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Handbook on Juvenile Justice in Arizona

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CHILDREN'S ACTION ALLIANCE

Children's Action Alliance (CAA) is a private nonprofit organization that works to make children's issues the subject of intense thought, debate, and action by Arizona's policy and decision makers, the news media and the public. Through research, publications, media campaigns, public education, and advocacy, we focus attention on the need to build broad support for public and private investments in successful policies and programs that improve the lives of Arizona's children and families. Children's Action Alliance is supported by foundations, corporate grants, and individual donations.

The Juvenile Justice Project was created to move the debate on juvenile justice policy beyond the "get tough" rhetoric to public policy that protects the public and meets the needs of troubled and troublesome youth.

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Introduction

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country."
Winston Churchill

A recent Gallup poll indicated that over 50 percent of Americans view crime as the number one problem facing our country. News media coverage bombards us with images of violent youth gangs, youths carrying guns, carjackings, and other unsettling events. At the same time, some criminologists say the media are largely responsible for generating "panic" about crime. They point out that official reports and crime statistics reveal a declining or stable crime rate, not an increase. These conflicting perspectives illustrate the complex nature of crime and juvenile crime in particular. This handbook attempts to clarify some of the issues surrounding juvenile crime and juvenile justice. This is no easy task, for juvenile crime and the system created to deal with it seem to defy clear explanations, simple solutions, and effective action.

No matter what the official statistics reveal, the American public fears crime, especially crime committed by juveniles. The mood and temper of the public concerning juvenile crime reflect a full range of emotions including confusion, frustration, fear, anger, and the desire to "just do something." Many American citizens feel a deep concern for what is happening to young people, and many also feel a strong desire to hold young people accountable for their law-breaking behavior. These conflicting positions reflect the very reasons why a separate justice system for juveniles was created in the first place. They also reflect the reasons for the unprecedented level of attention and criticism faced by the system today.

Underlying all of this fear and frustration is an important cultural shift in the United States — in the cultural conceptualization of children. The way we define children — what we feel they are capable of and culpable for — is the critical concept to keep in mind as you review this Handbook and learn more about juvenile justice. This handbook will clarify how the current system came about, how it handles cases today, what official reports tell us and do not tell us, how much of our tax money goes to fund the system and other important information.

Purpose of the Handbook

The handbook was created to:

★ provide a basic overview of the juvenile justice system

★ clarify the terminology used in juvenile justice

★ clarify critical issues in juvenile justice

★ promote citizen involvement.

The juvenile justice system is not capable of solving the problems of both the welfare of children and juvenile crime by itself, nor should it be held solely accountable for doing so. The social welfare of young people is a larger, societal responsibility. All citizens must do their part to improve the lives of children. We can start by committing ourselves to learning more about our juvenile justice system. By educating ourselves we can begin to ask informed questions and promote effective action. This handbook represents an initial step in this educational process.

The Juvenile Justice Project: Independent Advocacy for Juvenile Justice

The Juvenile Justice Project (TJJP) officially began operations in November 1993. TJJP is one of a number of projects at the Children's Action Alliance, Arizona's largest nonprofit child advocacy organization. TJJP provides independent advocacy for sound juvenile justice policy in Arizona. It was created to advocate for public policy based on research, accurate information, and a balanced view of juvenile justice. This balanced view puts a high priority on public safety. TJJP believes that it can be best achieved by making sure that youth are held accountable for their behavior and that communities and the juvenile justice system are held accountable for providing youth with the opportunities they need to become productive citizens.

Why Do We Need Independent Advocacy for Juvenile Justice?

Most Americans remain relatively unaware of the inner workings of the juvenile justice system. TJJP believes this lack of awareness ensures system failure, minimizes or eliminates accountability, and guarantees inefficient use of resources (including expenditure of substantial tax dollars).

Like any public issue, the juvenile justice field contains a variety of vested interest groups. These include persons whose economic livelihoods depend on certain policies, and groups or individuals who possess certain philosophical or political agendas. In election years, politicians at the local, state and federal levels clamor for who can be the toughest on crime. Juvenile justice and correctional interests, already receiving billions of federal and state tax dollars, vie for additional resources in order to meet projected demands. Contradictory crime statistics and reports from system officials confound citizens who want to make informed decisions. Some citizens struggle to decide which courses of action are most likely to protect society at what costs. Other citizens avoid grappling with the complexity of the issue and cry out for immediate retributive or punitive action. TJJP was established as a response to these dilemmas. TJJP provides an independent voice committed to expanding public awareness of and participation in our juvenile justice system.

"There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children..."

Former Supreme Court Justice Abe Fortas

1. A Brief History of Juvenile Justice in the United States

Background

Throughout history, many societies have grappled with what it means to be a child. Some have simply seen children as small adults, others as property. In many periods, violence against children has been the norm rather than the exception. Our cultural conceptualization of children in America has changed over time. Some feel it is changing again today. How we define children directly affects the nature of our juvenile justice system.

Our answers to the following questions greatly influence our public policy related to juvenile justice:

★ What is society's obligation to children?

★ What is a parent's obligation to a child?

★ What rights do youth have? How should they be protected?

★ How can we best teach our children what we want them to learn?

★ In what ways are children different from adults?

★ What are reasonable expectations of children and youth?

★ What part do local communities and neighborhoods play in developing and supporting their young people?

★ What rules should children follow?

★ What are the best ways to respond to youth who break rules?

Before the creation of the first juvenile court in America, the only special legal protection given to youth was based on English common law. Youth under the age of 7 were seen as lacking criminal intent. Youth between the ages of 7 and 14 were assumed to be lacking criminal intent, but exceptions were made. Youth over the age of 14 were treated as adults.

The Child Savers

The 1800s were marked by widespread social change. America was moving from a rural to an urban society and from an agrarian to an industrial economy. There was a great influx of immigrants. The child savers, a group of predominantly white middle-class and upper-class women, began to focus on poor children and, in particular, the children of immigrants who were becoming an obvious presence in urban centers. Street gangs were of particular concern to many city residents during this period.

Legislation was passed to institutionalize many of these children in order to save them from poverty, idleness, and immoral settings. Houses of refuge were established in most major cities by the mid-1800s. The concept behind these reform schools was the doctrine of *parens patriae* from English common law.

Under this concept, the state became parent to these children. These institutions, which sought to bring discipline to the wide range of youth confined, soon became the subject of major scandals because of the abusive conditions that existed within them.

The First Juvenile Court

In an attempt to take a new approach, the first juvenile court was created in 1899 in Cook County, Illinois. From the start, the juvenile court faced a difficult mission which was on the one hand, to provide for the best interests of children, and, on the other, to protect society. The first juvenile court was mandated to handle dependent[1] (abused or neglected) and ***delinquent*** youths. Young people charged with truancy, running away, or chronic disobedience also were handled by the new court. This separate court was justified as necessary to protect the best interests of children who were increasingly seen as in need of special treatment. It was also during this period that school attendance became compulsory and that child labor laws were enacted.

The traditional juvenile court differed from the adult criminal court in many important ways:

Adult Court	*Juvenile Court*
Formal criminal proceedings	Informal civil proceedings
Equity before the law	Individualized justice
Emphasis on punishment	Emphasis on treatment
Use of determinate sentences	Use of open-ended dispositions
Focus on past	Focus on future
Open proceedings	Confidential proceedings

The terms used in the juvenile court were also different:

Adult Court Terminology	*Juvenile Court Terminology*
Arrested	Taken into custody
Charged	Petition filed
Convicted	Adjudicated
Trial	Adjudication hearing
Sentence	Disposition

Many of these differences remain in the juvenile justice system today.

[1] In Arizona, ARS 8-201 defines a *dependent* child as a child who is adjudicated to be: a) in need of proper and effective parental care and control and has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control; b) destitute or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is unfit by reason of abuse, neglect, cruelty or depravity; c) under the age of eight years who is found to have committed an act that would result in adjudication as a delinquent child if committed by an older child.

Individualized Justice or Injustice?

By 1925, all but two states had enacted special legal procedures for juveniles. Proponents believed they had created a new era of individualized and humane care for wayward youth. Institutions continued to be used for a wide variety of youth. They were frequently crowded and abusive. Many children continued to be locked up with adults. Judges were often poorly trained. Staffing shortages and fiscal problems were common. There was also poor recordkeeping.

The juvenile court came under attack. There were three basic categories of criticisms. There were those who attacked the system for failing to punish serious offenders and thereby undermining the moral force of law. There were those who questioned the effectiveness of treatment and believed that much of what happened in the name of treatment was simply punishment and, whatever it was, it was ineffective. There were also those who argued that youth were having their rights regularly violated in the name of individualized treatment. It was this last group who would seemingly gain ground in the 1960s.

Juvenile Justice: An Emphasis on Rights

The 1960s ushered in a new era in juvenile justice. Kent v. United States (1966) was the first Supreme Court case to focus specifically on the juvenile court.

Morris Kent was charged at age 16 with robbery and rape. The juvenile court in the District of Columbia waived its jurisdiction over him, transferring him to adult court. The juvenile court judge did not hold a hearing or give Kent's attorney court reports. He also did not give any reasons for the transfer.

Justice Abe Fortas wrote in the Supreme Court's opinion:

> *"There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children ...."*

As a result of Kent, rights for youth were established in the judicial transfer process.

Shortly thereafter came the landmark *In re Gault* case, which had its roots in Gila County, Arizona. Gerald Gault was 15 when he was accused of making an obscene phone call. When he was taken into custody, his parents were not notified. They also were not given a copy of the petition[2] (charges). At the first hearing, no sworn testimony was taken and no record was made. At the second hearing, Gerald's accuser was still not present. Gerald was sentenced to what was then called the Arizona Board of State Institutions for Juveniles for an indeterminate period (not to extend past his twenty-first birthday). An adult convicted of the same offense could have been fined up to $50 or have been jailed for up to two months.

[2]*Petition* refers to a document filed in juvenile court alleging that a child is delinquent, incorrigible, or dependent and asking that the court assume jurisdiction over the child, or that the child be transferred to adult court. The petition is prepared and filed by the County Attorney.

As a result of *In re Gault*, juveniles who faced the possibility of institutionalization due to a charge of delinquency were given a number of rights including:

★ the right to timely notice of the specific charges

★ the right to access to counsel

★ the right against self-incrimination

★ the right to sworn testimony

★ the right to confront and cross-examine witnesses

★ the right to a written transcript of court proceedings (that could serve as the basis for an appeal)

In *In re Winship* (1970), it was further specified that "beyond a reasonable doubt" was the standard of proof for an adjudication of delinquency.

Many people welcomed these changes to the traditional juvenile justice system. Others believed that by making the courts mini-criminal courts, the juvenile court would be less able to meet the individual needs of youth. They argued that the proceedings were not adversarial, and such precautions were unnecessary. Others argued that when liberty is at stake, proceedings will invariably be seen as adversarial by youth.

The Juvenile Justice & Delinquency Prevention Act of 1974

In 1974 the U.S. Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP Act) which mandated:

★ the removal of juveniles who commit status offenses from secure confinement (***status offenses*** or ***incorrigibility*** refer to acts that are against the law for juveniles but not adults, such as running away from home, truancy, curfew violation, etc.)

★ the separation of children from adults in jails.

The JJDP Act represented an attempt to distinguish ***incorrigible*** youths from those who commit ***delinquent***[3] acts. The separation of children from adults in jails reflected the belief that children should be treated differently than adults and should be protected from the risks of confinement with adult inmates. Proponents of the JJDP Act viewed this change as a significant, positive system change. Passage of the JJDP Act led to substantial federal funding of alternatives to secure detention facilities and a variety of community-based programs.

Optimism over system reform decreased, however, as some critics noted that the rights of juveniles continued to be violated. Some critics claimed that diversion programs produced net-widening effects (drawing in youngsters whose behavior previously did not result in court or state intervention).

[3]A *delinquent* act is an offense committed by a child which would be a criminal offense if committed by an adult (see ARS 8-201).

Juvenile Justice in the Eighties

In the 1980s, reform efforts shifted toward more severe sanctions for violent and repetitive offenders. Reformers decried the past rehabilitative focus of juvenile justice and advocated for mandatory sentencing laws, vigorous prosecution and national crusades against drug use. Federal policies also changed, resulting in more than half the states passing legislation to make it easier to prosecute juveniles as adults.

Juvenile Justice Today

Today's juvenile justice system faces significant pressures. Across the country, we witness efforts to expand the states ability to transfer more juveniles to the adult criminal court. We also see efforts to increase periods of secure confinement and other punitive sanctions. Concerns about juvenile gangs have led to laws making gang membership an aggravating factor in delinquency matters. Many juvenile justice professionals express frustration in their attempts to fix problems posed by youth suffering from years of abuse and neglect.

Can the System Be Reformed?

Some juvenile justice critics exclaim that there is really nothing new in the juvenile justice field. The same concepts or ideas periodically reappear, these critics exhort, but the system has ultimately failed to meet its dual mission of protecting children and society. Some of the more ardent critics believe the system should be abolished. System proponents respond that true reform can make the system effective. Others believe only fundamental social change will make a difference. In short, juvenile justice faces a critical crossroads. Should there be a different system of justice for young people and, if so, can it be effective?

"Public policy regarding the treatment of young offenders has varied significantly over the past twenty years...Major swings in philosophy and program have been dependent largely upon personal dispositions, values and beliefs of the people involved in deciding policy...These shifts have not been in response to crime rates."

Governor's Select Committee on Juvenile Corrections
Report to the Governor, 1990

2 An Overview of Arizona's Juvenile Justice System

The Larger Context

First, it should be noted that Arizona's juvenile justice system does not exist in a vacuum. It is one segment (what some call the ***back end***) of a larger children's services system, which includes health care, education and child welfare. This larger system is fragmented and fraught with uneven distribution of resources. Consider, for example:

★ Funding for Arizona's school districts varies widely, ranging from a low of $3,500 a year per pupil to a high of $15,000 per pupil.

★ There are 133,000 Arizona children with no health insurance.

★ One of every three pregnant women in Arizona receives inadequate prenatal care.

★ Arizona's child poverty rate (meaning children who live at or below the federal poverty level) is the 13th highest in the nation.

★ Reports of suspected child abuse and neglect in Arizona have doubled in the last eight years with thousands of those reports not investigated (in violation of state law).

The fragmentation of the children's services system in Arizona stems from a variety of factors, including:

★ concentration of resources in urban areas and absence of resources in rural areas

★ conflicting goals and purposes of different government agencies

★ turf and other political issues that inhibit agencies' abilities to work together

★ lack of funding or uneven distribution of funding

★ absence of consistent, reliable information

In most cases, agencies like the Department of Economic Security (which serves dependent, abused and neglected children), the Department of Health Services (which administers children's behavioral health services), and the schools encounter troubled youths before the juvenile justice system does. But, the structure of the current system often prevents these agencies from providing appropriate services.

This fragmentation often leads to children being drawn into the juvenile justice system in order to obtain services. For example, a youth exhibiting serious behavior problems at home may not receive counseling or other appropriate services because of financial limitations or the absence of those services in the local community. As a result, the youth may be referred to the juvenile court after his/her behavior escalates. And while the juvenile court does have some funds for family counseling services that can be used before a youth becomes a ward of the court, these funds are very limited.

Once under juvenile court jurisdiction, a youth may be eligible for services purchased by the juvenile court with state treatment dollars. The paradox here, of course, is that the youth cannot receive these services until he/she comes under court jurisdiction. This scenario is further complicated by periodic freezes of treatment expenditures by the juvenile court (meaning, the court stops spending treatment dollars in order to stay within its budget allocation). While this practice appears fiscally responsible, it can result in a youth being committed to the state's juvenile corrections agency, the Department of Youth Treatment and Rehabilitation, and may result in the youth's confinement in a correctional institution. In other words, in some cases a youth's involvement with the juvenile justice system may have more to do with the availability of resources than his or her propensity for violating the law.

Decision-Making in the Juvenile Justice System

As noted before, the juvenile justice system is based on the premise of individualized treatment. This premise relies on significant discretion exercised by a number of key decision-makers (e.g., law enforcement officers, school officials, parents, juvenile court judges, prosecutors, etc.). There are some basic elements that affect decision-making that may clarify our understanding of the juvenile justice system. Most of these elements fit into the following categories:

Social Structural Realities. These include broader social issues such as society's view of adolescents and the family, the structure of the economic and political systems, the role of religion, etc.

Community and Political Realities. These include the political climate ("get tough" campaigns, for example), media attention, recent experiences in a community (e.g., a particularly heinous offense committed by a juvenile), and other phenomena.

Organizational Characteristics and Processes. These include budget considerations, availability of resources, types of programs available, caseloads, agency philosophy, etc. The roles of decision-makers in the organization and the amount of power they are given are also considerations.

Decision-maker Characteristics. These include the beliefs and biases of decision-makers as well as other personal characteristics that might affect decision-making (e.g., age, gender, ethnicity, and personal experiences).

Juvenile and Family Characteristics. These include personal characteristics of youth and family members as well as their access to resources (e.g., private counsel, alternative treatment services, etc.). Attitude and demeanor can also be important considerations. The interaction between this category and decision-maker characteristics is critical in the decision-making process.

Delinquency History and the Current Case. Previous decisions made about youth, the juvenile's prior delinquency history (e.g., previous referrals, adjudications, etc.), the seriousness of the most recent alleged offense (e.g., whether or not a weapon was involved), and other considerations also contribute to decisions concerning a juvenile's case.

All of these elements play significant roles in the types of decisions made by officials. Too often, however, these elements are applied

inconsistently, resulting in different consequences for children referred for the same types of law violations. This issue is discussed later in the handbook.

How the System Works

The juvenile court system is responsible for hearing cases referred for

★ delinquency (violations of the law committed by youth under the age of 18)

★ dependency (including child abuse and neglect)

★ status offenses (incorrigibility, truancy, running away, etc.)

Since this handbook focuses on juvenile justice, this section will cover delinquency and status offenses only.

How a Case Enters the System

A juvenile, defined as anyone 8 years of age through 17, may be referred to the juvenile court[4] by:

★ law enforcement agencies

★ parents or guardians

★ schools

The vast majority of youths are referred by law enforcement. Nationally, police are the primary referral source to the juvenile court, accounting for approximately 75 percent of all case referrals.

Police make initial and critical decisions about how minors will be handled. In particular, law enforcement officers have great discretion in the handling of status offenses and misdemeanors. They may decide to handle cases informally through warnings and verbal reprimands, or they may refer youths to nonjudicial agencies if those exist in certain communities. Police also make key decisions on whether young people are temporarily detained in police lockups or adult jails, juvenile detention facilities, or their homes. In most jurisdictions in Arizona, juvenile court personnel (commonly referred to as ***intake officers***) also make critical decisions about referred youths, including whether or not to detain or release.

Who Comes into the System?

At the age of 16, Rachita was committed to the State Department of Youth Treatment and Rehabilitation (DYTR) and confined in a juvenile correctional facility. Before her commitment to the State, Rachita had four referrals to the juvenile court. Her most serious delinquent acts involved shoplifting and giving a false name to authorities. Rachita's parents never married, and her mother was 15 years old when Rachita was born. Rachita lived with her grandmother and her uncle. Her uncle frequently raped Rachita until she ran away to her father's residence. Rachita had not lived with either parent because of her father's alcohol abuse and her mother's cocaine addiction. Rachita had a long history of truancy and other behavior problems. Before her commitment to DYTR, a psychological evaluation recommended Rachita be placed in a "highly structured residential treatment center." The juvenile court had no funds for such a placement.

[4] Legislative changes in 1994 also permit certain juvenile matters to be heard by justice and city courts with approval of the presiding juvenile court judge.

Why should we be concerned about young people referred to the juvenile justice system? Are these bad kids who need to be removed from our communities? The fact is, the percentage of youth at risk of being referred is much higher than we think. For example, data from Maricopa County suggest that:

★ ***Over 30 percent of ALL juveniles from age 8 to 17 will at some time be referred to the juvenile court*** (40 percent of male youth, 20 percent of female youth).

★ ***Over 70 percent of black male youth*** are likely to be referred at some time. (See Chart 1 on page 12 for a graph displaying the likelihood of referral by ethnic group.)

★ ***Over 40 percent of hispanic male youth*** are likely to be referred at some time.

★ ***Over 43 percent of black female youth*** are likely to be referred.

★ The number of juveniles ages 8 through 17 increased by ***almost 20 percent*** in Maricopa County from 1988 through 1992 — this growth will continue over the next decade, meaning more youths at risk of being referred.

Moreover, a significant percentage of youths involved in the juvenile justice system have been the victims of child abuse. In 1989, 36 percent of all youths committed to the State by the juvenile court in Maricopa County had child abuse reports filed with Child Protective Services on themselves and/or their siblings before commitment.

These data dramatically illustrate how many of our young people are involved in the juvenile justice system. And, there is every indication these percentages will continue and, quite possibly, expand into the next century.

The Juvenile Court Caseflow Process

Chart 2 shows the general caseflow for juveniles referred to the juvenile court in Maricopa County.

The Complaint/Referral and Citations

As the chart shows, the law enforcement officer (or other referral source) submits a delinquency or incorrigibility ***complaint***[5] to the juvenile court (in many cases the child is brought to the juvenile court's intake unit at the same time the complaint is submitted — this is known as a ***physical referral***). The juvenile court's ***intake officer reviews the complaint*** and decides to either ***detain or release the child pending further action***.

Not all juvenile court referrals, however, are brought directly to or screened by the juvenile court. In some areas of the state, judges serving on local justice (JP) or city courts are appointed by the presiding juvenile court judge as juvenile court hearing officers. These hearing officers may handle civil citations (e.g., traffic violations), status offenses, or less serious delinquency matters if authorized by the presiding juvenile court judge.

It is noteworthy that referral to the juvenile court does not always equate with access to or receipt of services. In 1993, ***34 percent of all juveniles did NOT receive any services*** (e.g., counseling, drug abuse treatment, etc.) following referral to the juvenile court. This includes early intervention services operating under the Progressively Increasing Consequences Act commonly referred to as PIC-ACT programs.

[5] A *complaint* is a report prepared by a law enforcement officer and submitted to the court alleging that a juvenile has violated the law. The term *referral* is often used in this context also.

Chart 1

WHAT IS THE LIKELIHOOD OF A REFERRAL TO JUVENILE COURT?

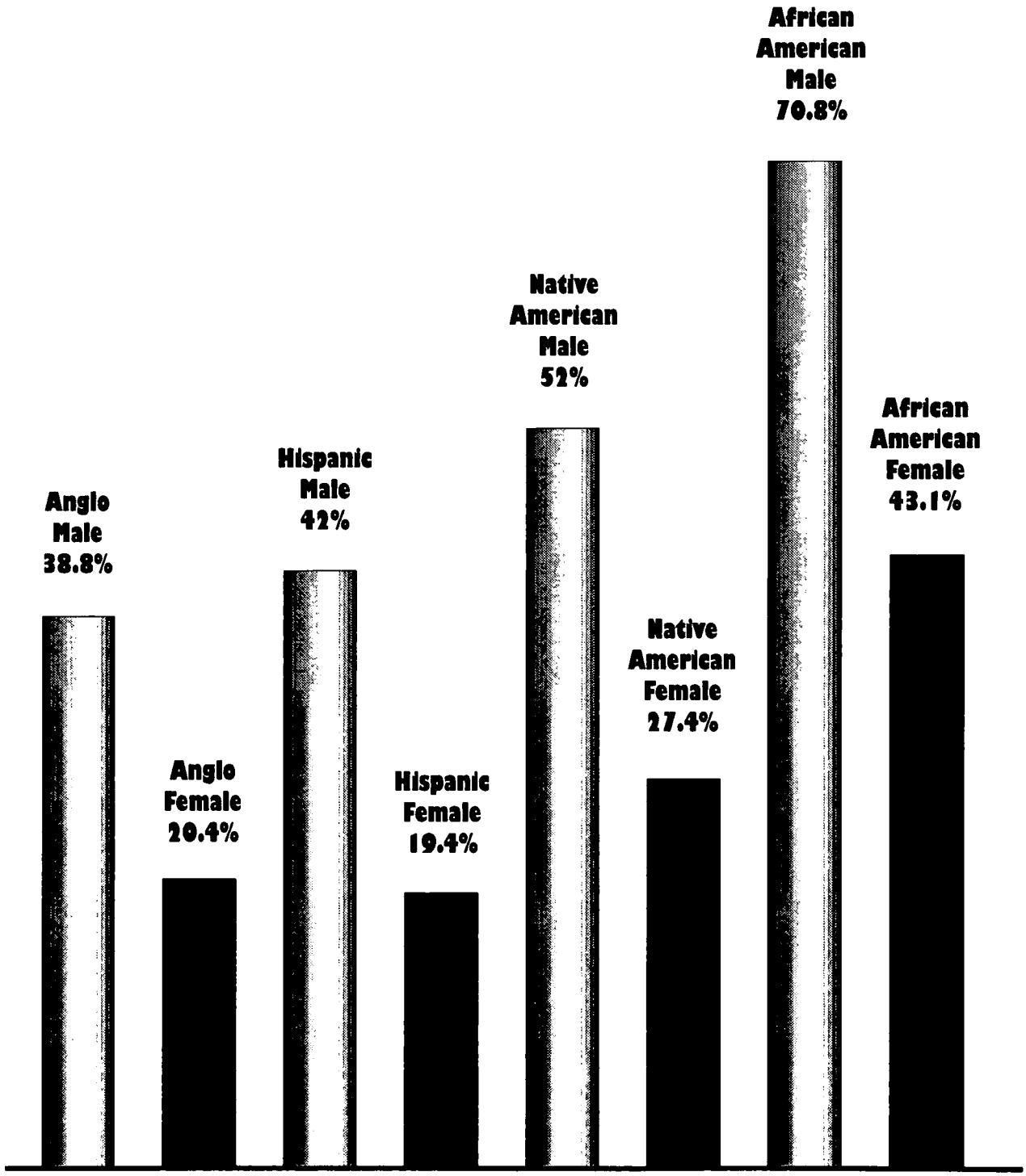
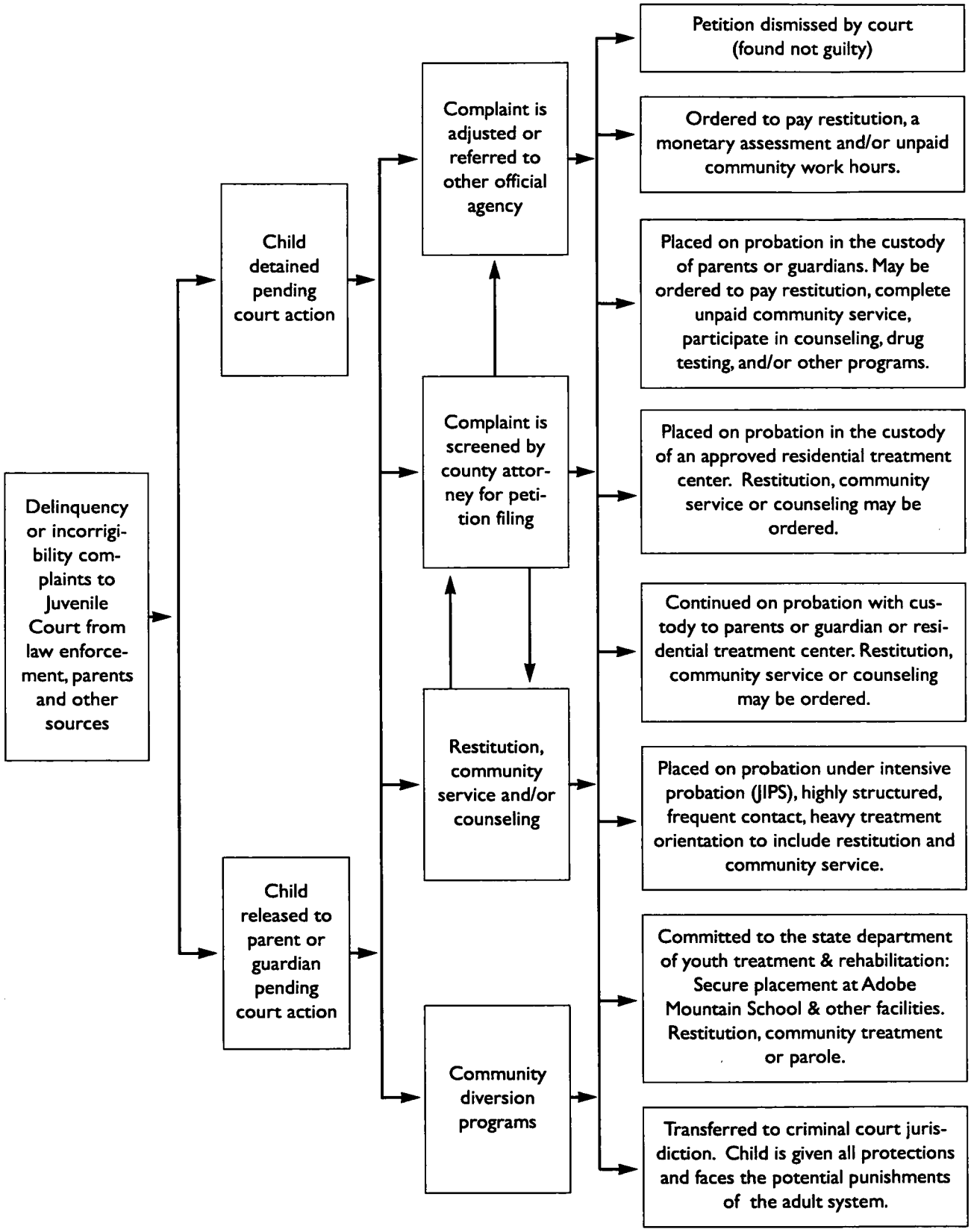


Chart 2

JUVENILE COURT SYSTEM FLOW CHART



The Detention Decision

ARS 8-201 defines detention as the temporary care of a child who requires secure custody in physically restricting facilities for the protection of the child or the community pending court disposition. Rule 3 from the Arizona Rules of Procedure for the Juvenile Court states the following:

a. *Any person who brings a child to a detention or shelter facility shall make a report to the juvenile probation officer in the manner required by local rules setting forth the reasons why the child should be detained.*

b. *A child shall be detained only if there is probable cause to believe that the child committed the acts alleged in the petition, and there is reasonable cause to believe:*

   1. That otherwise he/she will not be present at any hearing; or

   2. That he/she is likely to commit an offense injurious to himself or others;

   3. That he/she must be held for another jurisdiction;

   4. That the interests of the child or the public require custodial protection.

In addition to the above, the rules also require that "*no child shall be held in detention for more than 24 hours, excluding Saturdays, Sundays and holidays, unless a petition alleging his delinquent conduct has been filed; and no child shall be held longer than 24 hours excluding Saturdays, Sundays and holidays, after the filing of said petition unless so ordered by the court after hearing. If the detention hearing is not held within the time specified, the child shall be released from detention to the custody of his parents or other suitable persons.*" [6]

Presently, 13 juvenile courts operate juvenile detention facilities (Graham County and La Paz County do not have secure detention centers). These range from small detention homes housing a relatively small number of youths to larger facilities housing anywhere from 70 to 150 juveniles. A number of existing detention facilities provide at least some level of educational programs, outdoor recreation opportunities, and other activities for detainees. Unfortunately, too many county detention centers continue to fall below nationally recognized standards placing both young people and communities at risk.

The decision to detain a youth in a county detention center represents a critical step in the juvenile justice process. Youths who are detained are more likely to be detained in the future and more likely to have future system involvement. How that decision is made varies from county to county. Some counties utilize specific detention criteria in making the decision to detain. These criteria most often include:

★ presenting offense

★ history of delinquency

★ age of the juvenile

★ psychological and/or medical conditions

★ suicide potential (which may be determined by a psychologist or psychiatrist under contract with the juvenile court prior to deciding whether to detain)

★ other considerations

[6] Youth accused of or adjudicated for delinquent acts may be detained before or after disposition. Recent Arizona Court of Appeals decisions indicate that incorrigible youth may also be detained prior to disposition but *not* after disposition (see Gila County Juvenile Action NO. DEL-6325 v. Duber, 1991; and JV-130549 v. Superior Court of Arizona in Maricopa County, 1994).

The lack of consistent detention criteria between counties and other factors lead to significant differences in the types of youths detained across the state. Where a youth resides may be as (or more) important in the detention decision than the type of offense he or she is accused of. Inconsistent or nonexistent detention criteria invariably lead to inconsistent detention practices.

The news media frequently refer to juvenile detention centers in the same breath as juvenile institutions operated by the Department of Youth Treatment and Rehabilitation. These two types of facilities, however, have two very different purposes.

Juvenile detention facilities are:

★ managed by the juvenile courts

★ funded by county governments

★ intended to provide temporary care for children awaiting court disposition.

Juvenile institutions operated by DYTR are:

★ state facilities

★ intended to serve youth committed to the state by juvenile courts

★ intended to provide post-dispositional care for youths requiring secure confinement.

In general, detention involves shorter periods of confinement before the juvenile court reaches a disposition. Juvenile detention was not intended for post-disposition use.

Intake

The larger juvenile courts in Arizona have intake units that provide initial screening of referred cases. The smaller juvenile courts do not have intake units. Instead, probation staff in smaller departments provide all functions to the court including initial screening of referrals, social history investigations (i.e., background inquiries ordered by the court covering a referred youth's family history, school status and other relevant issues), and field supervision of juveniles placed on probation.

In the larger departments (e.g., Maricopa and Pima Counties), intake staff process the vast majority of cases. In Maricopa County, for example, most cases are handled by intake probation staff without further court processing. In other words, ***the majority of cases referred to the juvenile court in Maricopa County do not reach the petition or adjudication stages.*** These cases are diverted through programs or services operating under the title of PIC-ACT (Progressively Increasing Consequences Act).

PIC-ACT

The Progressively Increasing Consequences Act (commonly known as PIC-ACT) became state law on July 1, 1984. This legislation permits a juvenile probation officer to adjust a delinquency complaint under certain circumstances including:

★ upon receipt of a delinquency complaint alleging the commission of a misdemeanor offense or a complaint or citation alleging an alcohol offense[7] by a juvenile whose

[7] Legislation in 1994 makes possession of alcohol by a juvenile a delinquent act. The impact of this change on PIC-ACT eligibility, screening and services is unclear.

prior delinquent acts have not been adjusted on two separate occasions,

★ if the county attorney does not file a petition on a delinquency complaint alleging the commission of a misdemeanor offense or a complaint or citation alleging an alcohol offense by a juvenile whose prior alleged delinquent acts have been adjusted on two separate occasions, or

★ if the county attorney does not file a petition of a delinquency complaint alleging the commission of a felony offense.

Under the above circumstances, a juvenile probation officer may adjust a delinquency complaint if, after conducting an intake interview with the alleged juvenile offender and at least one of the juvenile's parents or guardians, the juvenile admits responsibility for the delinquent act or alcohol offense. However, before the complaint (or citation) can be adjusted, the juvenile must comply with one or more of the following conditions:

★ participation in unpaid community service work;

★ participation in a counseling program approved by the juvenile court, which is designed to strengthen family relationships and to prevent repetitive juvenile delinquency;

★ participation in an education program approved by the court, which has the goal of preventing further delinquent behavior;

★ participation in an education program approved by the court, which is designed to deal with ancillary problems experienced by the juvenile, such as alcohol or drug abuse;

★ participation in a nonresidential program of rehabilitation or supervision offered by the court, or offered by a community agency and approved by the court;

★ payment of restitution to the victim of the delinquent act (if applicable); and/or

★ payment of a monetary assessment.

The creation and implementation of PIC-ACT in the mid 1980s signified an important shift in Arizona's juvenile courts. Youth were seen as being more responsible for their behavior and, thus, the need for accountability became a major thrust of early intervention efforts. Without question, the public outcry for accountability rings even louder today.

Each juvenile court operates and/or contracts for a variety of services funded through PIC-ACT (PIC-ACT funds are appropriated annually by the state legislature). Examples of PIC-ACT programs include family counseling, drug abuse prevention, educational programs, community work service programs, wilderness-type programs, and others.

State law requires the Arizona Supreme Court to periodically evaluate the impact of PIC-ACT and other juvenile court treatment services. The last comprehensive evaluation of PIC-ACT programs occurred in 1987. In brief, this analysis found that:

★ PIC-ACT programs and services were well received by the juvenile justice community, law enforcement officials, school principals, program participants, and their parents.

★ Restitution and family counseling services were rated as effective services by officials but were among the least used in actual program operations.

★ The number of youth referred to the juvenile court and the number of petitions filed in years before and after enactment of PIC-ACT indicated limited positive impact on recidivism.

★ Juveniles diverted into PIC-ACT programs were most often referred for misdemeanor property offenses (53.3 percent); the vast majority involved shoplifting.

★ Community service work was the most frequently assigned PIC-ACT consequence (49 percent), with participation in an educational class (first offender or substance abuse class) being the second most frequent.

★ Overall, 91.1 percent of the complaints diverted into the program resulted in PIC-ACT ***adjustments***[8] after completion of assigned consequences.

★ Overall, just over 40 percent of PIC-ACT youth were referred to the juvenile court on new charges (delinquent and/or status offenses) within 24 months of placement in the program.

★ The lack of prior complaints, especially prior complaints for offenses eligible for PIC-ACT programming, was highly related to lower rates of new complaints.

PIC-ACT remains an important part of the juvenile justice system. However, the absence of ongoing program evaluation remains a sore point with critics of the system. These critics harp on the lack of information covering the effects of early intervention efforts. It remains to be seen whether the more recent outcry for prevention and early intervention will lead to more consistent tracking and evaluation of case outcomes.

Petition

Once the decision to initially detain or not is made (and the case is not eligible or accepted for PIC-ACT), the complaint is referred to the County Attorney's office where it is screened by the prosecutor to determine if a petition should be filed. As a rule, prosecutors review all referrals involving felony offenses and/or third subsequent delinquent offenses. Less serious delinquent acts are handled by court intake units or other means.

When screening a complaint, the County Attorney's office has the option of:

★ ***filing a formal petition*** in response to the complaint,

★ ***referring the complaint back to the probation department*** for PIC-ACT consideration,

★ ***referring the complaint*** to another official agency,

★ ***dismissing the complaint*** due to lack of evidence or other reasons.

In other words, the prosecutor decides whether formal charges will be filed with the court leading to subsequent court hearings.

If the County Attorney's office elects to file a petition, the *Public Defender's office* is notified (in counties where public defender units exist), and the prosecutor initiates the ***victim notification*** process (in cases involving victims). The time frames for all of these processes vary somewhat between courts with minimum requirements set by state court rules.

[8] *Adjustment* means disposing of a case without the juvenile being required to go to court.

The Advisory Hearing

An advisory hearing is held by the juvenile court after the filing of a petition. The advisory hearing involves:

★ ***formal review of the petition*** by the court

★ ***discussions with the accused juvenile*** regarding the events alleged in the petition

A juvenile court judge or commissioner presides over the hearing process, which includes a probation officer (if the petition involves a probationer or if the officer has information relevant to the case), defense counsel, the prosecutor, and the clerk of the court. The youth's parents or guardians are also expected to attend the advisory hearing.

In the advisory hearing, the juvenile is asked if he/she admits or denies the actions alleged in the petition. If the juvenile admits to the charges during the advisory hearing, the court orders a social history investigation which is conducted by the probation officer. This investigation involves interviews with family members, guardians and other persons who have information about the juvenile in question. The probation officer submits the social history report to the judge (or commissioner) before the disposition hearing.

Plea Bargaining

Some system critics view plea bargaining as a serious problem where moving a case through the system becomes more of a priority than the quality of justice. Others view it as a natural part of the adversarial court process. These observers feel there will always be some plea bargaining because of differences in the charging practices of law enforcement agencies, differences in screening by county prosecutors, and inconsistent responses by defense attorneys. Both perceptions are true. There are cases where plea bargaining is used to move a case more expeditiously. In these instances, justice is not being served. In other cases, the quality of information and other factors may lead to appropriate plea bargaining.

Data on the extent of plea bargaining are very limited. However, it is safe to assume that some type of plea bargaining occurs in over 50 percent of the cases where petitions are filed. Without question, the current system could not function without some level of plea bargains. Whether or not plea bargains are handled equitably is another question.

In Arizona, the incidence and/or likelihood of plea bargains often depend on:

★ the County Attorney's philosophy

★ the number and workloads of prosecutors

★ the quality of information presented by law enforcement

★ the quality of defense counsel

★ other considerations

Plea bargains can occur at any stage in the process after the filing of a petition but usually occur before or at the point of the adjudication hearing.

The Adjudication Hearing

If the juvenile denies the allegation(s) in the petition and the judge believes there is sufficient reason to proceed, an ***adjudication hearing*** is then set. The adjudication hearing is the juvenile court's version of a trial (there are no jury trials in juvenile courts in Arizona). At the hearing, testimony is given by the accused, the victim, and/or others, and the judge renders a decision as to whether or not

to adjudicate the youth. Juvenile courts do not find youth guilty or innocent per se. They may be ***adjudicated delinquent, or incorrigible***, or the petition may be dismissed. If found delinquent or incorrigible, the judge orders the probation officer to conduct a social history investigation prior to the disposition hearing.

The Disposition Hearing

In the ***disposition hearing*** the court decides what to do with a child. There are a number of dispositional alternatives available to the court including:

★ administrative probation (in some locales referred to as "informal" probation)

★ participation in counseling, drug testing and/or other programs

★ paying restitution and/or monetary assessment

★ performing unpaid community work service

★ standard juvenile probation in custody of parents or guardians

★ probation plus treatment (e.g., counseling) and/or other community services

★ probation in the custody of an approved residential treatment center,

★ foster home, or other out-of-home residence

★ juvenile intensive probation supervision (JIPS)

★ commitment to the Department of Youth Treatment and Rehabilitation (the state's juvenile corrections agency)

It is important to note that the above process does not cover youths who are transferred to the adult criminal court. The transfer process is described later in the handbook.

Probation

As noted above, one disposition available to the court involves placing a youth on probation. In all probation cases, the specific terms of probation are ordered by the court. There are different types of probation including:

★ ***administrative*** — where a youth may be required to report by mail or phone to a probation officer each month — administrative probation almost always involves juveniles adjudicated for minor offenses

★ ***standard or regular probation*** — where an assigned probation officer makes periodic contacts with the juvenile and his/her parent or guardians — terms of regular probation may include community service work, curfews, not associating with certain peers, school attendance, and other conditions

★ ***juvenile intensive probation supervision (JIPS)*** — a highly structured form of probation requiring frequent contacts, treatment services, restitution, community service and other conditions ordered by the court

The number of youths on probation has grown over the past decade. This growth reflects a number of factors including the growth in Arizona's juvenile population, the creation of the JIPS program, increased funding for probation and other factors. In Maricopa County, for example, the number of youths placed on probation increased by

almost 40 percent from 1988 through 1992 (2,041 to 2,807). The total number of juveniles on probation in Arizona at the end of 1992 exceeded 4,000 cases. Legislation passed in 1994 mandates that juvenile probation officer caseloads not exceed an average of 35 cases at one time.[9]

Commitment to the Department of Youth Treatment and Rehabilitation

Except for transferring a youth to the adult system, the decision to commit a youth to DYTR is the most severe sanction available to the juvenile court. However, DYTR is operated by the executive branch of government, not the judiciary. This separation of powers contributes to a continued level of tension between the juvenile courts and DYTR. Until recently, DYTR had complete authority over the length of confinement of committed juveniles. DYTR could not influence who was committed (that was and is under the purview of juvenile court judges), but DYTR assumed total legal authority over youths once they were committed to the state.

Juvenile Parole

Officially known as ***conditional release*** or ***conditional liberty***, the term parole is most commonly used to describe youths released to the community from secure institutions. While the terms ***parole*** and ***probation*** are often confused, ***parole*** only refers to cases committed to DYTR, while ***probation*** refers to cases under juvenile court jurisdiction.

The conditions of parole are often quite similar to the conditions of probation (e.g., not associating with certain peers, attending school, abiding by curfews, participating in community programs as required by the parole officer, etc.). However, if a juvenile on conditional release violates parole conditions, he or she can be brought before the Youth Hearing Board for parole revocation proceedings.

The most recent DYTR statistics indicate there were approximately 544 juveniles housed in state institutions and 1,139 juveniles on conditional release as of June 30, 1994. While longer-term data are not available, it is reasonable to assume that the number of juveniles on conditional release has increased steadily over the past three years. This increase reflects the rise in commitments to DYTR and the decline in the number of institutional beds.

Who is Committed?

Any youth found to be delinquent for any reason can be committed to the state. In 1989, research revealed that only 15.1 percent of youth committed to the state had ever been found delinquent (adjudicated) for a violent offense. Over one-third of the boys and two-thirds of the girls sent to our state institutions in 1989 were locked up for acts that would most likely not result in an adult being locked up.

The study of 1989 commitments also indicated that:

★ Arizona's 15 counties have very different philosophies when it comes to who should be committed.

[9]ARS 8-203.B states that *A juvenile probation officer performing field supervision shall not supervise more than an average of thirty-five juveniles on probation at one time.*

★ Females were much *more* likely to be committed for less serious offenses.

★ Minority youth were much *less* likely to receive services prior to commitment.

Over the years, there has been a strong need for guidelines for juvenile court judges to use in deciding who should be committed to DYTR. Until recently, many judges resisted establishment of commitment guidelines, feeling it detracted from the individualized treatment of each case. The absence of guidelines, however, results in DYTR trying to be all things to all young people — an agency providing secure confinement and rehabilitative treatment services for juveniles.

Another important factor affecting commitments to DYTR involves juvenile court budgets. Commitment to the state is a *free* option for the courts, meaning the courts do not pay for commitment out of their budgets. The courts do pay for community-based programs and treatment services. The absence of direct costs to the courts for committing a youth to DYTR worsens inconsistent commitment practices. For example, a youth who is appropriate for a community-based program may be committed, at least in part, because of a court's budget status. If the court's budget projections indicate it will run out of treatment funds before the end of the year the likelihood of commitment increases. This dilemma places courts in the difficult position of managing budget allocations versus meeting the individual treatment needs of young people.

The absence of commitment guidelines is compounded by the absence of length of confinement guidelines. These refer to specific periods of time of confinement for youth committed to DYTR. At present, it is impossible to consistently predict how long certain youths will be confined. The absence of more predictable periods of confinement has frustrated juvenile court judges and others for many years. Fortunately, recent legislation attempts to address these concerns. Senate Bill 1356 limits the ability of DYTR to release juveniles from secure confinement and calls for commitment guidelines. The new legislation:

★ requires the creation of guidelines to be used by juvenile court judges in determining those juveniles who should be committed to DYTR; and

★ mandates the development of length of stay guidelines for youth committed to DYTR and upon implementation allows the committing judge to assign a length of stay.

Commitment guidelines should result in more consistent commitment practices among the 15 juvenile courts. Length of stay guidelines should lead to more predictable periods of confinement. Selection of these criteria represents a critical policy decision that must be undertaken with great care. For example, some criteria may lead to overcrowding of state institutions and significant increases in the number of secure facilities needed. Other criteria may not keep certain high risk offenders off the streets. In brief, the development of commitment and length-of stay-guidelines should be based on accurate information, careful projections of likely outcomes, and a balanced approach to juvenile justice.

How the System is Funded

3.

What does juvenile justice cost us? There is no simple answer to this question. It is very difficult to determine the precise amount of dollars allocated to the entire juvenile justice system. There are many reasons for this, not the least of which is the fragmented funding picture. The juvenile courts, for example, receive state, county, and federal monies. DYTR receives state and federal dollars. In addition, any cost estimate of juvenile justice should also include costs incurred by law enforcement agencies. Furthermore, there are costs tied to victimization. Despite this complexity, some conservative cost estimates are possible.

The Juvenile Courts

Until the past few years, most juvenile courts received more than half of their funds from local county sources. Since the mid-1980s that has changed. The majority of juvenile courts now receive most of their funding from the state, except for Maricopa County.

For state fiscal year 1995, for example, state appropriations to the juvenile courts equal $33.7 million. These include state taxpayer funds for family counseling, juvenile probation, juvenile treatment, and juvenile intensive probation services. Once again, these figures do not include funds received through county, federal, or other entities.

Costs for Detention

The bulk of funding for juvenile detention centers comes from county sources.

The cost of operating detention facilities varies across counties. In Maricopa County, which operates the two largest secure detention centers, the average daily cost of detention per juvenile in 1993 was $93.32. This daily figure does not include the cost of constructing detention facilities. The costs for operating smaller detention facilities around the state is more difficult to discern but, in general, operating costs tend to fall between $90 to $100 per day per youth.

Costs for Treatment Programs

State appropriations to the juvenile courts for treatment programs (the Juvenile Probation Services fund, also referred to as the Juvenile Treatment Services fund) represent the largest state allocation of funding for the juvenile court system.

Since 1991, the amount of dollars appropriated to the Juvenile Probation Services Fund has grown more than 50 percent (from $16 million to over $24 million in FY 95). This dramatic increase was fueled, in large part, by the implementation of the federal Title XIX mental health program during the 1992 fiscal year. In brief, the implementation of Title XIX caused a significant rise in the rates of many private treatment programs because of feder-

al requirements. This increase in rates reduced the "purchasing power" of the courts (i.e., services cost more, so fewer juveniles receive services). Since state fiscal year 1990, for example, the treatment dollars available per juvenile (with a petition filed) have decreased by 19 percent (adjusting for inflation).

In fiscal year 1991, the average cost for residential treatment was $93.47 per day. By FY 94, the average daily rate increased to $147.86 per day, a 37 percent increase. Average daily costs for group homes also increased substantially during this period from $82.79 in 1990-91 to $103.86 per day, a 20 percent increase. Data from the Administrative Office of the Courts (AOC) reveal this sharp rise in costs significantly reduced the courts' ability to place all of the youths who require out-of-home placement. These sharp rate increases and other factors have also led to freezes on expenditures and/or rationing of treatment dollars in a number of courts. This results in a significant number of youths not receiving appropriate services.

DYTR Funding

For state fiscal year 1995, DYTR will receive $33.6 million dollars in state general fund appropriations. This represents a 7.9 percent increase over fiscal year 1994. Since its creation over two years ago, DYTR has experienced serious budget constraints inhibiting development of institutional and community-based programs. It remains to be seen whether the increase in funding for fiscal year 1995 will be sufficient to meet the changing needs of Arizona's juvenile corrections agency.

The System of Funding

As noted earlier, youth are currently being inappropriately drawn through the juvenile justice system because of a number of factors, which include the present system of funding. No one would consider giving welfare recipients American Express cards to feed their families because it would force them to go to expensive restaurants instead of to grocery stores. But that is precisely how we have designed funding in the juvenile justice system.

The options that are free to the courts are the harshest (and often the most expensive), and they exist at the back end of the children's services system. They are known as commitment and transfer. If a juvenile court wants to place a youth on probation, it comes out of the juvenile court budget. If the court wants to place a youth in residential treatment, it comes out of the court's treatment funds. Commitment to DYTR and transfer to adult court are free. When budgets are tight and placements are frozen, judges and other juvenile court personnel are placed in untenable positions. It is unrealistic to think that budget considerations do not influence placement and commitment decisions.

The Need for an Alternative System of Funding

A neutral funding system that provides incentives for counties to commit only youths who meet certain guidelines represents one promising approach to keeping youths at the lowest appropriate level of jurisdiction. This approach requires counties to pay the costs of youth committed to the state who do not meet developed criteria for commitment.

Statistical Overview

4.

Statistical Overview

It is difficult to obtain consistent data on juvenile justice in Arizona. Data are collected by a range of agencies including the 15 juvenile courts, DYTR, law enforcement agencies, the Governor's Office for Children, the Department of Health Services, the Department of Economic Security, and the Department of Education, just to name a few.

Historically, there has been a failure to use common definitions. This has made it virtually impossible to compare or combine information collected in different jurisdictions. It has also made the system vulnerable to political attacks, such as those made by people claiming that juvenile courts have failed in their attempts to serve children and protect society. The courts have recognized this weakness and have launched a serious effort to make data collection more consistent across counties.

Despite these limitations, there are some official data available from some juvenile courts that offer valuable insights into the system. The following tables and charts reflect official reports on a number of important variables. Where available, these data reflect statewide totals. In other instances, the data reflect county-specific information.

Before covering these statistical summaries, however, it's important to review a few crucial concepts on data interpretation. When reviewing statistical reports on juvenile justice keep the following concepts in mind:

★ *The analysis of whether crime is increasing or decreasing in Arizona depends heavily on which time period is chosen and which types of offenses are included or excluded in the analysis.*

Analysts and journalists sometimes simply choose two years (usually the most recent year and some prior year that serves as the base) and then calculate the percentage change between these two. This can be very misleading depending on which base year is selected. For example, trends in the crime rate between 1980 and 1990 show sharp declines in homicides (-25 percent), rape (-9 percent) and robbery (-17 percent) and an increase in aggravated assaults (10 percent). If the decade is shifted by just one year, so that 1981 data are compared with 1991, however, there are sizable increases in aggravated assault (29 percent) and rape (9.5 percent) and smaller decreases in homicide (-3 percent) and robbery (-7 percent).

★ *Studies of crime rates should look at each type of crime separately; clustering different types of crimes together can produce skewed results.*

Lumping different crimes together in categories like "serious" or "violent" can affect conclusions about whether crime is decreasing or increasing. Some studies incorporate an "index of violent crime" (including homicide, rape, robbery, and aggravated assault). Looking at the 1980 to 1990 comparison again, we see a very small increase (651 crimes per 100,000

persons to 652 per 100,000), whereas the 1981 to 1991 comparison reveals a sizable increase of 16 percent. Why? Because violent crime is simply the sum of four types, and because there are far more aggravated assaults than any other type, the violent index will mainly reflect the trends in aggravated assault.

Some researchers combine violent crimes with burglaries to produce an index of serious crimes. In this index, burglaries dominate because burglaries are about four times as likely to occur as all the violent crimes combined. Thus, serious crime in Arizona between 1980 and 1990 decreased by 17 percent because burglaries decreased by 22 percent; violent offenses actually increased slightly. Between 1981 and 1991, serious crimes decreased by 14 percent mainly because of the continued drop in burglaries, even though rates for aggravated assault and rape increased.

★ As noted in the 1993 Arizona Town Hall report "Confronting Violent Crime in Arizona," *When crime trends are complex, as certainly has been true in Arizona over the past two decades, the preferred strategy is to estimate the average change per year for each of the different types of crimes separately, using a linear regression model. The linear regression model produces a statistic ... that estimates the amount of change, per year, over the time period covered.*

Critical consumers of juvenile justice information should recognize that most official juvenile crime data reports do not heed this advice.

★ *Beware the use of percentages without absolute numbers.*

For example, a newspaper article might indicate a 100 percent increase in the number of juveniles arrested for homicide. This sounds very serious. But if this percentage increase reflects a jump from 1 to 2 juveniles is there a significant trend? The media and certain political interests are quite fond of using percentages to get the public's attention. The public must learn to appropriately question such reports.

★ *Know the number of juveniles and their percentage in the general population.*

For example, there have been many reports indicating sharp increases in the number of juveniles arrested for violent offenses. Many of these reports simply reflect that juveniles do represent a growing proportion of arrests in relation to the total number of all arrests. However, these reports omit the fact that the number and percentage of juveniles in the general population has grown substantially over the past few years. It is important and relevant to show changes in juvenile arrests (and other indicators) as they relate to the number and percentage of juveniles in the population.

★ *Studies that use relatively small sample sizes may be misleading.*

Juvenile justice research often involves a study of a small group of youth who receive some type of intervention or program (e.g., counseling, boot camp, etc.). The study attempts to determine whether the impact of the intervention affected these youth in some positive way (e.g., did it reduce subsequent delinquent acts?). Unfortunately, some studies use samples of juveniles that are too small and not representative of the general population. In these studies, the findings cannot be applied (generalized) to other groups of youth or youth in general.

★ *View all official juvenile justice data with a critical eye.*

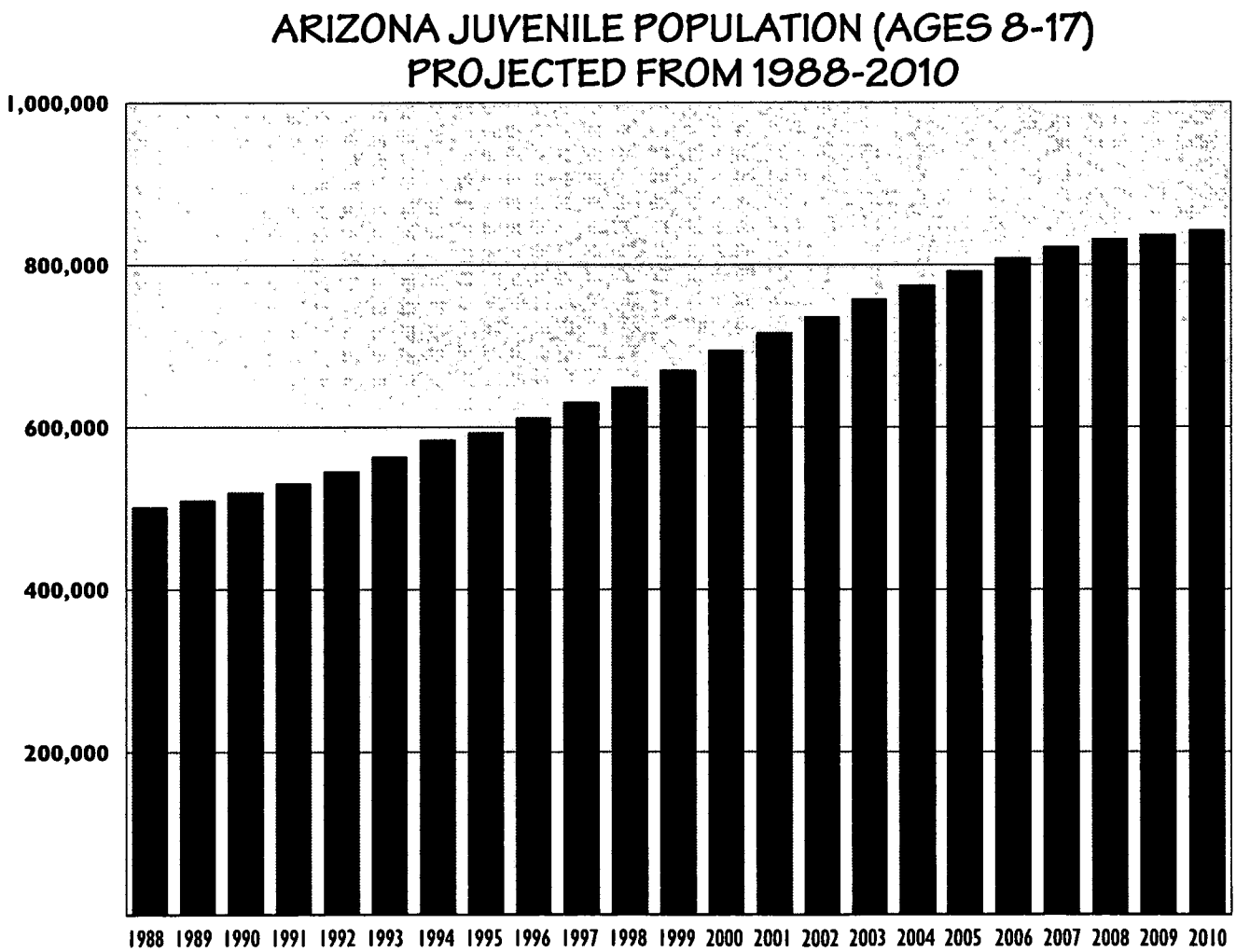
Think about what the data do not show as well as what they do show. Official data are limited to acts that are reported to authorities. They do not include acts that are not reported. Remember, definitions within the system are not consistent. Changes in enforcement practices, changes in laws covering juvenile crime and other factors may also have dramatic effects on official rates of delinquency.

Juvenile justice is a complex phenomenon. Official data invariably reflect only a part of the picture and sometimes the picture has more to do with political interests than anything else.

Juvenile Population

Chart 3 shows the juvenile population in Arizona from 1988 projected through 2010. This chart indicates the number of juveniles in Arizona is likely to increase by 68 percent (from 501,405 in 1988 to 842,853 by 2010) during this 22-year period.

Chart 3



1988 - 1993 population estimates: Tom R. Rex. Population Estimates of Arizona Children. January 1994.
1994 - 2010 population projections: Arizona DES, Research Administration Population Statistics Unit.

Number and Types of Referrals

The three pie charts on the next page (Chart 4) show the total number and percentage of juveniles referred to juvenile courts in five counties[10] for a three-year period (1991, 1992 and 1993) for delinquent or status offenses. It is important to remember that some juveniles received more than one referral during a period of time. Some observers believe that the increase in total referrals for the 1993 period may be due at least in part to the zero tolerance of curfew violations instituted in Phoenix and other communities.

Who is Referred to the Juvenile Courts?

Using data from these five counties to project statewide referral figures, there were approximately 38,000 juveniles referred to juvenile courts in FY 93. Looking closer at their referral backgrounds we see the following:

BACKGROUNDS OF 38,000 JUVENILES REFERRED IN 1993

50%	*or*	*19,000*	*juveniles had no previous referrals*
18%	*or*	*6,800*	*juveniles had one previous referral*
9%	*or*	*3,400*	*juveniles had two previous referrals*
6%	*or*	*2,300*	*juveniles had three previous referrals*
4%	*or*	*1,500*	*juveniles had four previous referrals*
10%	*or*	*3,800*	*juveniles had more than five previous referrals*

As you recall, data obtained in Maricopa County suggests that ***over 30 percent of all juveniles in the general population will at some time be referred to the juvenile court (40 percent of male youth; 20 percent of female youth)***. In addition, there are significant findings related to ethnicity that were discussed earlier.

Are Referrals to the Juvenile Court Increasing?

Official data (see Chart 5) from the juvenile court in Maricopa County reveals that the *percentage of juveniles referred for crime has actually decreased over the past seven years.*

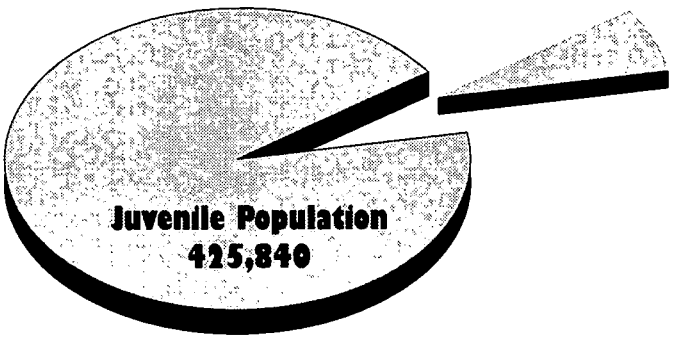
As the chart shows, in 1986, 7.3 percent of all juveniles in Maricopa County were referred to the juvenile court for delinquent acts. In 1992, the percentage of juveniles decreased to 5.9. However, this chart also shows a relatively small but significant increase (of 0.2 percent) in the percentage of juveniles referred for violent crimes in Maricopa County.

This overall decrease in the percentage of juveniles referred for any crimes also applies when looking at statewide data. ***For the five-year period beginning in 1988, the percentage of juveniles referred for crime decreased statewide.*** The data contradict the public perception that the juvenile crime rate is rising dramatically. Nevertheless, it is also important to emphasize that the percentage of juveniles referred for violent crimes has increased over the past five years. While this increase may not be as dramatic as some perceive, it represents a serious concern. Given the projected rise in the juvenile population, it is very likely that the number of juve-

[10]Referral information based on data from Coconino, Gila, Maricopa, Pima and Yuma. These counties account for approximately 80 percent of all juveniles in the state. The estimate of 38,000 juveniles statewide reflects projections from data obtained from these five counties.

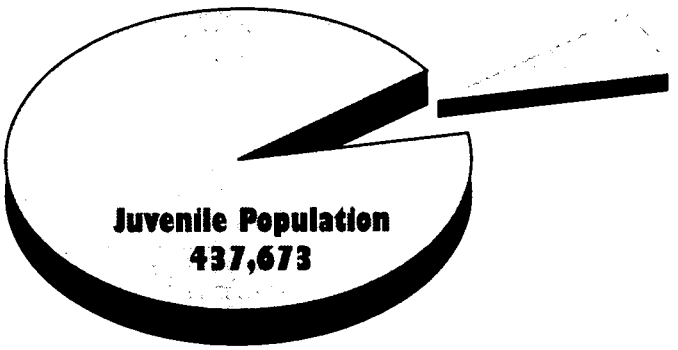
Chart 4

PERCENTAGE OF JUVENILE POPULATION ** (AGES 8-17) REFERRED TO JUVENILE COURTS, FY 1991-93



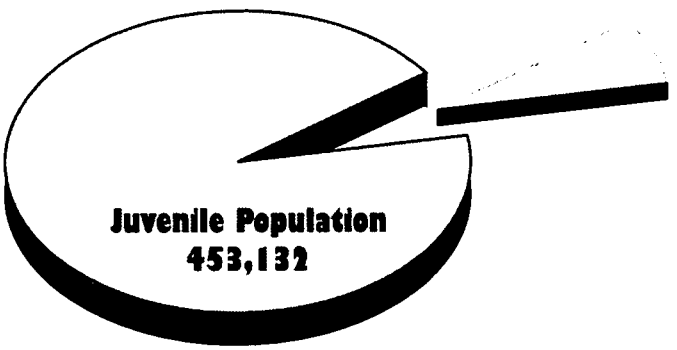
Juveniles Referred (6.8%) 29,048

1991



Juveniles Referred (7%) 30,711

1992



Juveniles Referred (6.95%) 31,495

1993

Referral information based on Juvenile On Line Tracking (JOLTS) data from the following Arizona counties: Coconino, Gila, Maricopa, Pima and Yuma. Together these counties account for approximately 80 percent of all juveniles.

** Tom R. Rex. *Population Estimates of Arizona Children.* January 1994.

niles arrested (for any types of offenses) will continue to escalate over the next decade.

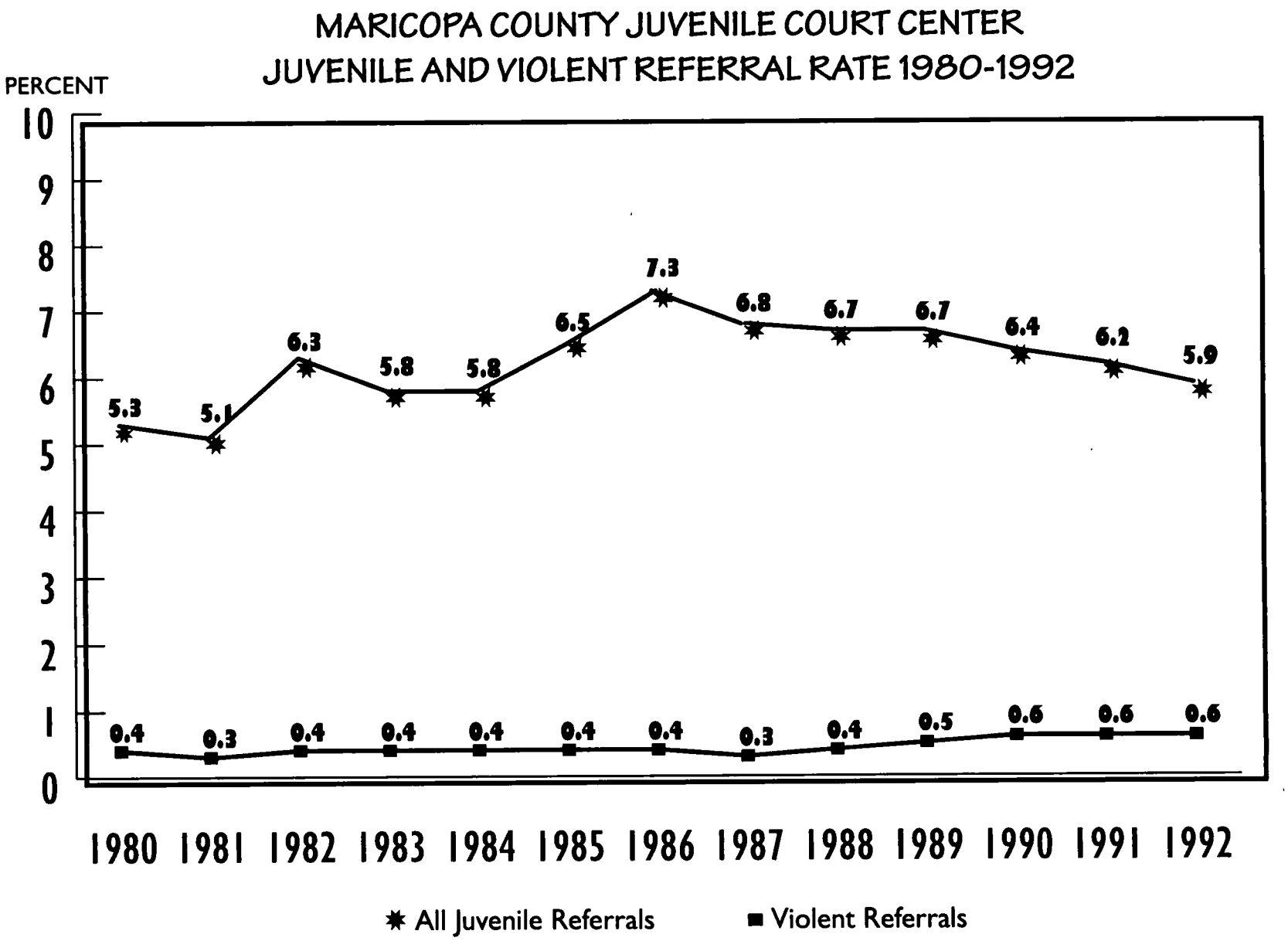
Dispositional Outcomes

What happens to juveniles after they are referred to the juvenile court? The data below provide a broad picture for youths referred in fiscal year 1993:

32%	or	12,000	juveniles took part in PIC-ACT (court diversion) programs
26%	or	10,000	were placed on probation
4%	or	1,400	completed noncourt diversion programs
3%	or	1,200	were committed to the Department of Youth Treatment & Rehabilitation
1%	or	300	were sent (transferred) to the adult court system

While approximately 34 percent of juveniles referred to the court during FY 1993 did not receive any services, over 18,000 (or just under 50 percent of all referred youths) and their families were provided treatment services of some type, ranging from family counseling to intensive out-of-home treatment. Unfortunately, in some juvenile courts, treatment expenditures were frozen or rationed in order to stay within fiscal allocations. This means that many juveniles did not receive services they needed.

Chart 5



BASED ON JUVENILE POPULATION (8-17) SOURCE: MARICOPA COUNTY JUVENILE COURT CENTER, 1993

"The juvenile justice system was created for kids who were involved in schoolyard fights and shoplifting, not for kids with AK-47s. Kids are engaging in adult behavior (and) they should be treated like adults."

Gov. J. Fife Symington, III

5. Current Issues and Trends in Juvenile Justice

Transfer of Juveniles to the Adult Criminal Justice System

An increasing number of states are proposing to handle juveniles in the criminal justice system. The logic of these policy proposals escapes me. If adults commit most of the violence in this country, and they are not deterred or corrected by the criminal justice system, why do we think the criminal justice system will be effective with juveniles?

Hunter Hurst III,
Director, National Center
for Juvenile Justice

The decision to transfer a juvenile to the adult system is the most serious action taken by the juvenile court. Most people assume that the transfer option is applied to the most serious and violent offenders. Unfortunately, this is not always the case. Based on a comprehensive study of transfers from Maricopa County in 1990, ***most juveniles considered for transfer were not charged with felonies against persons.*** As shown in Chart 6, 29 percent of juveniles considered for transfer were charged with felonies against persons while 47 percent were charged with major property offenses (e.g., burglary).

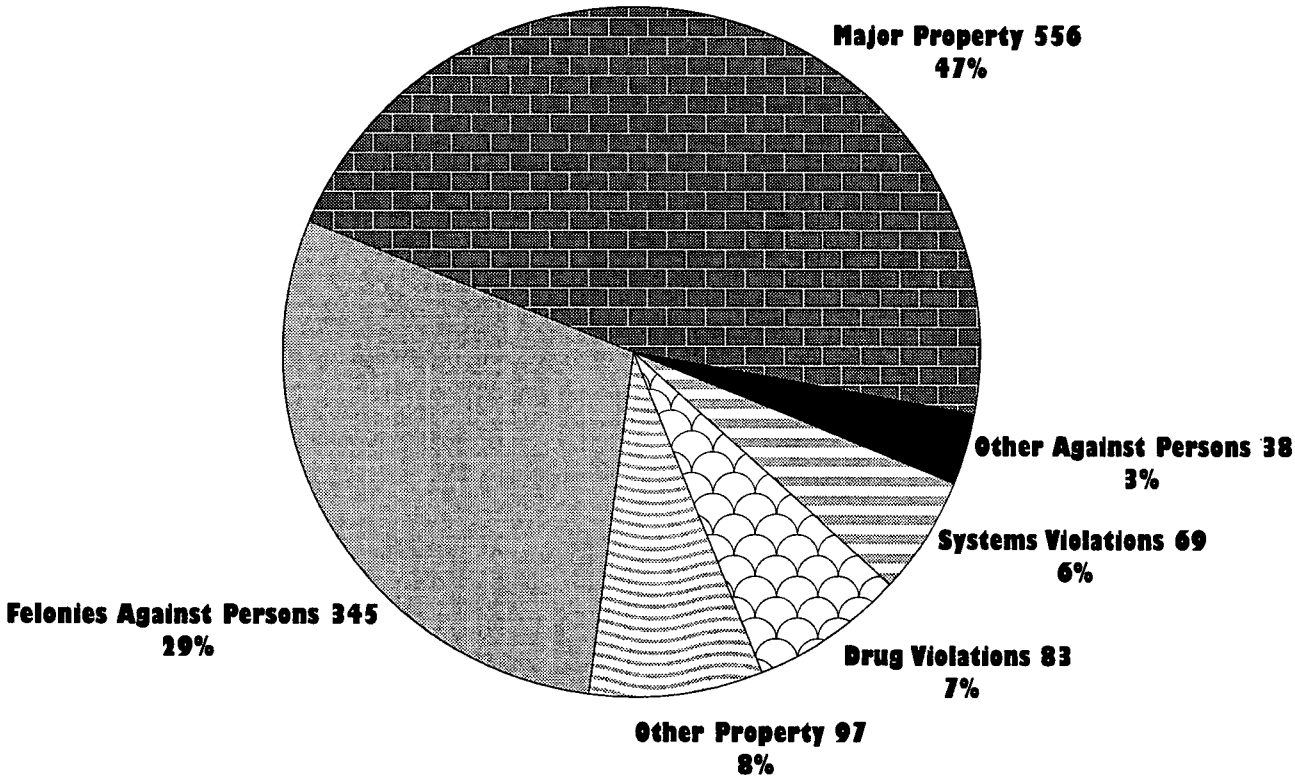
The fact that a juvenile is considered for transfer to adult court does not mean the case will actually be transferred. The initial decision to seek transfer is made by deputy county attorneys (prosecutors). The final decision is made by juvenile court judges who receive recommendations from probation officers and psychologists.

It is important to recognize that the transfer option is not intended to apply only to juveniles who commit serious crimes against persons. Clearly, at least some of the youth who commit burglaries or other major property offenses may also be appropriate for transfer. The fact that the juvenile court's jurisdiction ends at age 18 also plays an important role in transfer decisions. A significant percentage of cases are transferred because of the proximity to a youth's 18th birthday. However, the above data seem to contradict the common perception that transfer is only used for the most serious juvenile offenders.

In December 1994, the Arizona Supreme Court amended the rules of procedure covering transfer. These changes follow the recommendations of the Arizona Commission on Juvenile Justice. They make transfer ***presumptive*** for juveniles age 16 or older who commit certain violent or serious repetitive offenses, including murder, assault with a deadly weapon, sexual assault, or a felony preceded by four or more delinquency adjudications. The amended rules also create a new disposition option known as ***transfer deferral.*** This allows the juvenile court to delay the transfer decision while the juvenile completes a probationary program of treatment or rehabilitation. This provision is designed to allow the possibility of transfer to be used as a motivational tool for the rehabilitation of juvenile offenders.

Chart 6

ALLEGATIONS AT TIME OF TRANSFER DECISION



Data are for 376 juveniles from Maricopa and Pima counties in 1990
From: "Transfer of Juveniles to Adult Courts," M.A. Bortner, 1992.

Who Is Transferred?

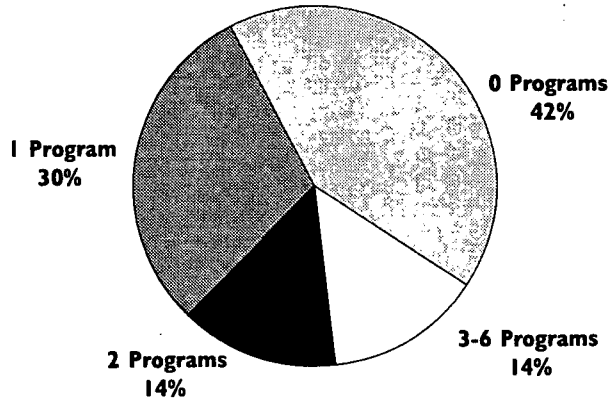
Many people assume that juveniles who are transferred to the adult system received a number of services from the juvenile justice system and did not respond to such services. Transfer is often described as the final choice, only used after all alternatives have been exhausted. However, transfer data contradict this assumption. As Chart 7 shows, ***a significant percentage of transferred youth do not receive any program services prior to transfer.***

Some groups of juveniles are more likely than others to be transferred including male youth, 17-year-olds, and minority juveniles. How juvenile characteristics influence juvenile justice decisions is a controversial subject. As Professor Peg Bortner, the author of the study of 1990 transfers, has noted:

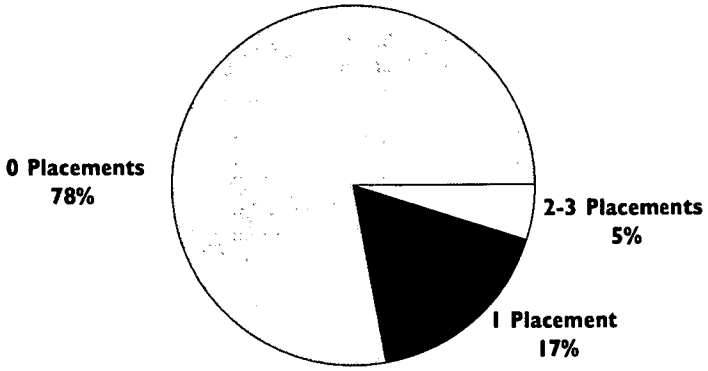
Chart 7

SERVICES FOR JUVENILES TRANSFERRED TO ADULT COURT

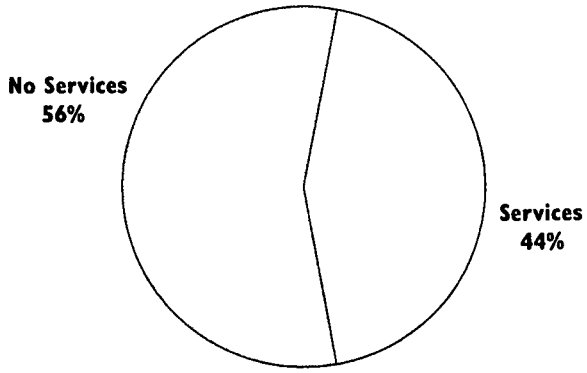
42% had no program services before being transferred to Adult Court



No placement for 78% of the Juveniles transferred to Adult Court



More than 50% received no services from DYTR



Based on 133 juveniles transferred to adult court in Maricopa and Pima counties in 1990.
From: "Transfer of Juveniles to Adult Courts," M.A. Bortner, 1992.

"When a characteristic such as a juvenile's age influences the transfer decision, it is considered an understandable and more legitimate influence ... when a juvenile's race/ethnicity or gender appear to affect decision-making, the influence is viewed as illegitimate."

The transfer research from 1990 also revealed that:

★ Of youth transferred, 84 percent were 17 years old.

★ Almost all juveniles transferred (98 percent) were males.

★ The percentage of anglo youths transferred was significantly lower (45 percent) than their rate of referral to the juvenile court in Maricopa County (55 percent).

★ The percentage of black youths transferred was significantly higher (25 percent) than their rate of referral to the juvenile court in Maricopa County (12 percent).

★ The percentage of hispanic youths transferred was slightly lower (28 percent) than their rate of referral to the juvenile court in Maricopa County (30 percent).

★ Of the juveniles transferred to the adult system, 14 percent had no prior referrals to juvenile court in Maricopa County.

The disproportionate number of minority youth who are transferred holds true even when accounting for prior delinquency and types of offenses. This issue of minority over-representation in the juvenile justice system is covered in greater detail later in this section.

Transfer Trends

While the number of juveniles actually transferred to the adult system remains very small ***the percentage of juveniles transferred to the adult system has increased dramatically over the past 13 years.*** In Maricopa County, for example, there were 102 juveniles transferred in 1980. That number increased to 231 cases in 1992 (an increase of more than 100 percent). While the number of juveniles in the general population also increased during this 12 year period, population growth alone cannot explain the sharp rise in transfers. Statewide data indicate that approximately 300 or more juveniles were transferred during fiscal year 1993. This trend is expected to increase given recent changes in court rules that incorporate a presumptive transfer approach.

Chart 8 shows the total number of children transferred to adult court in Maricopa County from 1980 through 1992.

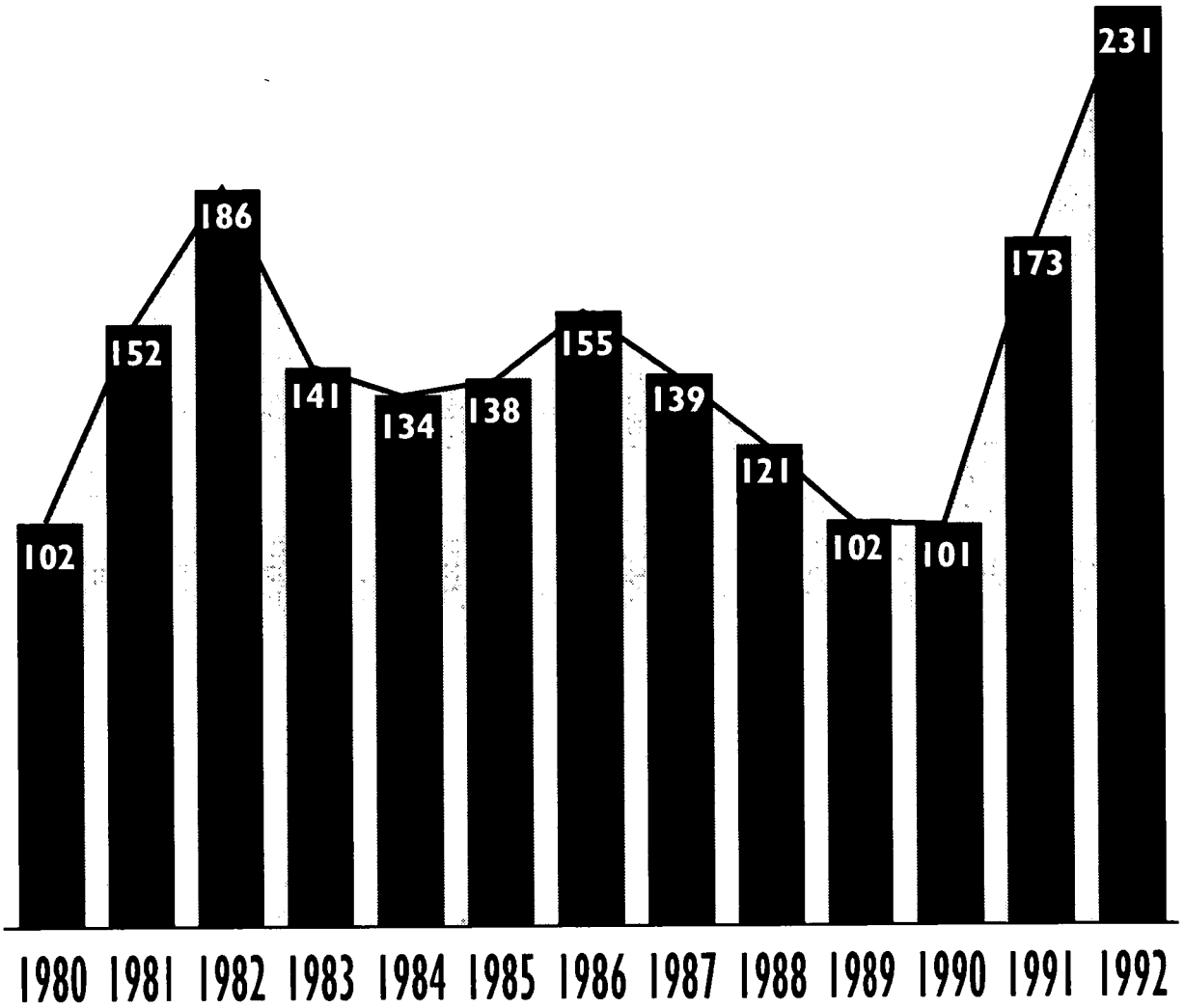
What Happens to Juveniles Who Are Transferred?

The primary purpose for transfer is to provide more meaningful sanctions for youths who cannot be served by the juvenile justice system. Theoretically, one would think that youths transferred to the adult system receive harsher penalties and/or closer supervision than in the juvenile system. However, this is not the case, as Chart 9 indicates.

The adult court dispositions of transferred juveniles shows that the majority of youth receive probation following transfer. This information seems to contradict the notion that youths receive harsher sanctions as a result of transfer. Given this possible contradiction, however, another important measure

Chart 8

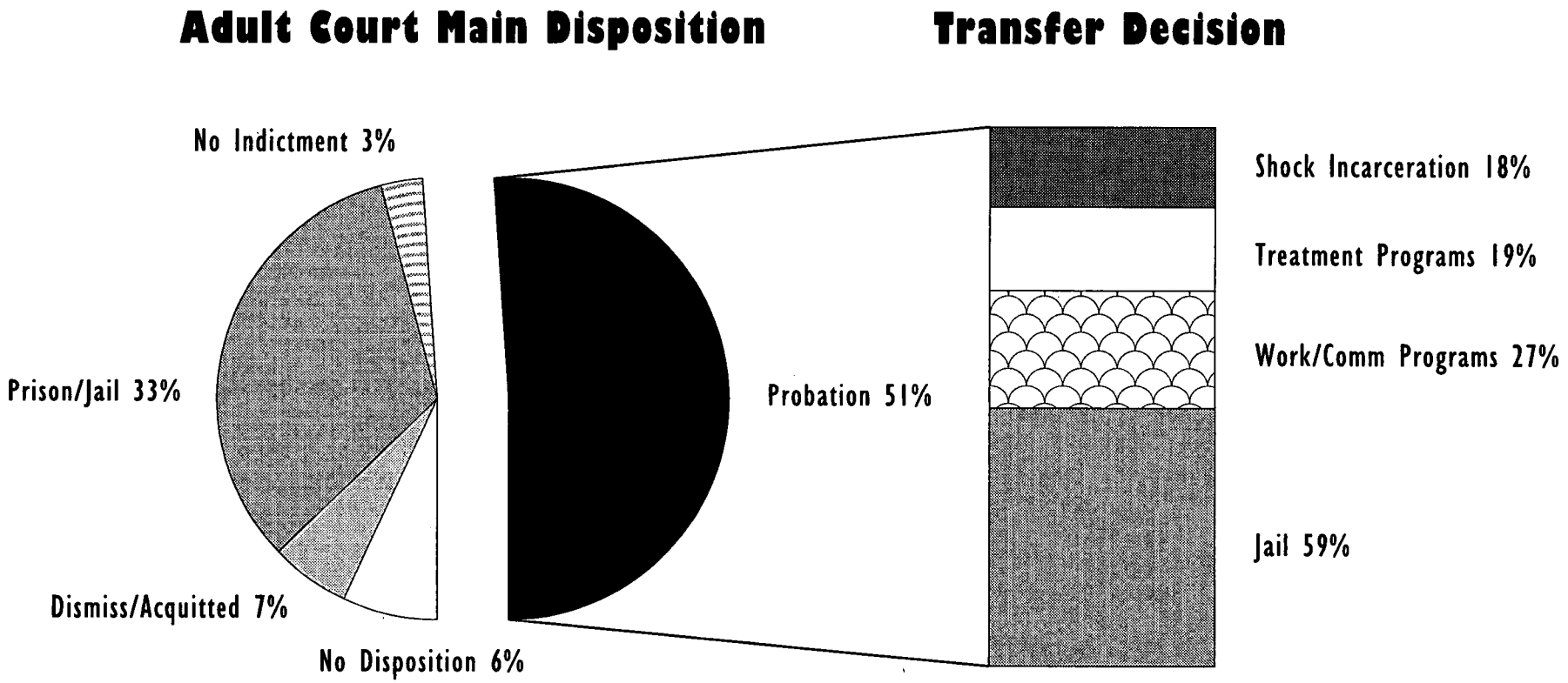
MARICOPA COUNTY JUVENILE COURT CENTER
NUMBER OF CHILDREN TRANSFERRED
1980-1992



Source: Maricopa County Juvenile Court, 1993

Chart 9

ADULT COURT DISPOSITIONS OF TRANSFERRED JUVENILES



Data are for 133 juveniles from Maricopa and Pima counties in 1990
Source: Peg Bortner, "Transfer of Juveniles to Adult Courts"

of transfer involves reoffending rates of transferred youths versus those who were not transferred. Chart 10 contains six month recidivism rates for youths transferred and denied transfer in 1992 in Maricopa County.

The youths transferred to the adult system have a slightly higher recidivism rate than those juveniles who were not transferred. To many professionals working in the juvenile justice system this finding is not a surprise. These individuals believe that the juvenile justice system is more capable of supervising most youths and has more resources at its disposal in comparison with the criminal justice system. Unfortunately, once transferred, a youth is not eligible for treatment programs serving the juvenile system. In some cases (e.g., juveniles convicted of sexual offenses in adult court), the lack of appropriate services may contribute to the slightly higher reoffending rates of transferred youths.

The absence of appropriate services in the adult system for transferred juveniles poses an important dilemma. On the one hand, as we have already noted, the number of transfers is likely to increase over the next few years. On the other hand, there are few effective services in the adult system for transferred juveniles. Some court officials feel this situation requires additional funding for the adult system in order to meet both the needs of transferred youth and the need for enhanced community protection. Critics concerned about the increasing number of transfers emphasize that putting additional resources in the adult system will draw even more young people toward transfer and drain resources from the juvenile system. This paradox offers no easy solutions.

Would Automatically Transferring Some Juveniles Have A Deterrent Effect?

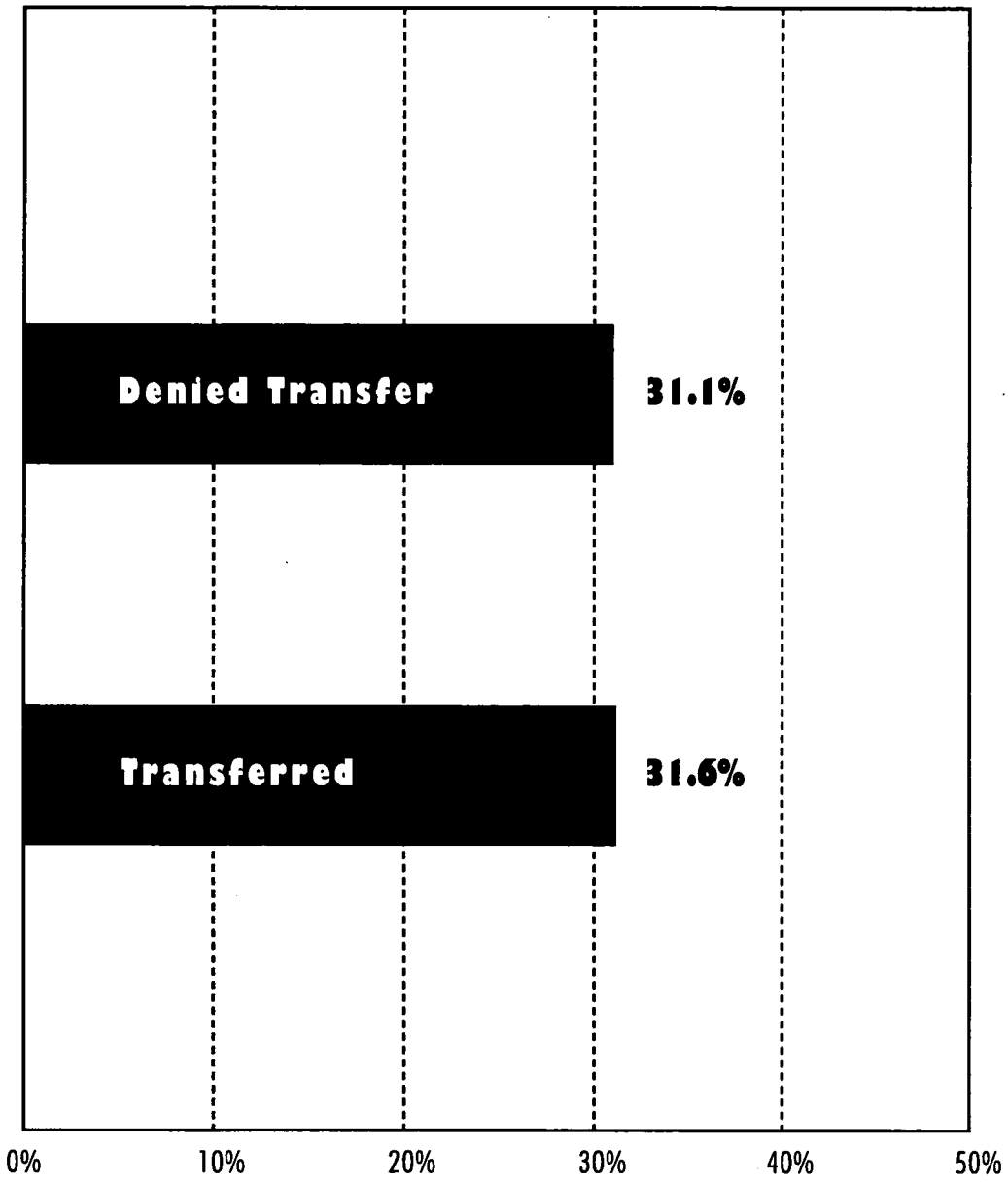
The State of Idaho revised its waiver (transfer) statute in 1981 mandating the automatic transfer of juveniles aged 14 to 18 years who were accused of any one of five offenses: murder of any degree or attempted murder, robbery, forcible rape, mayhem (e.g., dismemberment or severe disfigurement), and assault or battery with the attempt to commit any of the above crimes. The two primary reasons for this legislative change were to protect public safety (through incapacitation and deterrence) and enact more severe sanctions for serious juvenile offenders.

A study of the impact of the Idaho transfer law found that the statute change did not deter violent juvenile crime rates as measured by arrests for homicide, forcible rape, robbery, and aggravated assault. ***Average arrest rates for violent juvenile crimes decreased in two comparison states that did not have automatic transfer. The arrest rates for violent juvenile crimes in Idaho, however, increased significantly during a five-year period following enactment of the statute.***

The preliminary recidivism analysis in Maricopa County and the Idaho example raise serious questions regarding the public safety benefits of automatic transfer to the criminal justice system. Analyses of juvenile transfer practices in Maricopa County indicate that juvenile courts do transfer the majority of youths who would be transferred under an automatic transfer provision. In 1992, for example, the juvenile court in Maricopa County granted 63 percent of the transfers requested by county prosecutors. During that same period the percentage of

Chart 10

MARICOPA COUNTY JUVENILE COURT CENTER SIX-MONTH RECIDIVISM RATES BY TRANSFER DECISION 1992



Source: Maricopa County Juvenile Court, 1993

transfer requests withdrawn[11] by county prosecutors (38 percent) exceeded the percentage of transfer requests denied by the juvenile court (37 percent). This finding raises some questions about the perceived leniency of juvenile court judges.

Over-Representation of Minority Youths in the Juvenile Justice System

There is a disproportionate number of minority youths in Arizona's juvenile justice system. By disproportionate, we mean that the percentage of youths of different ethnic groups exceeds their proportions in the general population. The over-representation of youths of color has become an important issue in Arizona and other states. The federal government (through the Office of Juvenile Justice and Delinquency Prevention) has distributed funds to Arizona and others to develop programs intended to reduce this over-representation.

In 1992, the Arizona Juvenile Justice Advisory Council initiated a comprehensive study on the equitable treatment of minority youth. This study examined data from 1990 in Maricopa and Pima Counties, as well as data from DYTR. The study found that over-representation of minority youth:

- ★ exists at several specific points in the juvenile justice system
- ★ cannot be explained by factors such as seriousness of offense or number of prior referrals
- ★ is not the same for all minority juveniles; impacts vary with minority group
- ★ varies from county to county and from agency to agency
- ★ has cumulative effects; decisions at one stage influence subsequent decisions
- ★ is of serious concern to many system officials who sincerely desire equity for youth

Chart 11 shows representation of youth (from Maricopa County) at major decision points in the juvenile justice system. The data above and in the chart show that at almost all decision points different minority groups are more likely to be referred, more likely to be detained, more likely to be committed to DYTR, and more likely to be transferred to the adult system than their percentages in the general population. Coincidentally, minority juveniles are less likely to receive treatment services before DYTR commitment or transfer.

Gangs

At present, it is not against the law to be a member of a gang. As a result, the juvenile courts have not kept official data on the extent of gang membership. However, the State Department of Public Safety has developed criteria for defining gang membership (referred to as Gang Membership Identification Criteria or GMIC). These criteria are used by all law enforcement agencies in Arizona for investigative purposes and to estimate the extent of gang involvement. GMIC

[11] Prosecutors may "withdraw" their requests to transfer juveniles to adult court for a variety of reasons including the quality of evidence, new information about the case, the perceived likelihood that a particular judge will grant the transfer request or other considerations.

contains six factors, at least two of which must be present in order to consider someone a gang member. The six factors are:

1. Self Proclamation (e.g., statements of gang membership, assignment to protective custody, etc.)
2. Witness Testimony/Statements (e.g., person testifying in court, person giving deposition or other official statement)
3. Correspondence (written/electronic — e.g., information gathered that makes any type of reference to any gang member — for example, a letter stating the gang membership of another inmate; may include tapes, notes, documents, etc.)
4. Paraphernalia and Photographs (e.g., gang photographs intercepted, paraphernalia suggesting gang affiliation: belt buckle, ring, drawing, etc.)
5. Tattoos (e.g., wearing of specific gang tattoo and/or nicknames)
6. Clothing/Colors (e.g., observations of types of clothing, patches, and colors worn to indicate type of gang affiliation).

Some concerned citizens fear that the use of gang membership as an aggravating factor in criminal or delinquency proceedings will have disproportionate impact on minority youths. The use of gang membership criteria in the Denver metropolitan area, for example, led to the discovery that over 60 percent of all black male adolescents had been identified as possible gang members by area law enforcement agencies. Arizona state legislative changes in 1994 enable gang membership to be used as an aggravating factor (meaning that more serious sanctions may be imposed if the defendant is a gang member). This legislation:

★ incorporates the GMIC criteria as the legal definition of a criminal street gang member and includes "any other indicia of street gang membership"

★ restricts the suspended sentence, probation, pardon or release of a person convicted of any felony related to street gang activity

★ increases the presumptive minimum and maximum sentence for gang-related criminal activity by three years

★ authorizes DPS to establish a street gang enforcement revolving fund

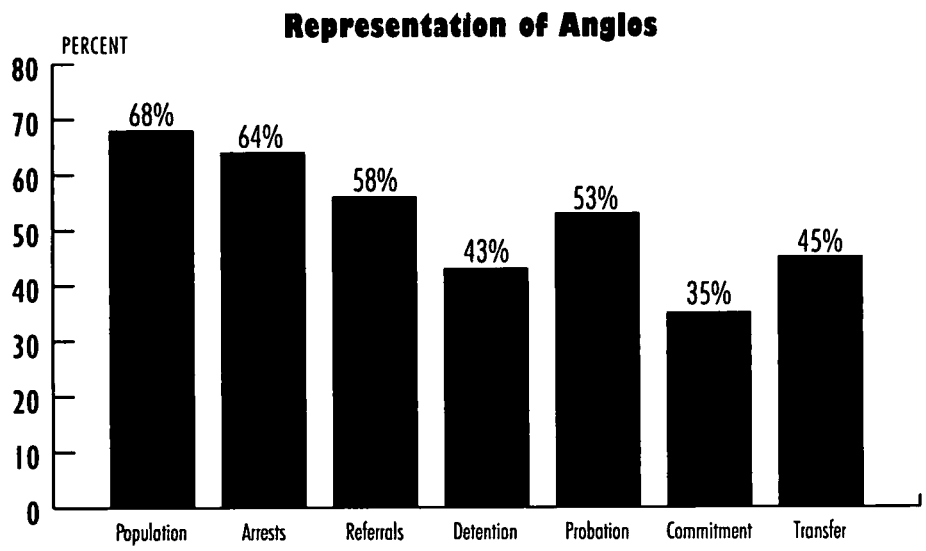
These changes may influence the extent of over-representation of minority youths.

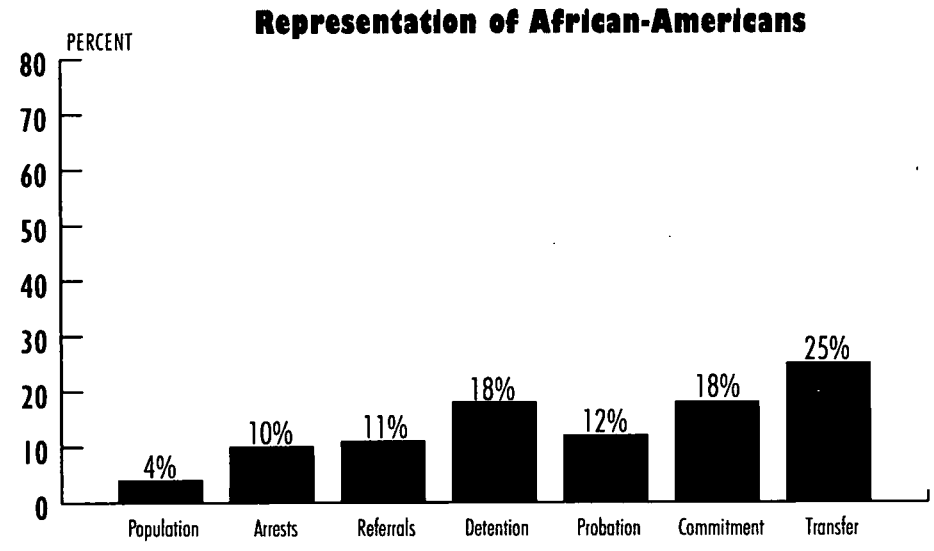
Confidentiality

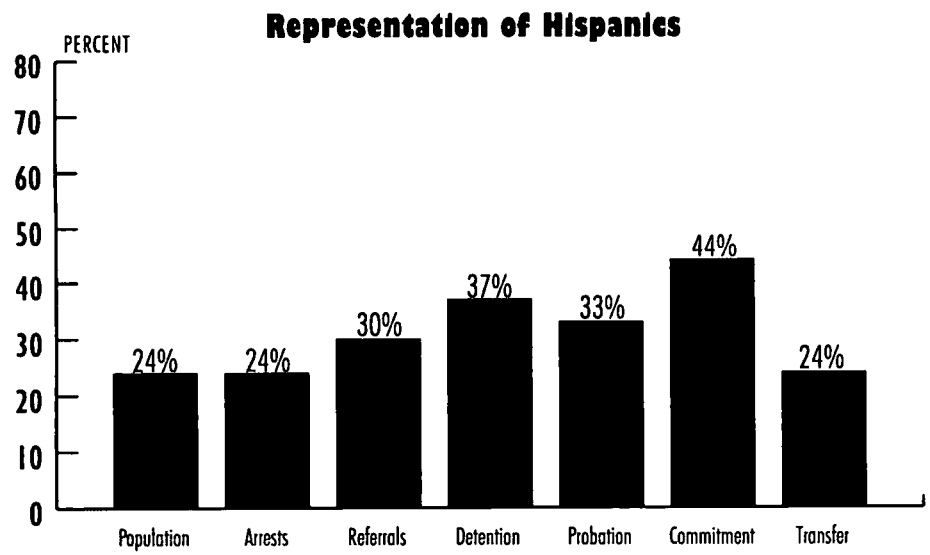
Proponents of the early juvenile courts claimed that confidentiality was essential for protecting the best interests of children. Today, a growing number of critics view confidentiality as a veil keeping the juvenile court and juvenile justice system from public scrutiny. Other skeptics feel that confidentiality is often used as a shield by the courts and public agencies to inhibit or prevent independent review of agency practices. In some states, public frustration with the insulated nature of the system has led to legislation allowing the use of juvenile records in adult sentencing matters. Newspapers and other media now publish the names of juvenile suspects in cases alleging serious or violent crimes. Given public concern about juvenile crime, it seems likely that the system's historical emphasis on confidentiality will continue to dissipate.

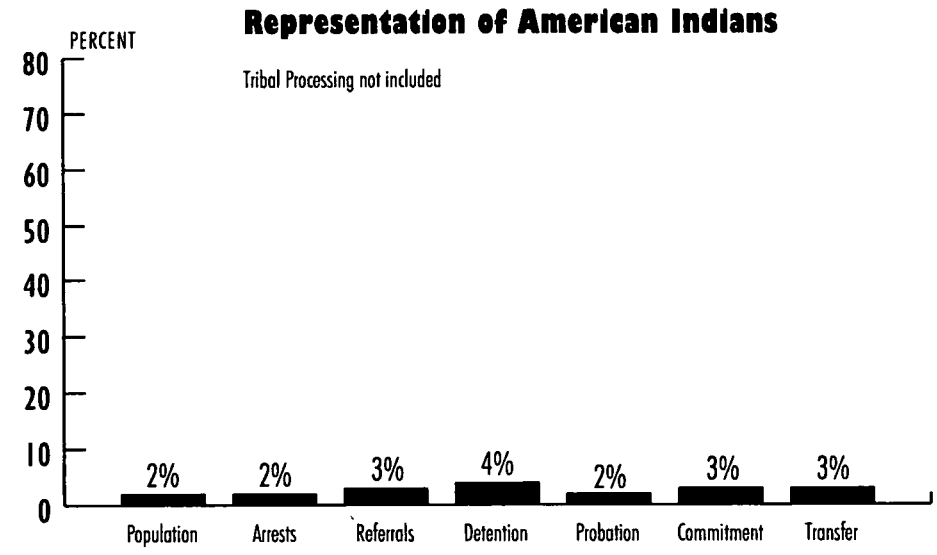
Chart 11

REPRESENTATION OF YOUTH (8-17 YEARS) AT MAJOR DECISION POINTS IN MARICOPA COUNTY, 1990









These graphs present frequencies. Other relevant factors (e.g. seriousness of offense, prior record, and age) have not been controlled.
Source: Peg Bortner, "Transfer of Juveniles to Adult Courts"

The Arizona Supreme Court recently initiated an experimental two-year program that will lift some of the veil of confidentiality from some categories of traditionally closed juvenile proceedings. The experimental changes, which will apply in all juvenile courts from January 1, 1995 until December 31, 1996, will mandate open hearings and records in cases involving serious or dangerous felonies or possession or use of firearms, unless the juvenile judge makes specific written findings explaining why the hearings and records should not be open. All transfer proceedings (hearings held to determine if a juvenile should be tried as an adult) will also be open to the public. After these changes have been in progress for one year, the Supreme Court will consider the possibility of opening all juvenile proceedings for public scrutiny regardless of the charges. Public comment will be solicited at that time.

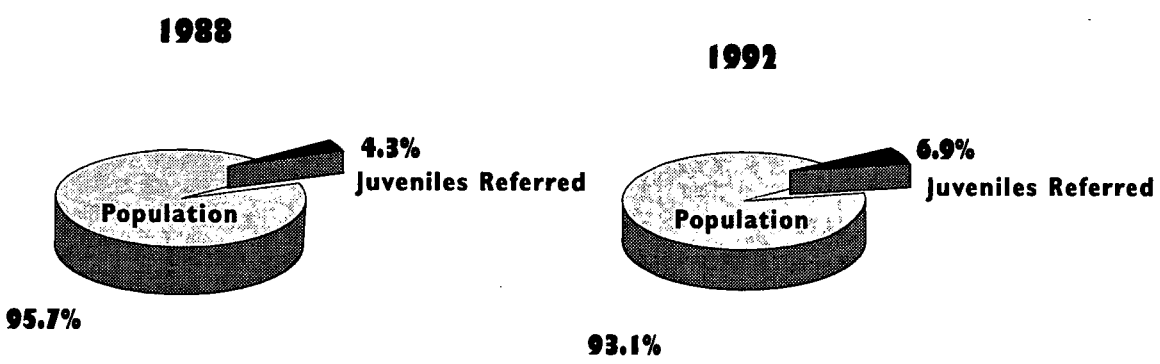
Juvenile Violence

Concerns about violent juvenile crime seem to have reached an all-time high, but are these concerns mirrored by official data? Some observers feel that characterizing this increase as an epidemic may be stretching things too far.

As noted previously, the percentage of juveniles referred for any crime has decreased over the past five years. However, based on Uniform Crime Report (arrest) data, ***the percentage of juvenile referrals that involve violent offenses has increased in the past five years.*** This increase in the percentage of referrals involving violence appears to be specific to Maricopa County. According to AOC reports, in 1986 approximately the same number of Maricopa County youths were arrested for violent crimes as were arrested in all other Arizona counties. However, by 1992, almost twice the number of Maricopa County youths were arrested for violent crimes as were youths in all other counties. The following pie charts show violent juvenile referrals for 1988 and 1992 in Maricopa County:

Chart 12

VIOLENT JUVENILE REFERRALS IN MARICOPA COUNTY



Comparisons of data that involve relatively short periods of time (e.g. five years) may not show the whole picture. Similarly, charts that combine different types of crimes into a single category of violent crimes may also distort the picture.

Juveniles and Firearms

The public is clearly concerned about the apparent increase in incidents involving juveniles and guns. In the 1994 legislative session, Arizona's legislature passed House Bill 2131. On the one hand, this legislation allows adults to carry concealed weapons if they obtain an official permit. For juveniles, this bill:

★ upgrades the provision of selling a firearm to a minor (except in very limited circumstances) from a Class 2 misdemeanor to a Class 6 felony

★ defines a youth who illegally possesses a firearm as a delinquent rather than an incorrigible youth (According to federal definitions and commonly accepted practice, delinquent offenses are those offenses that are against the law for both adults and children, whereas incorrigible acts only apply to juveniles; this provision of HB 2131 represents a move away from that practice in Arizona)

★ allows the suspension of a violator's driver's license or eligibility to obtain a license to be suspended until age 18

★ allows parents who *reasonably should have known* to be liable for any actual damages resulting from unlawful use of a firearm by their child

★ mandates that school personnel report violations of this law by juveniles

Increasing sanctions for firearm possession by juveniles seems to have growing support. However, it is unclear whether these and other changes (e.g., making illegal possession of alcohol by a minor a delinquent act) place Arizona in violation of the federal juvenile justice and delinquency prevention act.

Why Do Some Juveniles Carry Guns?

A recent study funded by the National Institute of Justice sought to determine the number and types of firearms owned and/or carried by juveniles and the reasons for firearm possession. This research looked at a sample of serious male juvenile offenders incarcerated in correctional centers in four states and a sample of male students in 10 inner-city high schools. The study found that:

★ 83 percent of the incarcerated juveniles and 22 percent of the students possessed guns.

★ 55 percent of incarcerated juveniles carried guns all or most of the time in the year or two before being incarcerated; 12 percent of the students did so, with another 23 percent carrying guns now and then.

★ Most of those surveyed said it would be easy to acquire a gun.

★ 45 percent of the incarcerated juveniles and 53 percent of the students said they would borrow a gun from family or friends; 54 percent of the incarcerated youth and 37 percent of the students said they would get one off the street.

★ The main reason given for owning or carrying a gun was self-protection; use in crime was not the most important factor in the decision to carry guns, nor was impressing one's peers.

The findings of this study reflect some disturbing implications regarding juvenile firearm possession. These implications include:

★ Owning and carrying guns are fairly common behaviors among youth with serious criminal histories and among students in troubled inner-city schools.

★ Firearms possessed by youth tend to be well-made, easy to shoot, accurate, reliable guns.

★ For the majority of sampled youth, self-protection in a hostile and violent world was the chief reason to own and carry a gun.

★ Controls imposed at the point of retail sale likely would be ineffective, at least by themselves, in preventing gun acquisition (youth rarely obtain their guns through such customary outlets).

★ Handguns of all types, and even military-style rifles, are readily available through theft from legitimate sources and can be had at relatively little cost.

★ An effective gun ownership policy, of necessity, must confront the issue of firearm theft.

As the following quote from the researchers reveals, constructive public policies covering juveniles and guns must include efforts to make juveniles feel safer in their communities:

"The problem is less one of getting guns out of the hands of juveniles and more one of reducing motivations (for the sample, primarily self-preservation) for youth to arm themselves in the first place. Convincing juveniles not to own, carry, and use guns will therefore require convincing them that they can survive in their neighborhoods without being armed."

Status Offenses

A status offense is an act that would not be considered a crime if committed by an adult. For many workers in the juvenile justice system, status offenders represent persistent sources of frustration. Effectively serving youths who run away from home or treatment programs, refuse to attend school, drink alcohol, or exhibit other troublesome behaviors represents a major challenge. The current system can use all of the same sanctions for incorrigible youth as delinquent youth, except for incarceration. As our system exists now, the juvenile courts are most often responsible for responding to these types of problems. In other states, other agencies (e.g., public or private social service agencies) are responsible for the needs of incorrigible youths.

The growing frustration with incorrigible juveniles and the need for early intervention have resulted in the redefining of certain status offenses and more serious sanctions for other incorrigible acts. As noted above, we have already seen some status offenses (e.g., illegal possession of alcohol and possession of a firearm) redefined as delinquent acts. House Bill 2504, passed during the 1994 Arizona state legislative session, contains the following provisions:

★ Illegal possession of alcohol by juveniles is now a delinquent act.

★ Youth can be fined up to $500 or ordered to perform community service.

★ Fines for incorrigible youth are increased from $50 to $150.

★ Parents will be found guilty of a Class 3 misdemeanor for not requiring youth to attend school.

★ Youth between the ages of 6 and 16 who are truant can be cited and brought before a court. This bill also allows youth of these ages who are habitually truant to be adjudicated incorrigible.[12]

By redefining certain acts as delinquent rather than incorrigible, juveniles who exhibit these behaviors are subject to the formal sanctions of the juvenile court including detention and, potentially, commitment to the state. These represent harsher penalties for behaviors that would result in no sanctions for adults.

Inconsistent Decision-Making

As noted earlier, decision-making in the juvenile justice system may be characterized by great inconsistency. This promotes inequity, undermines the system's ability to focus on serious offenders and hold all youth accountable, and makes meaningful planning and evaluation extremely difficult.

The juvenile courts and DYTR do not use a consistent classification method or structured decision-making tool. These tools usually involve risk and needs assessments. The risk assessment typically provides a measure of a youth's likelihood of subsequent referral or adjudication. Needs assessments typically offer a consistent framework for describing the treatment or service needs of a juvenile.

Senate Bill 1356, passed during the 1994 legislative session, requires a system-wide risk and needs assessment model which represents a step in the right direction. A uniform risk and needs assessment model should result in more consistent decisions and less dependence on individual discretion. However, the actual development of the model and its impact require on-going monitoring and evaluation to assess outcomes. These outcomes should include improved public safety, improved access to appropriate services, equitable treatment of all youth, and other considerations.

Reform vs. Abolition of the Juvenile Court

There is a growing movement in Arizona and elsewhere to abolish the juvenile court and children's services system as it exists today. Support for the abolitionist movement stems from a number of factors including:

★ the juvenile justice system's inability to demonstrate positive impact (including public safety and rehabilitation effects)

★ the lack of consistent information

★ the closed nature of the juvenile system

★ the emphasis on procedures instead of a focus on substantive outcomes

Proponents of the abolitionist perspective call for reliance on the adult model to replace the juvenile justice system. Abolitionist supporters also advocate for the transfer of juvenile justice system responsibilities from the judicial branch to the executive branch.

Some abolitionists call for establishment of a single children's services agency under the executive branch of government. This agency would oversee all government funds and services for children including dependent and delinquent youth. They believe there is an inherent conflict of interest in

[12] Statutes currently define youth under the age of eight who engage in such behavior as dependent, not incorrigible or delinquent, and so how this will work is unclear.

allowing the judicial branch to perform what should be an executive branch function.

Critics of the abolitionist position note that the adult system has not demonstrated its capacity to protect the public or change offender behavior. Skeptics of creating a single children's services agency question the benefits of one bureaucracy over another. They point to past experiences where executive branch agencies failed to adequately manage treatment funds for the juvenile courts.

The difficulties faced by the juvenile justice system stem in large part, as has been noted, from its dual mission to protect the public and to serve the best interests of children. This conflict also fuels the political tension between abolitionists and persons who believe the system can be reformed.

As this debate continutes, it is imperative to keep in mind our conceptualization of children. Whatever system model one supports, one must recognize that ***children are not little adults***. Any system must take this difference into account.

"Getting Smart" about Juvenile Crime versus "Get Tough" Rhetoric

Notions like automatic transfer and more punitive incarceration facilities do not equate with improved public safety or reduced taxpayer expense. The desire for more punitive sanctions must be tempered with an understanding that institutions must be safe for both kids and staff. Institutions that take on punitive models invariably experience high incidences of staff assaults, assaults by kids on other kids, and negative impacts on post-release recidivism.

Our juvenile justice system must do a better job of studying what works with certain groups of offenders and then find ways to expand these effective programs. Secure facilities and detention centers must be viewed as expensive resources designed for the most serious and risky offenders. The public must recognize that we cannot lock everyone up forever. Yes, there are costs and risks associated with community-based alternatives, but can we really afford to incarcerate every youth referred to the court more than twice? Public policies based on emotional tides and political posturing do nothing to improve the safety of our communities or the lives of young people.

6. Looking Ahead: What You Can Do

In our brief historical overview of the juvenile justice system, we emphasized the continuing dilemma faced by the juvenile justice system — the struggle to protect society and serve the best interests of children. The public's impatience with the juvenile justice system and the growing pressures faced by the system may lead to profound changes. Whether these changes result in a re-conceptualization of children as little adults depends largely on the action or inaction of the public. The overriding goal of The Juvenile Justice Project is to increase citizen awareness of and involvement in the juvenile justice system. We hope this handbook has helped to promote this goal.

For those interested in becoming active, a companion piece to this handbook, called *A Citizen's Guide to Fact-Finding and Action in the Juvenile Justice System*, is available through TJJP. This guide includes specific action people can take at the local and state level to ensure their voices are heard. It contains a listing of relevant questions and issues to be discussed with local and state officials.

With this basic foundation, advocates will be able to participate in public policy discussions surrounding juvenile justice. They will be able to ask important questions and gain a better sense of the ways in which their tax dollars are spent and the impact of such expenditures. Most important, the development of this constituency should result in an unprecedented level of participation in the formation of juvenile justice policies of our state.

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STATEWIDE OFFICE

The Juvenile Justice Project of
CHILDREN'S ACTION ALLIANCE
4001 N. 3rd St., Suite 160
Phoenix, Arizona 85012
Tel. (602) 266-0707
FAX (602) 263-8792

IN TUCSON

Southern Arizona Office
3443 N. Campbell Ave.
Tucson, Arizona 85719
Tel. (520) 795-4199, ext. 18
Fax (520) 795-5499