under current Arizona law, police may interrogate a child of any age outside the presence of the child’s parents or an attorney. A child who is interrogated while in police custody must be advised of his Miranda rights, which include the right to remain silent and the right to an attorney. Each Arizona law enforcement entity has its own process and policies regarding the manner in which “Miranda Rights” are explained to children. Children in Arizona are generally deemed capable of waiving their Miranda rights, including the constitutionally guaranteed right to counsel.

Clinical research, however, has consistently shown that children are not capable of fully understanding their Miranda rights. The landmark study on juveniles and Miranda rights found that 55% of juveniles surveyed did not understand at least one of the Miranda rights, as compared to 23% of adults.\textsuperscript{130} This study also concluded that the Miranda right most commonly misunderstood by juveniles is the right to consult an attorney before interrogation and to have an attorney present during interrogation. In fact, studies have concluded that between 90 and 95% of children waive their Miranda rights when subjected to police interrogation.\textsuperscript{131} For those under fifteen, one study found, the rate of refusal to talk was “virtually nonexistent”. By way of comparison, 42% of adults asserted their right to remain silent.\textsuperscript{132}

Arizona law in its current state thus disproportionally exposes children to conviction and punishment. A child who is too young to fully understand his Miranda rights or to resist the pressures of police interrogation as well as an adult may offer an involuntary and unreliable confession upon interrogation. This exposes the child to almost certain conviction, and for youth prosecuted as adults, the full range of adult penalties, including lifelong prison sentences.

Currently, Arizona courts will consider the presence or absence of a parent as simply one factor among many when they decide whether to admit a youth’s confession into evidence. Requiring parents to be present during interrogations may be advisable, but it does not guarantee children access to the protections they need during interrogation. Parents tend to believe that they should pressure their children to cooperate with the police in order to show that the children have nothing to hide.\textsuperscript{133} Parents are often poorly informed about the consequences of speaking to the police, and parents may experience conflicts of interest in cases involving charges of intra-family violence.\textsuperscript{134, 135}

In 2007, Illinois adopted a statute requiring attorney presence during custodial interrogations of youth 12 years old and under.\textsuperscript{136} Texas requires that a child be brought before a magistrate to explain his Miranda rights and the magistrate must confirm that the child understands the nature and contents of any statement made
and has knowingly, intelligently, and voluntarily waived these rights.\textsuperscript{137} There is no indication that these rules have inhibited the State’s ability to prosecute guilty children – it has just assured that the statements elicited by children are made in accordance with the child’s constitutional rights.

**Develop More Suitable Sanctions for Youth Who are Sentenced in Adult Court.**

**Provide for judicial discretion in sentencing youth convicted in the adult criminal justice court**

Arizona should give judges discretion in sentencing youth convicted in the adult court. Mandatory sentencing was created for adult offenders, and does not take into account the individual circumstances and developmental needs of youth offenders. The adult sentencing scheme is mismatched for youth who have yet to reach 18 years of age and does not take into account their ability to respond to treatment and age-out of their unlawful behavior. In sentencing youth, legislation could be developed to provide for judges to consider the need for community protection, victim’s wishes, psychological evaluations, age, competence, culpability and maturity of the youth, and the specific needs of youth (e.g., education, job-readiness, mobility/transportation, housing issues, etc.). These factors should be weighed and considered by the court on a case-by-case basis.

**Allow youth tried as adults to be held in juvenile facilities instead of adult jails or prisons**

Youth housed in county jails and in the state prison represent just a very small number of prisoners in adult jails and the state prison system. These facilities are not geared toward the needs of youth: staff are not trained in adolescent development issues, staff to youth ratios are insufficient to provide meaningful treatment and rehabilitation opportunities, and vocational programs are virtually non-existent.

The State Constitution (Article 22, Section 16) and state law (A.R.S. §8-305.) provide for separation of youth from adults.\textsuperscript{138} This protection is in place to safeguard youth from physical abuse, sexual assault and exploitation from adult prisoners. The Pima County Jail and the Arizona State Prison Complex in Tucson demonstrate compliance with sight and sound separation. In visits to Maricopa County Jail facilities, both the female and male youth are housed in pods separate from adults, but the youth regularly see and hear adults. The girls must walk through a female housing dormitory to their school classroom. Boys routinely walk in hallways with adult male inmates. Exposure to adult inmates places these youth in harm’s way and exposes them to adult criminal perspectives and behaviors.

Virginia recognized that youth offenders are different from adults and passed legislation in 2010 that creates a presumption that youth who are being tried as adults are to be held in juvenile detention centers pretrial and will only be placed in an adult jail if they are found by a judge to be a security or safety threat.

It is recommended that, in Arizona, youth under the age of 18 (and under age 21 if extended jurisdiction is enacted) be removed from adult correctional facilities and be housed in juvenile facilities focused on age and developmentally appropriate programming and services that are supervised by county juvenile probation and state juvenile corrections staff.

**Allow for the periodic review of life sentences imposed on youth offenders**

Arizona should eliminate the ability to sentence youth to natural life or life without the possibility of parole or review. Youth convicted of serious crimes should receive age and developmentally appropriate sentences that include a meaningful opportunity for periodic review. A youth who is sentenced to natural life will remain in prison the rest of his life and has no hope of release, whether or not he has been rehabilitated. Reviewing lengthy sentences given to youth recognizes that teenagers do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. This recommendation reinforces the U.S. Supreme Court \textit{Roper} decision of 2005 and the \textit{Graham} decision of 2010 that children are different than adults and that psychological and scientific developments continue to support the notion that “because juveniles have lessened culpability they are less deserving of the most severe punishments.”\textsuperscript{139}
This change in state law would not mean still-violent individuals will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, after a number of years, individuals sentenced to natural life as youth continue to pose a threat to the community. This review process would give youth hope for the future and more incentive to improve their circumstances.
Endnotes


7 Ibid.


19 Snyder, H. and Sickmund, M. . Judicial waiver provisions vary across states, however, they leave transfer decision-making to the State’s juvenile courts and require a juvenile court judge to order the transfer. Waiver provisions differ from one another in the degree of decision-making flexibility they allow the courts. Some make the waiver decision entirely discretionary. Others set up a presumption in favor of waiver. And others specify circumstances under which waiver is mandatory.

20 A.R.S. §8-341 (N) allows youth to receive treatment services until 21 years of age with the consent of the court, juvenile and state. This extension requires the consent of the youth and is not imposed solely by the court or other decision-making entity as other states require.

21 Some blended sentencing approaches allow for “blended supervision” meaning transferred youth may receive some combination of adult and juvenile probation supervision (e.g. juvenile probation until age 18 and then adult probation).


23 Ibid.

24 Maine recently enacted blended sentencing legislation which requires that juveniles sentenced in the adult criminal system who were under the age of 16 at the time of sentencing serve the first portion of their incarceration within a juvenile corrections facility and then serve the remaining portion (if applicable) at an adult facility. An Act To Allow Blended Sentencing for Certain Juveniles, Maine Statutes, L.S. 1897, S.P. 691 (2008).


26 Ibid.


29 Roper v. Simmons, 543 U.S. 551 (2005)


31 Ibid.

32 The states that currently prohibit JLWOP are: Alaska, Colorado, Kansas, Kentucky, Montana, New Mexico and Oregon. The District of Columbia also forbids JLWOP. The states where there are no people known to be serving JLWOP are: Maine, New Jersey, New York, Vermont, and West Virginia. http://www.endjlwop.org/ the-issue/my-state-and-jlwop/ 9-09 8-2010


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38 Ibid. page 10.

39 Ibid.


Florida (1996)
Youth transferred to adult criminal court had 34% more felony rearrests than youth who remained in the juvenile justice system.

Nearly 50% of the transferred youth re-offended after age 18; 35% of the juvenile cases re-offended.

When both the transfer and juvenile case in a matched pair re-offended, the evidence indicated that the transferred youth was more likely to commit a more serious felony.

Transfer cases sentenced to jail were most likely to reoffend after the age of 18.

New York/New Jersey (1996)
Among the robbery offenders, 76% of those tried in criminal court were rearrested, compared with 67% of those tried in juvenile court.

For the robbery offenders who were incarcerated in adult facilities (i.e., not originally placed on probation), 91% were subsequently re-arrested, compared to 73% of those who were initially incarcerated by the juvenile courts.

Among transferred individuals charged with a violent offense there was a 100% greater chance of re-arrest compared to those prosecuted in juvenile court.

There was a 47% greater chance of rearrest for transferred individuals among property offenses. (This differed from the 1996 study, which found no difference in recidivism for property offenses.)

Transferred individuals were rearrested at higher rates, and had a greater chance of being reincarcerated than those individuals prosecuted in juvenile court.

Pennsylvania (2001)
Transferred individuals were twice as likely to be rearrested, were rearrested more quickly, and were rearrested for more serious offenses.

Transfer was associated with a 77% greater likelihood of subsequent violent felony arrest.

Florida (2005)
49% of transferred juveniles reoffended compared to 35% of retained offenders.

When examining property offenses, 24% of transferred offenders reoffended compared with 16% of retained offenders.

When examining violent offenses, 14% of transferred offenders reoffended compared with 10% of retained offenders.


52 Deitch, Michele, et.al. (2009). From Time Out to Hard Time: Young Children in the Adult Criminal Justice System. Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs.

54 Ibid.
57 Deitch, Michele, et.al. (2009). From Time Out to Hard Time: Young Children in the Adult Criminal Justice System, Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs.
59 Ibid.
64 Roper v. Simmons, 543 U.S. 551 (2005)
65 Graham v. Florida, No. 08-7412, slip. op. at 17, 560 U.S. ___ (2010)
66 Graham v. Florida, No. 08-7412, slip. op. at 17, 560 U.S. ___ (2010)
69 Scott, Elizabeth and Steinberg, Laurence, Rethinking Juvenile Justice, Harvard University Press, 2008, Pages 52-55.
73 Ibid.
75 Flaherty, M. An Assessment of the national incidence of juvenile suicide in adult jails, lockups, and juvenile detention centers. The University of Illinois, Urbana-Champaign, 1980.
79 Arizona voters passed Initiative Measure, Proposition 102 in the 1996 general election repealing Ariz. Const. art. VI, § 15 and allocating authority over juvenile offender matters to the Arizona legislature and voters, rather than judges.
80 See SB 1628 (Laws of 2007) - Youthful Sex Offenders Treatment.
81 This ensures that if a youth is being prosecuted as an adult for a sex offense at the discretion of the prosecutor (discretionary direct file), a reverse remand hearing shall be held either on the motion of the juvenile, the court’s own motion, or when the offense was committed more than 12 months before the date that criminal charges were filed. Children’s Action Alliance, “SB 1628 – Youthful Sex Offenders: Treatment, Arizona Laws of 2007,” Phoenix, AZ, 2007.
82 Ariz. Rev. Stat. § 8-201(13) (iv)
85 Data adapted from Juveniles Processed in the Arizona Court System, Administrative Office of the Court annual reports, Fiscal Years 1998-2009.
86 Definitions of Felonies against Person and Felonies against Property are from Juveniles Processed in the Arizona Court System, Administrative Office of the Court annual reports, Fiscal Year 2009, page 36.
88 Percentages calculated from numbers reported in Juveniles Processed in the Arizona Court System: FY 2009
89 2000 American Community Survey, 2007 American Community Survey
90 Juvenile competency statute - ARS §8291(2) states “Incompetent” means a juvenile who does not have sufficient present ability to consult with the juvenile’s lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile.
91 Adult competency statute - ARS §134501(2) states “Incompetent to stand trial” means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant’s defense. In the case of a person under the age of eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person’s lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.
92 See ARS §8-327. Arizona’s constitutional exclusion and prosecutorial discretion pathways for transfer do not provide the court an opportunity to consider a youth’s psychosocial history.
In order to have their civil rights restored and/or have their criminal record sealed or expunged, a youth may have a few options:

• In Arizona, arrests that did not lead to conviction and certain convictions can be sealed or expunged, but the (youth) cannot deny the existence of those sealed/expunged records if asked about them.
• Record expungement for juveniles in the adult criminal system (releasing the youth from all penalties and disabilities resulting from the conviction) can be accomplished if the youth was not sentenced to a term of imprisonment, had no prior felony convictions and successfully completed probation.
• Once the youth has completed the terms of probation or parole for a 1st felony, civil liberties are restored without filing a formal petition with the court.
• If the youth was convicted of two or more felonies, s/he may file a petition to restore civil liberties upon completion of probation or two years from discharge from prison. (Regaining the right to possess a weapon depends on the felony charge).

An Exploration of Juvenile Outcomes in Adult Court, Administrative Office of the Courts, Arizona Supreme Court. A Data Report Jointly prepared by the Adult Probation Services Division and Juvenile Justice Services Division, December 2009.

AOC explained that Prison and Probation infers that a youth was convicted of more than one offense. A term of incarceration in Prison would be imposed on at least one offense and Probation would be imposed for another. Once the prison term was served, a probation “tail” would be required. December 15, 2009.


Email from Zach Del Pra, Deputy Chief, Maricopa County Adult Probation Department, December 31, 2009.

Email from David Sanders, Chief Adult Probation Officer, Pima County, to Beth Rosenberg, Children’s Action Alliance, August 6, 2010.

The Juveniles Transferred on Probation (JTOP) Court has been in operation for several years. Maricopa County Superior Court in coordination with the Adult Probation Department is, as of July 2010, in the process of changing the format of the court to focus on providing an avenue for immediate sanctions for those youth who violate probation.

Observation and discussion of JTOP Court Hearing process, October 22, 2009.

Data obtained via email from Judy Lopez, Adult Probation Department, Maricopa County, August 2, 2010.

Email from David Sanders, Chief Adult Probation Officer, Pima County, to Beth Rosenberg, Children’s Action Alliance, November 4, 2009.

Discussion with staff while touring Maricopa & Pima County Jails as well as Department of Corrections, Tucson Complex by Beth Rosenberg, CAA.

Arizona’s Constitution, Article 22, Section 16, states; “It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors.” State law, A.R.S. 8-305.C., further provides for sight and sound separation: ...

1. A juvenile who is transferred as provided in section 8-327 to the criminal division of the superior court may be securely detained if the juvenile is kept in a physically separate section from any adult charged with or convicted of a crime, and no sight or sound contact with any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

2. A juvenile who is arrested for an offense listed in section 13-501 may be detained in a juvenile facility until formally charged as an adult. After a juvenile has been formally charged as an adult the juvenile may be securely detained in an adult facility if the juvenile is detained separately from any adult charged with or convicted of a crime, except to the extent authorized under federal laws or regulations.

3. A juvenile who is arrested for an offense listed in section 13-501 may be detained in a juvenile facility until formally charged as an adult. After a juvenile has been formally charged as an adult the juvenile may be securely detained in an adult facility if the juvenile is detained separately from any adult charged with or convicted of a crime, except to the extent authorized under federal laws or regulations.

Visit by Beth Rosenberg, CAA, to the Arizona State Prison Complex in Tucson, Minor’s Unit, December 15, 2010.

Visits to Maricopa County Lower Buckeye Jail on October 7, 2010, and Estrella Jail on November 17, 2010, by Beth Rosenberg, CAA, and an August 25, 2010 letter from Pam Woody, Legal Liaison, Compliance Division, Maricopa County Sheriff’s Office.

Email from India Davis, Pima County Sheriff’s Office, August 9, 2010.

Correspondence from Regina Martinez, Deputy Warden, Arizona State Prison Complex-Tucson, Minors Unit, to Beth Rosenberg, Children’s Action Alliance, December 23, 2009.


Arizona voters passed Initiative Measure, Proposition 102 in the 1996 general election repealing Ariz. Const. Art. VI, $15 and allocating authority over juvenile offender matters to the Arizona legislature and voters.

Reich, Kristine, Legal memo to Children’s Action Alliance. (2008)

Scott, E. and Steinberg, L. Rethinking Juvenile Justice. (2008)

The Center on Wrongful Convictions of Youth, Northwestern University School of Law, September 2009.


Thomas Grisso et al., Juveniles’ Competence to Stand Trial.
A Comparison of Adolescents' and Adults' Capacities as Trial Defendants, 27 L. & Human Behav. 15 (Aug. 2003).


123 Thomas P. Sullivan, Recording Federal Custodial Interviews, 45 Am. Crim. L. Rev. 1297, 1311-12 (Fall 2008).

124 Thomas P. Sullivan, Recording Federal Custodial Interviews, 45 Am. Crim. L. Rev. 1297 (Fall 2008).

125 Thomas P. Sullivan, Recording Federal Custodial Interviews, 45 Am. Crim. L. Rev. 1297 (Fall 2008).


127 See The National Children's Advocacy Center, Forensic Interview Structure, 4.0 (revised January 2006).

128 The National Children's Advocacy Center, Forensic Interview Structure, 4.0 (revised January 2006).

129 See http://acfan.net/index.htm


133 Barbara Kaban & Ann E. Tobey, When Police Question Children: Are Protections Adequate, J. Ctr. for Child. & Cts. 151, 154 (1999). The study examined nearly 400 juvenile interrogations and concluded that when police interrogators asked children to waive their Miranda rights in the presence of their parents, 70-80% of parents offered no advice to their children. When parental advice was given, parents were far more likely to urge their children to waive their rights than to assert them.


135 See In the Interest of A.S., No. A-5747-07T4 (N.J. App. Ct. Aug. 12, 2009). Courts have noted that a parent may not be able to disinterestedly protect the interests of a child who is accused, for example, of harming his or her sibling.

136 See 705 ILCS 405/5-170 (2009)

137 Texas Statue, Sec. 51.095.

138 Arizona's Constitution, Article 22; Section 16, states: "It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of a crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors".

State law, A.R.S. §8-305.C., further provides for "sight and sound separation ..."

2. A juvenile who is transferred as provided in section 8-327 to the criminal division of the superior court may be securely detained if the juvenile is kept in a physically separate section from any adult charged with or convicted of a crime, and no sight or sound contact with any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

### Appendix A

#### Crimes Chart - Youth In The Adult Criminal Justice System

<table>
<thead>
<tr>
<th>Mandatory And Discretionary Direct Files</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitutional Provisions Defined by State Law</strong>&lt;br&gt;<strong>Mandatory Direct File</strong>&lt;br&gt;A.R.S. § 13-501(A)</td>
</tr>
<tr>
<td>Children who must be tried as an adult</td>
</tr>
<tr>
<td>If a child is 15, 16 or 17 and charged with:</td>
</tr>
<tr>
<td>• Murder</td>
</tr>
<tr>
<td>• Forcible sexual assault</td>
</tr>
<tr>
<td>• Armed robbery</td>
</tr>
<tr>
<td>If a child is 15, 16 or 17 and charged with a Violent Felony Offense</td>
</tr>
<tr>
<td>If a child is 15, 16 or 17 and charged as a Chronic Felony Offender</td>
</tr>
<tr>
<td>If a child is 15, 16 or 17 and charged with a class 2 felony</td>
</tr>
<tr>
<td>• Manslaughter (13-1103)</td>
</tr>
<tr>
<td>• Dangerous assault by a prisoner on another prisoner (13-1206)</td>
</tr>
<tr>
<td>• Kidnapping (13-1304)²</td>
</tr>
<tr>
<td>• Sex Trafficking (13-1307)</td>
</tr>
<tr>
<td>• Trafficking a person for forced labor (13-1308)</td>
</tr>
<tr>
<td>• Sexual conduct with a minor under the age of 15 (13-1405)³</td>
</tr>
<tr>
<td>• Molestation of a child (13-1410) – engaging in sexual contact other than the breast with a child under the age of 15.</td>
</tr>
<tr>
<td>• Continuous sexual abuse with a minor (13-1417)</td>
</tr>
<tr>
<td>• Burglary in the 1st degree (13-1508)</td>
</tr>
<tr>
<td>• Arson of an occupied structure (13-1704)⁴</td>
</tr>
<tr>
<td>• Theft of property or services with a 25K value or more (13-1802)</td>
</tr>
<tr>
<td>• Theft by extortion (13-1804(A)(1)).</td>
</tr>
<tr>
<td>• Trafficking in the identity of another person (13-2010)</td>
</tr>
<tr>
<td>• Credit card transaction record theft with a value 25K or more (13-2019)</td>
</tr>
<tr>
<td>• Trafficking in stolen property in the first degree (13-2307)</td>
</tr>
<tr>
<td>• Participating in or assisting a criminal syndication (13-2310)(2)</td>
</tr>
<tr>
<td>• Terrorism (13-2308.01)</td>
</tr>
<tr>
<td>• Fraudulent schemes or artifices (13-2310)</td>
</tr>
<tr>
<td>• Illegal control of an enterprise (13-2312(c))</td>
</tr>
<tr>
<td>• Money laundering in the 1st degree (13-2317)</td>
</tr>
<tr>
<td>• Smuggling if the person being smuggled is under 18 (13-2319)</td>
</tr>
<tr>
<td>• Promoting prison contraband if contraband is a deadly weapon or dangerous instrument (13-2505)</td>
</tr>
<tr>
<td>• Promoting secure care contraband if contraband is a deadly weapon or dangerous instrument</td>
</tr>
<tr>
<td>• Taking a child for purpose of prostitution (13-3206)</td>
</tr>
<tr>
<td>• Child prostitution (13-3212)</td>
</tr>
</tbody>
</table>

---

1. Forcible sexual assault means the victim is coerced by threat of force against a person or property, the victim is unable to consent (all juveniles 14 and under are unable to consent), victim is deceived as to the nature of the act or the victim erroneously believed the person was their spouse.

2. Aggravated assault – Causes serious physical injury to victim under 15 (13-1204(A)(1))

3. Aggravated assault – Causes serious physical injury to victim under 15 (13-1204(A)(2))

4. Drive by shooting (13-1209)

5. Discharging a firearm at a structure (13-1211)

---

<table>
<thead>
<tr>
<th>Children who must be tried as an adult</th>
<th>Children who may be direct filed, if the child is 14 and charged with a class 2 felony</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a child is 15, 16 or 17 and charged with a class 2 felony</td>
<td></td>
</tr>
<tr>
<td>• Charged with a class 2 felony</td>
<td></td>
</tr>
<tr>
<td>If a Child is 15, 16 or 17 and Charged with a Violent Felony Offense</td>
<td></td>
</tr>
<tr>
<td>If a Child is 15, 16 or 17 and Charged with a Chronically Felony Offense</td>
<td></td>
</tr>
<tr>
<td>If a Child is 15, 16 or 17 and Charged as a felony offense committed by a Chronic Felony Offender (13-501(G)(2)) defines chronic felony offender as a juvenile who had had two prior and separate adjudications and dispositions for conduct that would constitute a felony if convicted as an adult.</td>
<td></td>
</tr>
</tbody>
</table>

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Appendix B
### Crimes Chart - Youth In The Adult Criminal Justice System - continued

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Possession or sale of precursor chemicals, regulated chemicals, substances or equipment (13-3404.01(A)(1) and (6))(1) – knowingly possesses a precursor chemical II; (6) sell, transfer or furnish any precursor chemical</td>
<td>• Possession of marijuana for sale weighing more than 4 pounds (13-3405(A)(2))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Possession of marijuana being transported for sale weighing more than 2 pounds (13-3405(A)(4))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Possession of dangerous drugs for sale (13-3407(A)(2))</td>
<td>• Possession of equipment or chemicals to manufacture Methamphetamine (13-3407(A)(3))</td>
</tr>
<tr>
<td></td>
<td>• Manufactures a dangerous drug (13-3407(A)(4))</td>
<td>• Manufactures a dangerous drug to another person (13-3407(A)(5))</td>
</tr>
<tr>
<td></td>
<td>• Administers a dangerous drug to another person (13-3407(A)(5))</td>
<td>• Transports for sale a dangerous drug (13-3407(A)(7))</td>
</tr>
<tr>
<td></td>
<td>• Possess a narcotic drug for sale (13-3408(A)(2))</td>
<td>• Possess a narcotic drug to another person (13-3408(A)(5))</td>
</tr>
<tr>
<td></td>
<td>• Manufacture of a narcotic drug for sale (13-3408(A)(4))</td>
<td>• Transport for sale of a narcotic drug (13-3408(A)(7))</td>
</tr>
<tr>
<td></td>
<td>• Administer a narcotic drug to another person (13-3408(A)(5))</td>
<td>• Involving or using a minor in drug offenses (13-3409)</td>
</tr>
<tr>
<td></td>
<td>• Transport for sale of a narcotic drug (13-3408(A)(7))</td>
<td>• Commercial sexual exploitation of a minor (13-3552)</td>
</tr>
<tr>
<td></td>
<td>• Involving or using a minor in drug offenses (13-3409)</td>
<td>• Sexual exploitation of a minor (13-3553)</td>
</tr>
<tr>
<td>If the Child is 14, 15, 16 or 17 and Charged with a class 3 Felony (10-17 and 19-23)</td>
<td>• Aggravated assault – Causes serious physical injury to victim 15 years or older (13-1204(A)(1))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Custodial interference (13-1302)</td>
<td>• Aggravated robbery (13-1903)</td>
</tr>
<tr>
<td></td>
<td>• Sexual abuse if the victim is under 15 (13-1404)</td>
<td>• Aggravated taking of an identity (13-2009)</td>
</tr>
<tr>
<td></td>
<td>• Burglary in the 2nd degree (13-1507)</td>
<td>• Credit card transaction record theft with a value between 3k and 25K (13-2109)</td>
</tr>
<tr>
<td></td>
<td>• Aggravated assault – Causes temporary but serious physical injury to a victim is a class four (13-1204(A)(14))</td>
<td>• Trafficking in stolen property in the second degree (13-2307)</td>
</tr>
<tr>
<td></td>
<td>• Arson of a structure is a class 4 felony (13-1703)</td>
<td>• Computer tampering (13-2316)</td>
</tr>
<tr>
<td></td>
<td>• Robbery (13-1902)</td>
<td>• Money laundering in the second degree (13-2317)</td>
</tr>
</tbody>
</table>

1 Armed robbery (13-1904) has included using an orange plastic toy gun.
2 Kidnapping (13-1304) has included a Junior High child holding another person by the arm and threatening to hit them if they try to leave the area.
3 Sexual conduct with a minor under the age of 15 (13-1405) applies even if the accused is only 14.
4 Arson of an occupied structure (13-1704) has included lighting a trash can on fire in the boys bathroom.
5 Participating in or assisting a criminal syndication (13-2308) has applied to children involved in gangs.
6 Sexual abuse if the victim is under 15 (13-1404) has included the touching of a breast if the person is under 15.
7 Aggravated assault (13-1204(A)(14)) – Causes temporary but serious physical injury to a victim is a class four. A broken nose is considered a serious physical injury.
Appendix B
Arizona Laws Related to Juvenile Transfer

CONSTITUTION of ARIZONA

Judicial Department – Article 5

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

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 proceedings 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.

Schedule And Miscellaneous – Article 22

16. Confinement of minor offenders

Section 16. It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors.

ARIZONA REVISED STATUTES

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.

8-305. Detention center; jail; separate custody

A. The county board of supervisors or the county jail district, if authorized pursuant to title 48, chapter 25, shall maintain a detention center that is separate and apart from a jail or lockup in which adults are confined and where juveniles who are alleged to be delinquent or children who are incorrigible and within the provisions of this article shall be detained when necessary before or after a hearing or as a condition of probation. The board may enter agreements with public or private entities to acquire land for, build, purchase, lease-purchase, lease or expand a detention center required by this section.

B. The board of supervisors or the county jail district, if authorized pursuant to title 48, chapter 25, may provide for the detention of juveniles who are accused or convicted of a criminal offense in a jail or lockup in which adults are confined. A juvenile who is confined in a jail or lockup in which adults are confined shall be kept in a physically separate section from any adult who is charged with or convicted of a criminal offense, and no sight or sound contact between the juvenile and any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

C. A juvenile, pending a juvenile hearing, shall not be confined with adults charged with or convicted of a crime, except that:

1. A juvenile who is accused of a criminal offense or who is alleged to be delinquent may be securely detained in such location for up to six hours until transportation to a juvenile detention center can be arranged if the juvenile is kept in a physically separate section from any adult who is charged with or convicted of a crime and no sight or sound contact between the juvenile and any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

2. A juvenile who is transferred as provided in section 8-327 to the criminal division of the superior court may be securely detained if the juvenile is kept in a physically separate section from any adult charged with or convicted of a crime, and no sight or sound contact with any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

3. A juvenile who is arrested for an offense listed in section 13-501 may be detained in a juvenile facility until formally charged as an adult. After a juvenile has been formally charged as an adult the juvenile may be securely detained in an adult facility if the juvenile is detained separately from any adult charged with or convicted of a crime, except to the extent authorized under federal laws or regulations.

4. A child who is alleged to be delinquent or who is alleged to be incorrigible shall not be securely detained in a jail or lockup in which adults charged with or convicted of a crime are detained. A child may be nonsecurely detained if necessary to obtain the child's name, age, residence or other identifying information for up to six hours until arrangements for transportation to any shelter care facility, home or other appropriate place can be made. A child who is nonsecurely detained shall be detained separately from any adult charged with or convicted of a crime, and no sight or sound contact with any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

D. Any detained juvenile or child who, by the juvenile's or child's conduct, endangers or evidences that the juvenile or child may endanger the safety of other detained children shall not be allowed to intermingle with any other juvenile or child in the detention center.

F. Pursuant to section 8-322, the county board of supervisors, the county jail district board of directors or the administrative office of the courts on behalf of the juvenile court may enter into an agreement with public or private entities to provide the detention centers required by subsection A of this section.

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.

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B-341. Disposition and commitment; definitions

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:
   (a) To the care of the juvenile’s parents, subject to the supervision of a probation department.
   (b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.
   (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
   (d) To a private agency or institution, subject to the supervision of a probation officer.
   (e) To the department of juvenile corrections.
   (f) To maternal or paternal relatives, subject to the supervision of a probation department.
   (g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:
   (a) To the care of the child’s parents, subject to the supervision of a probation department.
   (b) To the protective supervision of a probation department, subject to any conditions the court may impose.
   (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
   (d) To a public or private agency, subject to the supervision of a probation department.
   (e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile’s eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

1. The juvenile is not charged with a subsequent offense.
2. The juvenile has not been found in violation of a condition of probation.
3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.
4. The offense for which the juvenile is placed on probation does not involve a dangerous offense as defined in section 13-105.
5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.
6. Restitution ordered pursuant to section B-344 has been made.
7. The juvenile’s parents have not requested that the court continue the juvenile’s probation for more than one year.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile: You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, or may place the juvenile on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile: You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

F. The failure or inability of the court to provide the notices required under subsections C and E of this section does not preclude the use of the prior adjudications for any purpose otherwise permitted.

G. Except as provided in subsection S of this section, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, the court shall order the juvenile to pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation. If the director of the department of juvenile corrections determines that enforcement of an order for monetary assessment as a term and condition of conditional liberty is not cost-effective, the director may require the youth to perform an equivalent amount of community restitution in lieu of the payment ordered as a condition of conditional liberty.

H. If a child is adjudicated incorrigible, the court may impose a monetary assessment on the child of not more than one hundred fifty dollars.

I. A juvenile who is charged with unlawful purchase, possession or consumption of spirituous liquor is subject to section B-323. The monetary assessment for a conviction of unlawful purchase, possession or consumption of spirituous liquor by a juvenile shall not exceed five hundred dollars. The court of competent jurisdiction may order a monetary assessment or equivalent community restitution.
J. The court shall require the monetary assessment imposed under subsection G or H of this section on a juvenile who is not committed to the department of juvenile corrections to be satisfied in one or both of the following forms:

1. Monetary reimbursement by the juvenile in a lump sum or installment payments through the clerk of the superior court for appropriate distribution.

2. A program of work, not in conflict with regular schooling, to repair damage to the victim’s property, to provide community restitution or to provide the juvenile with a job for wages. The court order for restitution or monetary assessment shall specify, according to the dispositional program, the amount of reimbursement and the portion of wages of either existing or provided work that is to be credited toward satisfaction of the restitution or assessment, or the nature of the work to be performed and the number of hours to be spent working. The number of hours to be spent working shall be set by the court based on the severity of the offense but shall not be less than sixteen hours.

K. If a juvenile is committed to the department of juvenile corrections, the court shall specify the amount of the monetary assessment imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological examination and educational assessment if one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may temporarily escort the juvenile from secure care pursuant to section 41-2804, may release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.

2. The person terminates treatment.

3. The person commits a new offense after reaching eighteen years of age.

4. Continued treatment is not required or is not in the best interests of the state or the person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting attorney shall file this petition at the request of the victim’s parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile’s parent or guardian and a minor victim’s parent or guardian and shall counsel them regarding the meaning and health implications of the results.

P. If a juvenile has been adjudicated delinquent for an offense that if committed by an adult would be a felony, the court shall provide the department of public safety Arizona automated fingerprint identification system established in section 41-2411 with the juvenile’s fingerprints, personal identification data and other pertinent information. If a juvenile has been committed to the department of juvenile corrections the department shall provide the fingerprints and information required by this subsection to the Arizona automated fingerprint identification system. If the juvenile’s fingerprints and information have been previously submitted to the Arizona automated fingerprint identification system the information is not required to be resubmitted.

Q. Access to fingerprint records submitted pursuant to subsection P of this section shall be limited to the administration of criminal justice as defined in section 41-1750. Dissemination of fingerprint information shall be limited to the name of the juvenile, juvenile case number, date of adjudication and court of adjudication.

R. If a juvenile is adjudicated delinquent for an offense that if committed by an adult would be a misdemeanor, the court may prohibit the juvenile from carrying or possessing a firearm while the juvenile is under the jurisdiction of the department of juvenile corrections or the juvenile court.

S. If a juvenile is adjudicated delinquent for a violation of section 13-1602, subsection A, paragraph 5, the court shall order the juvenile to pay a fine of at least three hundred dollars but not more than one thousand dollars. Any restitution ordered shall be paid in accordance with section 13-809, subsection A. The court may order the juvenile to perform community restitution in lieu of the payment for all or part of the fine if it is in the best interests of the juvenile. The amount of community restitution shall be equivalent to the amount of the fine by crediting any service performed at a rate of ten dollars per hour. If the juvenile is convicted of a second or subsequent violation of section 13-1602, subsection A, paragraph 5 and is ordered to perform community restitution, the court may order the parent or guardian of the juvenile to assist the juvenile in the performance of the community restitution if both of the following apply:

1. The parent or guardian had knowledge that the juvenile intended to engage in or was engaging in the conduct that gave rise to the violation.

2. The parent or guardian knowingly provided the juvenile with the means to engage in the conduct that gave rise to the violation.

T. If a juvenile is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13,
chapter 34 and is placed on juvenile probation, the court may order the juvenile to submit to random drug and alcohol testing at least two times per week as a condition of probation.

U. A juvenile who is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34, who is placed on juvenile probation and who is found to have consumed any spirituous liquor or to have used any drug listed in section 13-3401 while on probation is in violation of the juvenile's probation. A juvenile who commits a third or subsequent violation of a condition of probation as prescribed by this subsection shall be brought before the juvenile court and, if the allegations are proven, the court shall either revoke probation and hold a disposition hearing pursuant to this section or select additional conditions of probation as it deems necessary, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment.

V. For the purposes of this section:

1. “First time felony juvenile offender” means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.
2. “Repeat felony juvenile offender” means a juvenile to whom both of the following apply:
   (a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.
   (b) Previously has been adjudicated a first time felony juvenile offender.
3. “Sexual offense” means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

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 at the time the alleged offense is committed and the juvenile 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.
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 at the time the alleged offense is committed and the juvenile 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 a dangerous offense.
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. On 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. Unless otherwise provided by law, nothing in this section shall be construed as to confer jurisdiction in the juvenile court over any person who is eighteen years of age or older.

H. 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. “Other violent felony offense” 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.

13-504. Persons under eighteen years of age; juvenile transfer
A. On motion of a juvenile or on the court’s own motion, the court, if a juvenile is being prosecuted in the same manner as an adult pursuant to section 13-501, subsection B for a violation of title 13, chapter 14 or 35.1, shall hold a hearing to determine if jurisdiction of the criminal prosecution should be transferred to the juvenile court.
B. Notwithstanding subsection A of this section, the court shall hold a hearing if a juvenile is prosecuted in the same manner as an adult pursuant to section 13-501, subsection B for a violation of title 13, chapter 14 or 35.1 that was committed more than twelve months before the date of the filing of the criminal charge.
C. If the court finds by clear and convincing evidence that public safety and the rehabilitation of the juvenile, if adjudicated delinquent, would be best served by transferring the prosecution to the juvenile court, the judge shall order the juvenile transferred to the juvenile court. 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 or shall release the juvenile to the custody of the juvenile’s parent, guardian or other person legally responsible for the juvenile. If the juvenile is released to the juvenile’s parent, guardian or 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.
D. The court shall consider the following factors in determining whether the public safety and the juvenile’s rehabilitation, if adjudicated delinquent, would be served by the transfer:
   1. The seriousness of the offense involved.
   2. The record and previous history of the juvenile, including previous contacts with the court 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 or other secure institutions.
   4. Whether the juvenile was previously committed to the department of juvenile corrections for a felony offense.
   5. Whether the juvenile committed another felony offense while the juvenile was a ward of the department of juvenile corrections.
   6. Whether 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. 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 juvenile court. The court shall not defer the decision as to the transfer.

13-751. Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition
A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder as defined in section 13-1105, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for life or natural life as determined and in accordance with the procedures provided in section 13-752. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis. If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.
B. At the aggravation phase of the sentencing proceeding that is held pursuant to section 13-752, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials. The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution. The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.
C. At the penalty phase of the sentencing proceeding that is held pursuant to section 13-752, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility under the rules governing admission of evidence at criminal trials. The burden of establishing the existence of the mitigating circumstances included in subsection G of this section is on the defendant. The defendant must prove the existence of the mitigating circumstances by a preponderance of the evidence. If the trier of fact is a jury, the jurors do not have to agree unanimously that a mitigating circumstance has been proven to exist. Each juror may consider any mitigating circumstance found by that juror in determining the appropriate penalty.
D. Evidence that is admitted at the trial and that relates to any aggravating or mitigating circumstances shall be deemed admitted as evidence at a sentencing proceeding if the trier of fact considering that evidence is the same trier of fact that determined the defendant’s guilt. The prosecution and the defendant shall be permitted to rebut any information received at the aggravation or penalty phase of the sentencing proceeding and shall be given fair opportunity to present argument as to whether the information is sufficient to establish the existence of any of the circumstances included in subsections
F and G of this section.

E. In determining whether to impose a sentence of death or life imprisonment, the trier of fact shall take into account the aggravating and mitigating circumstances that have been proven. The trier of fact shall impose a sentence of death if the trier of fact finds one or more of the aggravating circumstances enumerated in subsection F of this section and then determines that there are no mitigating circumstances sufficiently substantial to call for leniency.

F. The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.
2. The defendant has been or was previously convicted of a serious offense, whether preparatory or completed. Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph.
3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the person murdered during the commission of the offense.
4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.
5. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.
6. The defendant committed the offense in an especially heinous, cruel or depraved manner.
7. The defendant committed the offense while:
   (a) In the custody of or on authorized or unauthorized release from the state department of corrections, a law enforcement agency or a county or city jail.
   (b) On probation for a felony offense.
8. The defendant has been convicted of one or more other homicides, as defined in section 13-1101, that were committed during the commission of the offense.
9. The defendant was an adult at the time the offense was committed or was tried as an adult and the murdered person was under fifteen years of age, was an unborn child in the womb at any stage of its development or was seventy years of age or older.
10. The murdered person was an on duty peace officer who was killed in the course of performing the officer's official duties and the defendant knew, or should have known, that the murdered person was a peace officer.
11. The defendant committed the offense with the intent to promote, further or assist the objectives of a criminal street gang or criminal syndicate or to join a criminal street gang or criminal syndicate.
12. The defendant committed the offense to prevent a person's cooperation with an official law enforcement investigation, to prevent a person's testimony in a court proceeding, in retaliation for a person's cooperation with an official law enforcement investigation or in retaliation for a person's testimony in a court proceeding.
13. The offense was committed in a cold, calculated manner without pretense of moral or legal justification.
14. The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense. For the purposes of this paragraph:
   (a) "Authorized remote stun gun" means a remote stun gun that has all of the following:
      (i) An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.
      (ii) A serial or identification number on all projectiles that are discharged from the remote stun gun.
      (iii) An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.
      (iv) A training program that is offered by the manufacturer.
   (b) "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through a spark, plasma, ionization or other conductive means emitting from the device.

G. The trier of fact shall consider as mitigating circumstances any factors proffered by the defendant or the state that are relevant in determining whether to impose a sentence less than death, including any aspect of the defendant's character, propensities or record and any of the circumstances of the offense, including but not limited to the following:

1. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.
2. The defendant was under unusual and substantial duress, although not such as to constitute a defense to prosecution.
3. The defendant was legally accountable for the conduct of another under section 13-303, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution.
4. The defendant could not reasonably have foreseen that his conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person.
5. The defendant's age.

H. For purposes of determining whether a conviction of any dangerous crime against children is a serious offense pursuant to this section, an unborn child...
shall be treated like a minor who is under twelve years of age.

I. For the purposes of this section, “serious offense” means any of the following offenses if committed in this state or any offense committed outside this state that if committed in this state would constitute one of the following offenses:

1. First degree murder.
2. Second degree murder.
3. Manslaughter.
4. Aggravated assault resulting in serious physical injury or committed by the use, threatened use or exhibition of a deadly weapon or dangerous instrument.
5. Sexual assault.
6. Any dangerous crime against children.
7. Arson of an occupied structure.
8. Robbery.
11. Sexual conduct with a minor under fifteen years of age.
12. Burglary in the second degree.
13. Terrorism.

13-752. Sentences of death, life imprisonment or natural life; imposition; sentencing proceedings; definitions

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder, the trier of fact at the sentencing proceeding shall determine whether to impose a sentence of death in accordance with the procedures provided in this section. If the trier of fact determines that a sentence of death is not appropriate, or if the state has not filed a notice of intent to seek the death penalty, and the defendant is convicted of first degree murder, the court shall determine whether to impose a sentence of life or natural life.

B. Before trial, the prosecution shall notice one or more of the aggravating circumstances under section 13-751, subsection F.

C. If the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall then immediately determine whether one or more alleged aggravating circumstances have been proven. This proceeding is the aggravation phase of the sentencing proceeding.

D. If the trier of fact finds that one or more of the alleged aggravating circumstances have been proven, the trier of fact shall then immediately determine whether the death penalty should be imposed. This proceeding is the penalty phase of the sentencing proceeding.

E. At the aggravation phase, the trier of fact shall make a special finding on whether each alleged aggravating circumstance has been proven based on the evidence that was presented at the trial or at the aggravation phase. If the trier of fact is a jury, a unanimous verdict is required to find that the aggravating circumstance has been proven. If the trier of fact unanimously finds that an aggravating circumstance has not been proven, the defendant is entitled to a special finding that the aggravating circumstance has not been proven. If the trier of fact unanimously finds no aggravating circumstances, the court shall then determine whether to impose a sentence of life or natural life on the defendant.

F. The penalty phase shall be held immediately after the trier of fact finds at the aggravation phase that one or more of the aggravating circumstances under section 13-751, subsection F have been proven. A finding by the trier of fact that any of the remaining aggravating circumstances alleged has not been proven or the inability of the trier of fact to agree on the issue of whether any of the remaining aggravating circumstances alleged has been proven shall not prevent the holding of the penalty phase.

G. At the penalty phase, the defendant and the state may present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency. In order for the trier of fact to make this determination, the state may present any evidence that demonstrates that the defendant should not be shown leniency.

H. The trier of fact shall determine unanimously whether death is the appropriate sentence. If the trier of fact is a jury and the jury unanimously determines that the death penalty is not appropriate, the court shall determine whether to impose a sentence of life or natural life.

I. If the trier of fact at any prior phase of the trial is the same trier of fact at the subsequent phase, any evidence that was presented at any prior phase of the trial shall be deemed admitted as evidence at any subsequent phase of the trial.

J. At the aggravation phase, if the trier of fact is a jury, the jury is unable to reach a verdict on any of the alleged aggravating circumstances and the jury has not found that at least one of the alleged aggravating circumstances has been proven, the court shall dismiss the jury and impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found not proved by unanimous verdict. If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.

K. At the penalty phase, if the trier of fact is a jury and the jury is unable to reach a verdict, the court shall dismiss the jury and shall impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found by unanimous verdict to be proved or not proved. If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.

L. If the jury that rendered a verdict of guilty is not the jury first impaneled for the aggravation phase, the jury impaneled in the aggravation phase shall not retry the issue of the defendant's guilt. If the jury impaneled in the aggravation phase is unable to reach a verdict on any of the alleged aggravating circumstances and the jury has not found that at least one of the alleged aggravating circumstances has been proven, the court shall dismiss the jury and
shall impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found not proved by unanimous verdict. If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.

M. Alternate jurors who are impaneled for the trial in a case in which the offense is punishable by death shall not be excused from the case until the completion of the sentencing proceeding.

N. If the sentence of a person who was sentenced to death is overturned, the person shall be resentenced pursuant to this section by a jury that is specifically impaneled for this purpose as if the original sentencing had not occurred.

O. In any case that requires sentencing or resentencing in which the defendant has been convicted of an offense that is punishable by death and in which the trier of fact was a judge or a jury that has since been discharged, the defendant shall be sentenced or resented pursuant to this section by a jury that is specifically impaneled for this purpose.

P. The trier of fact shall make all factual determinations required by this section or the Constitution of the United States or this state to impose a death sentence. If the defendant bears the burden of proof, the issue shall be determined in the penalty phase. If the state bears the burden of proof, the issue shall be determined in the aggravation phase.

Q. If the death penalty was not alleged or was alleged but not imposed, the court shall determine whether to impose a sentence of life or natural life. In determining whether to impose a sentence of life or natural life, the court:

1. May consider any evidence introduced before sentencing or at any other sentencing proceeding.
2. Shall consider the aggravating and mitigating circumstances listed in section 13-701 and any statement made by a victim.

R. Subject to section 13-751, subsection B, a victim has the right to be present at the aggravation phase and to present any information that is relevant to the proceeding. A victim has the right to be present and to present information at the penalty phase. At the penalty phase, the victim may present information about the murdered person and the impact of the murder on the victim and other family members and may submit a victim impact statement in any format to the trier of fact.

S. For the purposes of this section:

1. “Trier of fact” means a jury unless the defendant and the state waive a jury, in which case the trier of fact shall be the court.
2. “Victim” means the murdered person's spouse, parent, child, grandparent or sibling, any other person related to the murdered person by consanguinity or affinity to the second degree or any other lawful representative of the murdered person, except if the spouse, parent, child, grandparent, sibling, other person related to the murdered person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

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.

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 pleaded and proved as a prior conviction in any subsequent prosecution of the defendant.
3. The court shall consider the aggravating and mitigating circumstances listed in section 13-701 and any statement made by a victim.
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.