

A BRIEFING PAPER BY THE ACLU OF ARIZONA

★ JULY 2011 ★

Protecting What Works

Juvenile Diversion in Maricopa County



Acknowledgements

This report was written by Annie Lai with assistance from Samantha Blons. Special thanks to David Hintze, who conducted interviews with juvenile defenders, probation department staff, private diversion contractors, and court personnel. His research and contributions to this project were invaluable.

We also thank the juvenile justice community members and stakeholders who agreed to be interviewed for this project.

Finally, we are grateful to Phil Stevenson, Chris Phillis of the Maricopa County Juvenile Public Defender's Office, Barbara Marshall of the Maricopa County Attorney's Office, and to the Children's Action Alliance Juvenile Justice Advisory Committee for providing valuable feedback for this paper, and for their commitment to juvenile justice in Arizona.

About the ACLU of Arizona

The American Civil Liberties Union of Arizona is the state's premier guardian of liberty, working daily in the courts, legislature and communities to defend and preserve individual rights and freedoms guaranteed to all by the Constitution and the laws of the United States and Arizona. The ACLU of Arizona is an affiliate of the ACLU, the largest civil liberties organization in the country, with more than 500,000 members.

This report was written in partnership with the ACLU Racial Justice Project, which aims to preserve and extend the constitutional rights of people of color. Through advocacy efforts including litigation, community organizing and training, legislative initiatives, and public education, we strive to educate and empower the public.

The ACLU of Arizona and the ACLU Racial Justice Program are committed to challenging the "school to prison pipeline," a disturbing national trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems. The ACLU also works to ensure adequate representation, decent care during periods of incarceration, and other rights for youth in the juvenile justice system.



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Published July 2011

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Introduction

In 2010, four percent of Arizona's youth, or 41,040 juveniles, received at least one delinquency referral to the juvenile justice system.¹ About half of these youth had not had any previous contact with the justice system, and 66 percent were referred for misdemeanors or status offenses.² Fortunately, the rate of juveniles referred to the justice system who are being diverted is on the rise. Diversion is a process by which juveniles can avoid formal court processing, and therefore, a delinquency record, by successfully completing one or more diversion "consequences." The consequences can range from writing an apology to community service, counseling, or teen court. In 2010, 46% of the youth referred were diverted.³ Two-thirds of the youth diverted had never been referred to the court before.⁴ More than 86% of these youth had one prior referral or less, and 83% were referred for non-felony offenses.⁵

The concept of diversion has been around since the early days of the juvenile justice system. It is based on evidence that processing youth offenders through the court system can do more harm than good. Indeed, court involvement for low-level offenders has been shown to be related to lower educational attainment, more limited employment prospects and higher rates of reoffending. By handling such cases outside of the formal system, courts and prosecutors can avoid exacerbating these effects and also reduce the strain on overloaded dockets.

In 1967, partly in response to concerns that processing youth through the formal system could lead to further delinquency, the President's Commission on Law Enforcement and the Administration of Justice called on communities to establish local youth agencies or bureaus that could serve as an alternative to putting youths through court.⁶ The Commission's recommendation led to a proliferation in diversion programs in the late 1960s and 1970s. Today, most diversion programs are no longer sustained by federal grants, but by state and local funding sources. As these budgets continue to get slashed, policymakers will undoubtedly face pressure to reduce the investment in good quality diversion programs and shift more of the cost onto the families of referred youth who may not be able to afford the cost. This would be a mistake. Diversion offers an important opportunity for many young people who, with limited intervention, need never return to the juvenile justice system. By investing in diversion, we not only increase the chance that these youth will succeed, but also save money over the long run and enhance public safety.

In 2010, following the announcement of some significant changes to the diversion program by the local county attorney's office, the ACLU of Arizona undertook an investigation of juvenile diversion in Maricopa County. Maricopa County contains 60% of the state's population and is home to the large metropolitan community of Phoenix.⁷ It handles just over half of the state's juvenile referrals and an almost equal share of the diversion.⁸ As part of its investigation, the ACLU of Arizona examined data from the juvenile court, probation department and two private contractors that were retained by the Maricopa County Attorney's Office (MCAO) to provide fee-based diversion services. The ACLU also interviewed court and probation department staff, juvenile defenders, a juvenile prosecutor, and representatives from the private companies. This paper presents the findings and recommendations of the investigation.

How Juvenile Diversion Works in Arizona

In Arizona, for cases processed through the 15 county juvenile courts, the authority to decide whether or not a case will be eligible for diversion rests with the prosecutor, or county attorney.⁹ However, the county attorney may designate certain offenses that are eligible for diversion, and those cases that fall within the criteria set by the county attorney may be handled directly by juvenile court probation officers assigned to diversion. Alternatively, the county attorney may refer diversion-eligible cases to an approved program in the community.¹⁰ Cities and towns can also establish their own diversion programs, but starting in 2009, those programs must also be pre-approved by the county attorney.¹¹

Whether diversion is administered by the juvenile court or by a provider approved by the county attorney's office, in order to participate, the juvenile must acknowledge responsibility for the offense.¹² The juvenile must also complete each of the consequences imposed, including, where applicable, the payment of restitution to the victim.¹³ Participation in diversion cannot be used against the juvenile in any future proceeding.¹⁴ If the juvenile successfully completes diversion, the county attorney will not file any charges in court and the juvenile will be able to avoid a delinquency record.¹⁵

There are certain offenses that are always ineligible for diversion under Arizona law. For example, a juvenile that is referred for driving under the influence or related offenses will not be eligible for diversion.¹⁶ Chronic and violent felony offenders are also ineligible.¹⁷ In 2008, "dangerous offenses" involving the use or threatening exhibition of a deadly weapon or dangerous instrument were added to the list of ineligible offenses.¹⁸ And in 2009, lawmakers amended the law again to exclude juveniles referred for any alcohol or drug offense from diversion if they had participated in a diversion program twice in the preceding 24 months.¹⁹ Further, juveniles that are detained for any offense for more than 24 hours will be ineligible for diversion since a petition must be filed within that time period by law.²⁰

Juvenile diversion programs are funded through a combination of state grants, county appropriations and fees collected from the families participating in diversion. Each year, the Administrative Office of the Courts of the Arizona Supreme Court (AOC) calculates a "per juvenile" reimbursement rate for the provision of diversion services. The juvenile courts then receive a grant based on the number of juveniles they serve through diversion. Courts are further required to assess parents a fee of \$50 unless they can demonstrate an inability to pay.²¹

Case Study: Juvenile Diversion in Maricopa County

According to data maintained by the Maricopa County Probation Department, in 2010, the juvenile court received 29,228 delinquency referrals for 21,406 youth.²² Compared to the rest of the state, a greater percentage of these youth, 62% (13,219), had not previously had a delinquency referral.²³ Like with the rest of the state, the total number of referrals in Maricopa County has been steadily dropping. This has largely been due to a reduction in the number of referrals for status offenses.²⁴ For many years, the most common referral was for truancy, but starting in 2008, when those referrals experienced a sharp decline, shoplifting took their place as the largest category of referrals. In 2010, for example, shoplifting made up 4,095 (or 14%) of total referrals.

The percentage of referrals from schools also appears to be on the decline. School referrals had been increasing steadily until 2009, but in 2010, they dropped by 51% (1,750 referrals).²⁵ The Phoenix Police Department continues to be the largest source of referrals, though referrals from the Mesa, Glendale and Chandler Police Departments each increased between 2009 and 2010.²⁶ It should be noted that referrals from law enforcement agencies can reflect referrals for incidents taking place on a school campus, made by either a school resource officer or a police officer called to the scene by school officials. For example, between 2006 and 2009, an average of 1,280 arrests of juveniles by the Phoenix Police Department each year involved a school.²⁷ A majority of these arrests were for offenses such as disorderly conduct, assault, and criminal damage.²⁸

Disproportionate minority contact with the juvenile system continues to persist. African-American youth made up 12% of the total number of youths referred, even though they represent only 4.5% of the juvenile population, according to the Arizona Department of Economic Security.²⁹ Hispanic youth made up 38.6% of total youths referred, though they represent only 33% of the juvenile population.³⁰ And Native-American youth made up 3.4% of those referred, compared to being only 1.9% of the juvenile population.³¹ More in-depth analysis reveals that minority youth are not only being referred at rates greater than their representation in the population, but that disproportionality appears to be unequally distributed across particular offense categories. Figure 1 shows the rate at which minority youth were referred in 2010 relative to the number of referrals we would expect for each group to have if referrals for that offense category reflected the group's representation in the population. African-American youths, for example, were referred for administrative offenses at a rate four times greater than we would have expected based on their representation in the referred juvenile population.

Figure 1

Source: Maricopa County Probation Department, *FY2010 Data Book*

	Felony Person	Felony Property	Obstruct	Misd Person	Drugs	Public Peace	Misd Property	Status	Admin
Af-Am	3.7	2.6	3.8	4.0	1.9	1.8	3.4	2.3	4.0
Caucasian	0.7	0.6	0.6	0.8	0.8	0.9	0.8	0.6	0.9
Hispanic	1.2	1.5	1.3	1.0	1.1	1.0	1.1	1.4	0.7
Nat-Am	2.0	1.5	2.1	2.1	2.2	1.4	1.8	2.1	3.3
API	0.2	0.4	0.3	0.6	0.6	0.4	0.8	0.3	0.6
Other	0.6	0.4	0.2	0.6	0.5	1.0	0.4	2.7	1.3

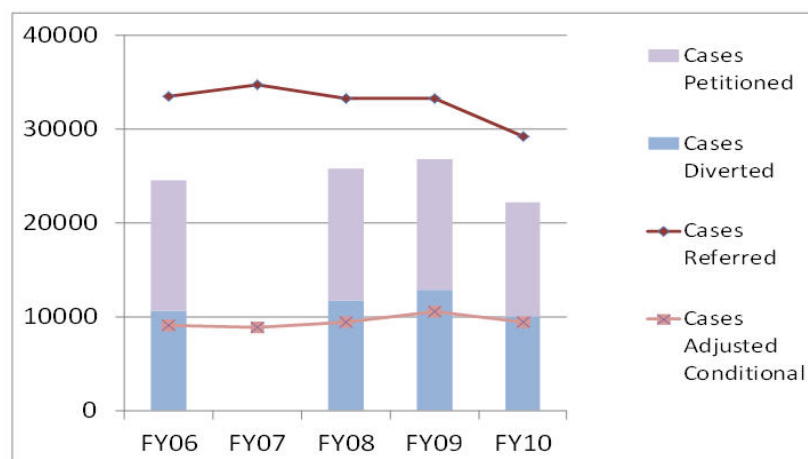
The data available for juveniles diverted indicates that minority youth in Maricopa County are being diverted at rates comparable to their share of referrals.^{32,33} However, given that those same youth are being unequally referred for particular offenses (as shown in Figure 1), and that the nature of the offense plays a significant role in determining diversion-eligibility, it seems that race or ethnicity may be playing a role in a juvenile’s chances of being offered diversion at the offense level.

Research suggests that race or ethnicity might play a role in a juvenile’s chances of being offered diversion. In 2010, ASU Professor Nancy Rodriguez published a study analyzing data from the Arizona Juvenile On-Line Tracking System (JOLTS).³⁴ After controlling for offense type, prior referrals, and socio-economic and other information, she found that African-American youth were 40% less likely than Caucasian youth to be diverted, and that Native-American youth were 27% less likely to be diverted.³⁵ In addition, because African-American, Latino, and Native-American youth are all more likely to be detained, and because detention can make a juvenile ineligible for diversion, these youth are further disadvantaged in their chances of being offered diversion.³⁶

In Maricopa County, the great majority of diversion cases are handled by the probation department of the juvenile court, by officers in the Early Intervention Unit. Rather than reviewing every case file, the county attorney’s office sets some general eligibility criteria. If a referral is determined to fit that criteria upon intake, then the case will automatically be sent to probation. If a case sent directly to the county attorney’s office is later determined to be appropriate for diversion, then the prosecutor can also refer the case to probation, or it can send the case to an approved provider of diversion services. This process was initially instituted in response to growing caseloads.³⁷ If a juvenile successfully completes diversion, the disposition of the referral is usually designated as “adjusted conditional.” Figure 2 provides an overview of available data on what happens to referrals that are diverted. Unfortunately, the probation department does not make available the total number of cases in which diversion was offered, but only where the juvenile declined diversion or where the juvenile did not successfully complete diversion and a petition was filed.³⁸

Figure 2

Source: Maricopa County Probation Department, *FY2006-FY2010 Data Books*



The Early Intervention Unit has established an array of programs for diverted juveniles. Some of these programs include:

- **Court Unified Truancy Suppression (CUTS)** > The CUTS program is a partnership between the juvenile probation department and school districts to assign consequences for truant youth designed to help them stay in school and improve their schoolwork.³⁹ The probation department has also established a program called CUTS LITE, an education and intervention program that aims to prevent truancy before a referral is made.⁴⁰
- **Community Justice Committees (CJCs)** > CJC panels, created in 1995 based on principles of restorative justice, include participation by victims, family members, and the local community.⁴¹ CJC panels are usually staffed by trained volunteers who assign consequences after receiving input from victims. The panels sit once a month and are located in over 20 locations throughout the county.⁴² The critical feature of CJC panels is that they hold the juvenile accountable in his or her own community; some new panels even have youth volunteers.⁴³ A recent study found that juveniles who went through the CJC program were 30% less likely than those who participated in other diversion programs to recidivate.⁴⁴ The effects were more pronounced for girls, and also for youths with no prior offenses.⁴⁵ Unfortunately, minority youth are less likely to be referred to the CJC program than their Caucasian counterparts.⁴⁶
- **Teen Court** > Operated in partnership with the Valley of the Sun YMCA, Teen Court is a popular diversion program that gives youth an opportunity to have their consequences decided by a jury of their peers. Teen Court jurors are trained by probation officers or other adult volunteers. Juveniles and parents participate, and victims are invited. Teen Court has been around in Maricopa County since the 1990s,⁴⁷ and as of March 2010, there were more than 1,050 teen courts operating around the nation.⁴⁸ The idea behind teen courts is that young people are more likely to listen to their peers than adults, and that exposing them to positive peer pressure can reduce recidivism.⁴⁹ Both youth who go through Teen Court as “defendants” and those who serve as jurors can develop greater respect for the legal system as a result.⁵⁰ Many youth who go through the Teen Court as defendants actually come back to serve as jurors.⁵¹ Teen Court “show up” rates are higher than for other diversion programs,⁵² and the Maricopa County Teen Court in particular has been associated with lower recidivism rates (9% versus 15% in the comparison group).⁵³
- **Standard Cite-In** > If the case is not referred to one of the specialized programs above, a probation officer will simply meet with the juvenile and assign consequences based on the nature of the offense and the characteristics of the juvenile. Cases involving domestic violence or more serious offenses may not be appropriate for Teen Court or CJC panels, and may therefore be handled by a probation officer one on one.⁵⁴ The probation officer will monitor the juvenile’s progress and confirm that the consequences have been completed.⁵⁵
- **Drug Diversion** > This program consists of approved drug education and prevention programs for youth referred for certain drug-related offenses.⁵⁶

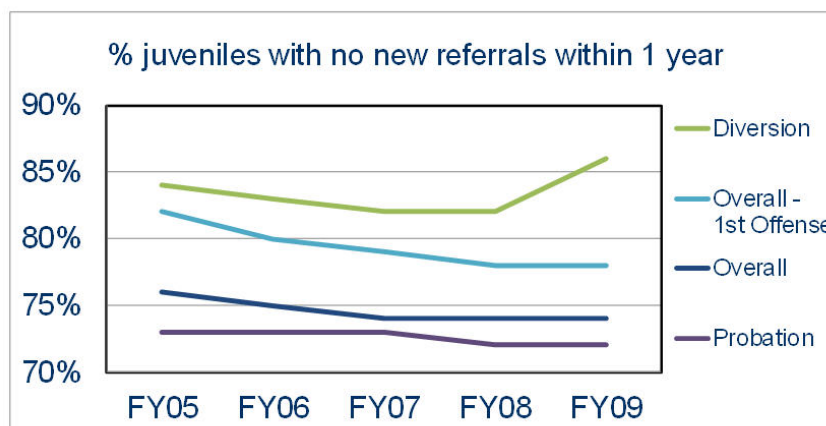
■ **City Diversion Programs** > According to the Maricopa County Juvenile Probation Department, six cities in Maricopa County also operate their own diversion programs for juveniles that have received a referral – usually a status offense or misdemeanor – in their jurisdiction.⁵⁷ Those cities will take a “first run” with the juvenile, and if the juvenile does not successfully complete the program, the case will be sent to the probation department for follow-up.⁵⁸ The referral information and outcome of the city diversion program is captured in the juvenile court’s intake system.⁵⁹ In 2010, the success rate was 73.4%.⁶⁰ Some view city diversion to be preferable because the agencies are more familiar to families and the program is usually located closer to home for the juvenile.⁶¹ This is supported by research which shows that juveniles attending diversion at neighborhood satellite offices are less likely to recidivate.⁶² Unfortunately, a recent change in the law requiring such programs to be pre-approved by the county attorney seems to have discouraged some city officials from continuing with their programs.⁶³

In 2010, the probation department reported that a total of 10,034 referrals for 9,169 youth were treated as diversion-eligible.⁶⁴ It is not entirely clear whether this data includes diversion cases handled directly by the county attorney’s office and referred to a fee-based diversion provider without going through the probation department.⁶⁵ In any event, for these 10,034 referrals, 17,194 consequences ranging from writing an apology letter to Teen Court to community service to attending counseling were assigned.⁶⁶ The overall rate of completion for these consequences was 84%, down from 98% in 2009.⁶⁷ In 2010, a total of 1,452 youth participated in Teen Court, with 86.3% successfully completing the program.⁶⁸ Another 2,435 participated in an education program, with an 85% completion rate.⁶⁹

Figure 3 compares the respective “success rates” (i.e., no new referrals within one year) for juveniles referred (first offense and overall), juveniles diverted, and juveniles adjudicated delinquent who were assigned to probation.⁷⁰ Though these figures would be more informative if they controlled for offense type, they do suggest that diversion can be a highly effective intervention for reducing recidivism.

Figure 3

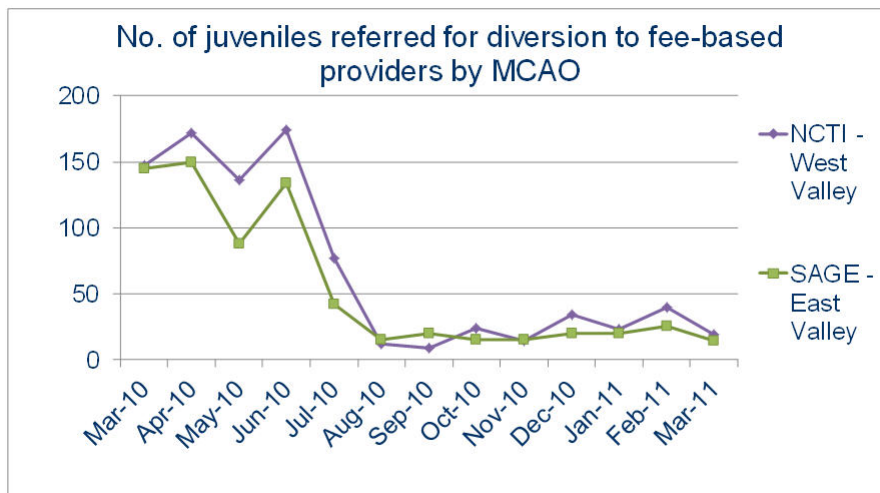
Source: Maricopa County Probation Department, *FY2010 Data Book*



In 2010, MCAO made two significant changes to diversion. First, MCAO started to send some low-level graffiti cases to fee-based diversion providers.⁷⁴ Prior to that, pursuant to a “get tough” policy of the county attorney, graffiti cases were ineligible for diversion.⁷² Second, starting in March 2010, MCAO also started to refer hundreds of shoplifting cases to the fee-based providers rather than having those cases go through the probation department.⁷³ However, after July 2010, it appears that the number of referrals to fee-based providers dropped to fewer than 50 cases a month. Figure 4 illustrates the number of cases that were referred to the West Valley provider, NCTI, and the East Valley provider, SAGE Counseling, respectively.

Figure 4

Source: NCTI and SAGE Counseling responses to public records requests



When the shift to fee-based providers was first announced, juvenile defenders were quite concerned that juveniles could be denied an opportunity to participate in diversion because they might not be able to pay the requisite fees up front. While the probation department had previously assessed parents fees (\$50 for diversion and a \$25 victim fee in cases involving a victim), families could receive a discount if payment of the fee would create financial hardship.⁷⁴ Further, the probation department did not prevent a juvenile from going ahead with a diversion program if he or she could not pay the fee, whether it was for an education class or Teen Court.⁷⁵ Juvenile defenders had several cases in which youth ended up in court simply because they could not afford to pay the fees for diversion to fee-based providers.⁷⁶ Research has confirmed that poverty will negatively impact a juvenile’s likelihood of completing diversion.⁷⁷ Figure 5 presents some basic information about the two fee-based providers and a comparison of these programs with the juvenile probation department.

Figure 5

Source: NCTI and SAGE Counseling responses to public records requests and Maricopa County Juvenile Probation Department, *FY2010 Data Book*

	NCTI (‘10 - ‘11)	SAGE (‘10 - ‘11)	Probation (‘09 - ‘10)
# referrals	881	705	10,034
% reached	93.2%	82.4%	
% completed	62.9%	62.6%	84%*
cost to juvenile	\$115	\$90+	\$50 - \$75+
% financial aid	30%	32.7%	34.8%**

* Overall rate of consequence completion (not by juvenile).

** This is an estimate based on diversion service fees collected in FY 2010.

It appears from the data that both fee-based providers actually provided partial and, to a lesser extent, full scholarships to a substantial number of families. However, these percentages (30% and 32.7%, respectively) are calculated based on the number of juveniles who showed up and completed the program. According to the data received, the show-up rate appears to be significantly lower for the private fee-based companies than for juvenile probation programs.⁷⁸ In other words, some families who decided not to complete diversion through the private companies may have done so because of the cost; the fee-based programs do not inform families about the availability of financial aid until later in the process.⁷⁹ That data would not be reflected in these numbers.⁸⁰

Both fee-based providers agreed it would not be fair for a juvenile to be denied diversion because he or she could not afford it, but they were not in a position to offer more than the scholarships and sliding scale options already available.⁸¹ Their contracts with MCAO did not provide for any mechanism to subsidize the cost of participation with public funding, and without any grant or foundation funding, they have to collect enough fees to keep the programs running.⁸²

Alternatively, juveniles could have decided not to participate in diversion based on a limited understanding of what it was. Juvenile defenders reported that this was fairly common.⁸³ Some clients believed they had already been through the court process when in fact they had only gone through diversion.⁸⁴ In fact, some juvenile public defender's offices began to take calls from families on this issue because many were declining diversion, only to realize later – after learning more about the juvenile justice system – that it would have been the juvenile's best option.^{85,86}

The juvenile court, together with juvenile defenders and prosecutors, have developed several informal mechanisms to try to address those cases in which a juvenile declines or does not complete diversion. For status offense referrals where the juvenile fails to complete diversion, the probation department and prosecutors have developed a process called “stop-react,” whereby a case will be put on hold – and a petition not filed – until the juvenile is referred for a subsequent offense.⁸⁷ In the vast majority of cases, the juvenile is not ever referred for another offense, and the juvenile does not return to the juvenile justice system.⁸⁸ These cases can still be considered “successful,” since the juvenile has not re-offended. Approximately five percent of the diversion case load consists of stop-react cases.⁸⁹ In addition, juvenile prosecutors will sometimes offer post-filing dismissals of delinquency petitions when it appears the juvenile should have been diverted.⁹⁰ However, this requires the approval of a supervisor, and juvenile defenders report that this option is not always offered.⁹¹ Prosecutors also usually condition the dismissal on the completion of diversion-like programs. However, the difference is that the probation department is not involved in the provision of those services (the agreement is now treated as a private agreement among the parties that does not involve the court), so the family has to pay for them out of their own pocket.⁹² This can introduce the same unfairness for a family that cannot afford the services as under fee-based diversion.⁹³ In addition, a post-filing dismissal still carries with it some stigma of formal court involvement, since a petition has been filed.

Advantages of Juvenile Diversion

There are a number of reasons why diversion is worth investing in. Perhaps most importantly from a policymaking point of view, diversion has been shown to decrease the likelihood that a juvenile will commit another offense. In one randomized study that compared the recidivism rate of juveniles who received the same treatment, one group with formal court involvement and one group without, researchers found that court involvement had an additional, detrimental effect on the likelihood of re-offending over a two-year period.⁹⁴ Another study of a program in Thurston County, Washington, showed that faster processing and completion of diversion consequences resulted in lower felony reoffending rates in juveniles.⁹⁵ The positive effects of diversion on recidivism appear to be strongest for programs that contain a restorative justice component.⁹⁶ Placing a juvenile on probation can have an additional stigmatizing effect – the juvenile becomes known to his or her family and community as a troublemaker who is “under supervision.”⁹⁷

The juvenile system was founded on a philosophy that children have a greater chance of being rehabilitated than adults. Part of the rationale of imposing sanctions is for juveniles to associate law-breaking behavior with some consequence. However, it can take many months for a delinquency case to wind its way through the juvenile court.⁹⁸ By the time sanctions are imposed, a juvenile may not attribute it to the offending act,⁹⁹ and may even commit intervening delinquent acts. In many cases, the sanctions imposed at the end of the process are similar to the consequences assigned in diversion.¹⁰⁰ However, diversion is usually completed within 60 to 90 days, whether through the probation department or a private fee-based provider.¹⁰¹ In this way, diversion can offer swifter intervention, and therefore, much more effective intervention, without the stigma and cost of a lengthy court process. It can also provide quicker satisfaction for victims.¹⁰²

By diverting more cases involving less serious offenders, the juvenile court, prosecutors, and defense attorneys can focus their resources on the more serious referrals that come in. During the period when shoplifting referrals were regularly sent to private fee-based diversion programs, prosecutors had to read every offense report that came in.¹⁰³ This in itself took time away from charging attorneys’ other duties.¹⁰⁴ Investing in diversion can therefore save money spent on the juvenile justice system over the long run.

Finally, by investing in diversion, we increase the chance that a child will stay in school. Arizona State University Professor Gary Sweeten has studied the effects of a first-time arrest and court involvement among high school students, and found that an arrest without court involvement will double the chances that a juvenile will not graduate, while a court appearance almost quadruples that chance.¹⁰⁵ Other studies have addressed the detrimental impact of a juvenile record on a child’s chances of success from educational attainment to employment prospects.¹⁰⁶ Given the overwhelming evidence of the benefits of diversion, it is in all of our interests to protect these vital programs.

Recommendations

As a result of the ACLU of Arizona's study, we make the following six recommendations:

- **Reduce disproportionate minority treatment in the juvenile justice system** by increasing opportunities for minority youth to be diverted, including selection into restorative justice programs⁴⁰⁷ such as CJs and Teen Courts. This will require a concerted effort to establish more CJC panels and Teen Courts in underserved neighborhoods with a high concentration of low-income and minority youth.
- **Ensure that diversion programs are financially accessible to youth.** While it may make some sense to increase the “stake” that families have in diversion by charging a nominal fee, care should be taken to accommodate those families who may be unfairly precluded from diversion because they cannot afford to pay the fee. MCAO or fee-based diversion providers should charge families a maximum of \$50 for diversion and a \$25 victim fee and create a sliding scale fee structure for families who cannot afford to pay. They should modify their materials to inform families of this option. County officials should explore options for tapping into public or private funding to make this possible, or keep the programs in the probation department.
- **Reduce other barriers to diversion.** The probation department should explore options for operating after hours to accommodate single and working parents, and increase the use of satellite offices. This can have a significant impact on a family's ability to complete diversion. All diversion providers should consider locating programs in the community, so that juveniles can meet with providers and complete diversion consequences without leaving their own neighborhoods. Establishing such community-based, culturally competent services in local neighborhoods would be an important step to expanding access to diversion. Providers should also update the way they communicate with youth and not rely solely on letters. Promising communication methods include text messaging and email. Providers should also ensure that diversion services are available in Spanish and other languages.
- **Increase public awareness about diversion.** Many families do not have enough information about the juvenile justice system to make informed decisions about whether or not to go through with diversion. The juvenile court and other key players should conduct outreach and public education to increase awareness about the benefits of diversion, both for the juvenile and for the community at large.

- **Increase offenses that are eligible for diversion.** The last year has shown that offenses such as graffiti can be effectively tackled through diversion and need not result in a juvenile court petition. Policymakers should experiment with additional offense categories to see if they can be effectively addressed through diversion.
- **Invest in more comprehensive data collection and reporting** so that the effectiveness of program changes can be evaluated. The juvenile court currently has only one primary researcher who is responsible for gathering and analyzing yearly data. Further, it is not clear whether the results of diversion are being captured across the board in a way that is conducive to analysis; nor is there currently an attempt to reliably assess the reasons why juveniles do not complete diversion. More resources for data collection, reporting, and analysis can save money by allowing policymakers to understand how program changes positively or negatively impact other aspects of the system.

Conclusion

The rate of juveniles being diverted in Arizona is on the rise. This is significant because diversion can offer swifter and more effective intervention for juveniles referred for a delinquency offense without the stigma and cost of a lengthy court process. Many young people who successfully complete diversion programs never return to the juvenile justice system. Indeed, research shows that juveniles who participate in diversion re-offend at lower rates than those who are processed through the court. It is imperative that we continue to invest in cost-saving juvenile diversion programs that help keep kids out of the court system and in school. Furthermore, the juvenile justice community can strengthen existing programs by increasing diversion opportunities for minority youth and ensuring that diversion remains financially accessible to low-income families.

Although there has been some progress made on the diversion front, the fact remains that too many kids are referred to the justice system for minor offenses in the first place. Misdemeanors and status offenses still make up 66% of referrals. In addition to maintaining and expanding upon diversion programs, members of the juvenile justice community should make the reduction of referrals for minor offenses a policy priority.

Endnotes

- 1 Administrative Office of the Courts, Arizona Supreme Court, *Juveniles Processed in the Arizona Court System, FY 2010*, p. 4, available at <http://www.azcourts.gov/jjpd/PublicationsReports.aspx>. The 2010 fiscal year for the court system runs from July 1 of the prior year to June 30 of the reported year. In FY 2010, another 427 juveniles had cases filed in Arizona's adult criminal justice system. Juveniles prosecuted in adult court are not the subject of this briefing paper. For an excellent overview of that issue, see Children's Action Alliance, *Improving Public Safety by Keeping Youth Out of the Adult Criminal Justice System* (Nov. 2010), available at: http://www.azchildren.org/MyFiles/10%20issues/2010_jj_pub.pdf.
- 2 Administrative Office of the Courts, Arizona Supreme Court, *Juveniles Processed in the Arizona Court System, FY 2010*, p. 8.
- 3 *Ibid.* p. 12.
- 4 *Ibid.* p. 13.
- 5 *Ibid.*
- 6 President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society*, p. 83 (1967).
- 7 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 11, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 8 Administrative Office of the Courts, Arizona Supreme Court, *Juveniles Processed in the Arizona Court System, FY 2010*, pp. 7, 12, available at <http://www.azcourts.gov/jjpd/PublicationsReports.aspx>.
- 9 Ariz. Rev. Stat. § 8-321(C).
- 10 *Ibid.*
- 11 Arizona Senate Bill 1420, 49th Leg., 1st Reg. Sess., Ch. 189 (Az. 2009) (creating Ariz. Rev. Stat. § 8-323).
- 12 Ariz. Rev. Stat. § 8-321(F), (H).
- 13 *Ibid.*
- 14 Ariz. Rev. Stat. § 8-321(G), (M).
- 15 *Ibid.* Some county attorneys' offices will not file a petition if the juvenile has completed a substantial portion of his or her consequences.
- 16 Ariz. Rev. Stat. § 8-321(B).
- 17 *Ibid.*
- 18 Arizona House Bill 2207, 48th Leg., 2nd Reg. Sess., Ch. 301 (Az. 2008).
- 19 Arizona Senate Bill 1420, 49th Leg., 1st Reg. Sess., Ch. 189 (Az. 2009).
- 20 Interview with Chris Phillis, Maricopa County Juvenile Public Defender, Mar. 25, 2010. Juvenile defenders have voiced concerns that this rule can lead to some arbitrary and counterproductive results, such as the exclusion of youth charged with status offenses or misdemeanors who would otherwise be eligible for diversion. *Id.*
- 21 Ariz. Rev. Stat. § 8-321(N).
- 22 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 12, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 23 *Ibid.* p. 23.
- 24 *Ibid.* p. 13.
- 25 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 64, and *FY2009 Data Book*, p. 64, both available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 26 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 64, and *FY2009 Data Book*, p. 64, both available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 27 Data provided by the Phoenix Police Department in response to a public records request (on file with author).
- 28 *Ibid.* The greatest number of arrests from a single category were for marijuana use/possession.

- 29 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 25, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 30 Ibid.
- 31 Ibid.
- 32 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 25, 36, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 33 Administrative Office of the Courts, Arizona Supreme Court, *Juveniles Processed in the Arizona Court System, FY 2010*, p. 7, 12, available at <http://www.azcourts.gov/jjsd/PublicationsReports.aspx>.
- At the state level, African-American and Native-American youth are diverted at lower rates than other groups, as compared to their representation in the referred juvenile population. In 2010, 45.8% of all juveniles referred in Arizona were diverted. However, African-American juveniles were diverted only 39% of the time and Native-Americans were diverted just 36.8% of the time.
- 34 Rodriguez, Nancy, "The Cumulative Effect of Race and Ethnicity in Juvenile Court Outcomes and Why Preadjudication Detention Matters," *Journal of Research in Crime and Delinquency* (2010) 47:391-413.
- 35 Ibid. pp. 400-03.
- 36 Ibid. pp. 402-05. Interview with probation department staff, Feb. 19, 2010.
- 37 Interview with probation department staff, Feb. 19, 2010.
- 38 Email from juvenile court staff dated Mar. 14, 2011.
- 39 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 35, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 40 Interview with probation department staff, Apr. 20, 2010.
- 41 Rodriguez, Nancy, "Restorative Justice, Communities and Delinquency: Whom Do We Reintegrate," *Criminology & Public Policy* (2005) 4:1, 103-130.
- 42 Maricopa County Superior Court, *FY 2009 Annual Statistical Report*, at p. 12, available at: <http://www.superiorcourt.maricopa.gov/MediaRelationsAndCommunityOutreach/docs/annualrep/FY2009AnnualRpt.pdf>.
- 43 Interview with probation department staff, Feb. 19, 2010.
- 44 Rodriguez, Nancy, "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," *Crime & Delinquency* (2007) 53:355-379, pp. 366-68. The measure of recidivism used was whether or not a juvenile had a petition filed for a subsequent offense within 24 months.
- 45 Rodriguez, Nancy, "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," *Crime & Delinquency* (2007) 53:355-379, pp. 369-70.
- 46 Ibid. p. 361.
- 47 Butts, Jeffery, Janeen Buck & Mark Coggeshall, Urban Institute, *The Impact of Teen Court on Young Offenders* (Apr. 2002), at pp. 2, 14, available at: <http://www.urban.org/uploadedpdf/410457.pdf>.
- 48 Facts and Stats, National Youth Court Center, at <http://www.youthcourt.net/>.
- 49 Butts, Jeffery, Janeen Buck & Mark Coggeshall, Urban Institute, *The Impact of Teen Court on Young Offenders* (Apr. 2002), at pp. 8-10, available at: <http://www.urban.org/uploadedpdf/410457.pdf>. This does not mean that teen jurors will necessarily be easier on juvenile offenders; in fact, sometimes teen jurors will assign harsher consequences to their peers. However, at least one study has found that teen jurors prefer to **focus on restorative**, non-punitive goals in sentencing (e.g., that the defendant learns about the consequences of delinquent behavior and makes better choices in the future). Greene, Edith & Kasey Weber, "Teen Court Jurors' Sentencing Decisions," *Criminal Justice Review* (Sept. 2008) at p. 379.
- 50 Butts, Jeffery, Janeen Buck & Mark Coggeshall, Urban Institute, *The Impact of Teen Court on Young Offenders* (Apr. 2002), at pp. 9, 31-32, available at: <http://www.urban.org/uploadedpdf/410457.pdf>.
- 51 Interview with probation department staff, Apr. 20, 2010 and May 20, 2010.
- 52 Interview with probation department staff, May 20, 2010.

- 53 Butts, Jeffery, Janeen Buck & Mark Coggeshall, Urban Institute, *The Impact of Teen Court on Young Offenders* (Apr. 2002), at p. 28, available at: <http://www.urban.org/uploadedpdf/410457.pdf>. The measure of recidivism used was whether or not the juvenile had another referral filed within six months.
- 54 Interview with probation department staff, Apr. 20, 2010.
- 55 Ibid.
- 56 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 35, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 57 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 34, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 58 Interview with probation department staff, Feb. 19, 2010.
- 59 Ibid.
- 60 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 37, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 61 Interview with probation department staff, Feb. 19, 2010.
- 62 Rodriguez, Nancy, "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," *Crime & Delinquency* (2007) 53:355-379, p. 368.
- 63 Interview with Chris Phillis, Maricopa County Juvenile Public Defender, Mar. 25, 2010.
- 64 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 37, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 65 Juvenile court staff indicated that such data would not be included in its annual data books; however, the county attorney's office believed that such cases *would be* captured into the court's data.
- 66 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 37, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 67 Ibid. See also, Maricopa County Juvenile Probation Department, *FY2009 Data Book*, p. 35, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 68 Maricopa County Juvenile Probation Department, *FY2010 Data Book*, p. 37, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>.
- 69 Ibid.
- 70 For overall referrals and juveniles assigned to probation, the measure of recidivism used was whether or not the juvenile had another referral, not including administrative offenses or violations of probation, within one year. Ibid. p. 53. For juveniles diverted, the measure of recidivism used was whether or not the juvenile was apprehended for a new delinquent offense within one year. Ibid. p. 54.
- 71 Interview with fee-based diversion provider, May 13, 2010, and NCTI response to records request (on file with author).
- 72 Interview with Chris Phillis, Maricopa County Juvenile Public Defender, Mar. 25, 2010.
- 73 NCTI and SAGE Counseling responses to records requests (on file with author).
- 74 Maricopa County Juvenile Probation Department Procedures, Policy III. A(17) Financial Sanctions (effective July 17, 2009).
- 75 Interview with fee-based provider, May 13, 2010.
- 76 Interviews with juvenile public defenders Bryn DeFusco, Mar. 24, 2010; Andrew Meissen, Mar. 26, 2010; and Suzanne Sanchez, Apr. 15, 2010; and Maricopa County Juvenile Public Defender Chris Phillis, Mar. 25, 2010.
- 77 De Beus, Kimberly and Nancy Rodriguez, "Restorative Justice Practice: An Examination of Program Completion and Recidivism," *Journal of Criminal Justice* (2007) 35:337-347, p. 345.

- 78 This might be explained in part by the fact that juveniles in the private fee-based companies must also pay restitution before being considered to have “completed” the program. The probation department may be less strict when it comes to making juveniles pay restitution. The difference might also be explained in part by a difference in the way the probation department measures show-up rates. The percent-completed figure for probation may not take into consideration juveniles who never appeared for a first meeting with a probation officer.
- 79 Initially, NCTI instructs juveniles that “payment of \$115.00...must be paid in full,” including \$60.00 that is due on the day of the intake interview. SAGE Counseling instructs juveniles to bring the amount of the class fee in a class confirmation letter. NCTI and SAGE Counseling responses to public records requests (on file with author).
- 80 It is unclear to what extent low-income families might decide against contacting fee-based providers to arrange for diversion in the first place because the programs appear cost-prohibitive. In such cases, the providers would never know if that is the reason why a juvenile decided not to participate in diversion.
- 81 Interview with fee-based diversion providers, May 20, 2010 and Mar. 31, 2011.
- 82 Ibid.
- 83 Interviews with juvenile public defenders Art Merchant, Apr. 2, 2010, and Suzanne Sanchez, Apr. 15, 2010.
- 84 Interviews with juvenile public defenders Art Merchant, Apr. 2, 2010, and Suzanne Sanchez, Apr. 15, 2010.
- 85 Interview with juvenile public defender Suzanne Sanchez, Apr. 15, 2010.
- 86 At least one juvenile public defender’s office has stopped taking telephone calls from families. Email from juvenile public defender Art Merchant dated May 19, 2011.
- 87 Interview with probation department staff, Feb. 19, 2010.
- 88 Interview with probation department staff, Feb. 19, 2010.
- 89 Ibid.
- 90 Interview with juvenile prosecutor, June 10, 2010.
- 91 Interview with juvenile public defender Suzanne Sanchez, Apr. 15, 2010.
- 92 Ibid.
- 93 Ibid. Some juvenile defenders have tried to negotiate dismissal agreements that do not contain fee-based programs, with mixed results.
- 94 Davidson, W.S., Redner, R., Blakely, C.H., Mitchell, C.M., & Emshoff, J.G., “Diversion of Juvenile Offenders: An Experimental Comparison,” *Journal of Consulting and Clinical Psychology* (1987), 55:68-75.
- 95 Washington State Institute for Public Policy, “Fast Tracking Youth to Diversion in Thurston County: A Preliminary Analysis,” (1997): 1-3, available at <http://www.wsipp.wa.gov/rptfiles/FastTrack.pdf>.
- In 1995, the Thurston County Prosecuting Attorney’s Office implemented the “Fast Track Program” for first-time juvenile offenders, which ensured that diverted juveniles receive a hearing within 12 days of being referred by law enforcement. A Community Accountability Board presides over each youth’s diversion hearing. Data collected six months prior to the program’s implementation showed that the youth reoffended with a felony 11.4% of the time. Six months after the program began, the same class of youth reoffended with a felony only 5.7% of the time.
- 96 Rodriguez, Nancy, “Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism,” *Crime & Delinquency* (2007) 53:355-379, pp. 366-68.
- 97 Interview with Chris Phillis, Maricopa County Juvenile Public Defender, Mar. 25, 2010. In addition, referrals for probation violations, sometimes quite minor, increased between 2009 and 2010. In FY 2010, they were the fourth largest category of referrals, at 7.7% (2,253) of the total. Maricopa County Juvenile Probation Department, *FY2010 Data Book*, pp. 13, 35, available at <http://www.superiorcourt.maricopa.gov/JuvenileProbation/Administration/RAPSDivision.asp>. Referrals for probation violation are most likely to be petitioned – 99.3% of probation violation referrals will result in a petition. Ibid. pp. 18, 35. This can create a harsh cycle of court involvement that can continue into adulthood.
- 98 Interview with Chris Phillis, Maricopa County Juvenile Public Defender, Mar. 25, 2010. An estimate of 16-18 months (including probation) was provided.

- 99 Interview with juvenile public defender Suzanne Sanchez, Apr. 15, 2010. See also, Boyd, Rebecca, Shiela Huss and David Myers, "Antecedents and Consequences of Juvenile Case Processing: Where Are We Now, and Where Do We Go From Here?" *Youth Violence and Juvenile Justice* (2008) 6:195, p. 201-02 (collecting studies).
- 100 Interview with Chris Phillis, Maricopa County Juvenile Public Defender, Mar. 25, 2010.
- 101 Interview with probation department staff, Apr. 20, 2010; interview with fee-based diversion provider, May 13, 2010; see also Ariz. Rev. Stat. § 8-321(K).
- 102 Interview with juvenile public defender Suzanne Sanchez, Apr. 15, 2010.
- 103 Interview with juvenile prosecutor, June 10, 2010. Shoplifting referrals were returned to the probation department diversion program, and prosecutors no longer had to review each one.
- 104 Ibid.
- 105 Sweeten, Gary, "Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement," *Justice Quarterly* (Dec. 2006) 23:4, pp. 472-73.
- 106 Bernburg, J.G., & Krohn, M.D., "Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood," *Criminology* (2003) 41:1287-1318.
- 107 Programs that adopt the "restorative justice" moniker must ensure that practices remain faithful to restorative justice principles, including a focus on **repairing the harm done to victims and to the community by a youth's criminal or delinquent behavior**; building relationships and collaborating with victims, family members, and/or community members to reach an agreement; and rehabilitating the offender. **Rodriguez, Nancy**, "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," *Crime & Delinquency* (2007) 53:355-379, pp. 355-57.



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