



# CHILDREN'S ACTION ALLIANCE

*A Voice for Arizona's Children*

## ***SB 1628 – Youthful Sex Offenders: Treatment*** **Recognizes that children charged with sexual offenses** **are different from adult sex offenders**

**Background:** In 1996, Arizona voters passed a ballot initiative that constitutionally requires that children fifteen years old and older charged with certain violent crimes be prosecuted as adults. The following year, the state legislature gave county attorneys the **sole** discretion to prosecute many more children as adults – children as young as 14 accused of a wider variety of crimes, including consensual sex between youth and non-violent crimes. In FY 2006, 188 youth were transferred to adult court<sup>1</sup> by the sole discretion of a county attorney without a judicial hearing to consider whether public safety and the interests of the youth might be better served by retaining the youth in the juvenile court.

**SB 1628 - Youthful Sex Offenders; Treatment** (*as signed by the Governor on 5/1/07*) enhances the prospects for community-safety and youth rehabilitation by strengthening the participation of other decision-makers and providing more opportunities to consider the individual characteristics of a case rather than applying a standard result for all youth cases. The legislation requires:

- (1) **Age and Developmental Appropriate Treatment:** Youth sex offenders shall only be placed in a treatment program with youth of a similar age and developmental maturity level and requires mental health treatment programs to comply with the Professional Code of Ethics for the Association for the Treatment of Sexual Abusers and not include the use of images that are obscene or constitute sexual exploitation of a minor. This applies to treatment programs a *sex offender* is placed in by the court or the adult or juvenile probation department and treatment programs provided by ADC or ADJC. A *sex offender* is defined as a person who is twenty-one or younger and adjudicated delinquent for or convicted of a sex offense that does include persons who, during the commission of the offense, discharge, use or threaten with a deadly weapon or dangerous instrument.
- (2) **Annual Review of Probation:** The court, at the request of a probationer, must conduct a probation hearing at least once a year for a probationer who is under 22 years old and was convicted of an offense that occurred before the person turned 18. At the hearing, the court must consider whether to continue, modify or terminate probation; a person's duty to register as a sex offender and community notification.
- (3) **Reverse Remand:** If a juvenile is being prosecuted as an adult for a sex offense at the discretion of the prosecutor, the court must hold a hearing to determine if jurisdiction should be transferred to the juvenile court if the juvenile makes a motion, or the court decides, on its own motion to initiate the hearing, or the offense was committed more than 12 months before the date that criminal charges were filed. Transfers the juvenile to juvenile court if the court finds by clear and convincing evidence that public safety and the rehabilitation of the juvenile would be best served by doing so. Outlines factors the court must consider in determining whether the public safety and juvenile's rehabilitation would be served by transferring the juvenile to juvenile court.

## Background on treatment and response to youth sex offenders:

*Children charged with sexual offenses are different from adult sex offenders.* Sexually inappropriate behavior by children is wrong and needs a response designed for youth. Adolescent brains and psychological makeup are in a state of constant change and development, which makes children dependent on adults to grow, learn, and understand this complicated world. This is also why children are receptive to rehabilitation and treatment.

*When teenagers who conduct inappropriate sexual behavior are treated as adults by the criminal justice system, they are prevented from the very circumstances that will help them live a normal, law-abiding life.* These youth are subject to lifelong sex offender registration and notification requirements and probationary rules designed for adults that make it difficult to work and go to school. These consequences do not improve public safety; rather they prevent youth from getting needed support from their families, force them to live in homeless shelters with adult sexual predators, create roadblocks that keep them from finding jobs and housing, and cut off chances for living a normal, law-abiding and productive life.

### Here are the FACTS:

- **CHILDREN WHO COMMIT SEXUAL OFFENSES RESPOND WELL TO TREATMENT AND EXHIBIT EXTREMELY LOW RATES OF RECIDIVISM.**
  - Over 90% of arrests of children for sex offenses represent a **one-time event** that will never recur.<sup>ii</sup> Studies of juvenile offenders repeatedly show low recidivism rates ranging from 3 - 4%.<sup>iii</sup>
  - Studies show that sexually abusive youth are responsive to and benefit from treatment.<sup>iv</sup>
  - Specialized treatment that helps children develop healthy understandings of sexuality and programs are proven to reduce recidivism rates for sexual offenses. Such programs include cognitive-behavioral and relapse-prevention treatment, as well as multi-systemic therapy (MST).<sup>v</sup>
- **YOUTH WHO ENGAGE IN SEXUALLY INAPPROPRIATE BEHAVIOR DO NOT USUALLY BECOME ADULT SEX OFFENDERS.**
  - Psychiatrists and other experts agree: sexually inappropriate behavior by children does not indicate a permanent problem. Because youth are in a transitional and developmental stage in their lives, their sexual offending behavior is **not fixed**.<sup>vi</sup>
  - Patterns of sexual behavior by youth differ significantly from those of adult sex offenders. Unlike adult sex offenders, children who act out sexually do not find aggression erotic. Children who engage in sexual behavior with other young people are not motivated by an abnormal sexual obsession with children.<sup>vii</sup>
- **CHILDREN WHO ENGAGE IN INAPPROPRIATE SEXUAL BEHAVIOR GENERALLY REQUIRE CHILD SPECIFIC TREATMENT WHICH IS BEST UNDERSTOOD AND ADDRESSED BY THE JUVENILE JUSTICE SYSTEM.**
  - Unlike adult sex offenders, whose behavior cannot be explained by looking to the general criminal population, youth offenders exhibit child-specific problems that require child-specific treatment in the juvenile justice system.
  - With appropriate treatment in the juvenile justice system, research shows that children who engage in sexually inappropriate behavior will become healthy, responsible adults.<sup>viii</sup>

5-07-07

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<sup>i</sup> Administrative Office of the Courts, FY 2006 statistical report, January 2007.

<sup>ii</sup> FRANKLIN E. ZIMRING, AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING 66 (2004).

<sup>iii</sup> *Id.* at Appendix C

<sup>iv</sup> Center for Sex Offender Management, *Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches and Management Practices* (Dec. 1999), <http://www.csom.org/pubs/juvbrf10.html>.

<sup>v</sup> Center for Sex Offender Management, *Recidivism of Sex Offenders* (May 2001), <http://www.csom.org/pubs/recidsexof.html>; *Understanding Juvenile Sexual Offending Behavior*, *supra* note 3.

<sup>vi</sup> In *Roper v. Simmons*, 125 S.Ct. 1883 (2005), the U.S. Supreme Court explained that “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Id.* at 1195.

<sup>vii</sup> ZIMRING, *supra* note 1 at 139-40 (explaining that the overwhelming majority of sexually abusive children are not diagnosable sex deviants at any point before they age out of the juvenile system. Zimring similarly noted that it was unlikely juvenile offenders could be diagnosed with any confidence for pedophilia).

<sup>viii</sup> Center for Sex Offender Management, *Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches and Management Practices* (Dec. 1999), <http://www.csom.org/pubs/juvbrf10.html>.