

Item 4 Attachment:

Chronic Felony Offender-2010 CAA report recommended:

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

One of the 1996 Constitutional changes to Article IV, Part 2, Section 22, mandates the filing in adult court of any case involving a youth who is 15, 16 or 17, charged with a felony offense, and considered a “chronic felony offender”. In 1997, the legislature subsequently defined a “chronic felony offender” and also allowed prosecutors to file discretionary chronic felony offender charges against youth who are 14 years of age. In current state law, “chronic felony offender” means a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult. (A.R.S. §13-501.G.2.) (note – it was G. but now is H.)

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

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

In 2010 (prior to our report being published), Senator Gray sponsored SB 1089 which had this definition. *(This definition was developed through a sub-committee of CAA's JJ Advisory Committee.)*

2. "Chronic felony offender" means a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult AND AT LEAST ONE OF THE PRIOR ADJUDICATIONS AND DISPOSITIONS INVOLVED AN OFFENSE IN WHICH THE JUVENILE INTENTIONALLY OR KNOWINGLY CAUSED PHYSICAL INJURY. FOR THE PURPOSES OF THIS PARAGRAPH, PRIOR ADJUDICATIONS DO NOT INCLUDE ADJUDICATIONS FOR CLASS 4, 5 OR 6 FELONY OFFENSES UNLESS THE OFFENSE INVOLVED THE JUVENILE'S USE OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR A VIOLATION OF SECTION 13-1102, 13-1404 OR 13-1405.

After the bill was introduced, Jerry Landau, the court's lobbyist, suggested this amendment.

G. For the purposes of this section:

1. "Accused" means a juvenile against whom a complaint, information or indictment is filed.
2. "Chronic felony offender" means a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult.
3. "Forcible sexual assault" means sexual assault pursuant to section 13-1406 that is committed without consent as defined in section 13-1401, paragraph 5, subdivision (a).
4. "Other violent felony offense" means:
 - (a) Aggravated assault pursuant to section 13-1204, subsection A, paragraph 1.
 - (b) Aggravated assault pursuant to section 13-1204, subsection A, paragraph 2 involving the use of a deadly weapon.
 - (c) Drive by shooting pursuant to section 13-1209.
 - (d) Discharging a firearm at a structure pursuant to section 13-1211.

5. "PRIOR ADJUDICATION" MEANS EITHER:

(a) A DANGEROUS OFFENSE

(b) A CLASS 1, 2 OR 3 FELONY

(c) A VIOLATION OF TITLE 13, CHAPTER 14 THAT IS A CLASS 5 FELONY

SB 1089 never received a hearing.

At the first meeting the task was to learn about current decision-making and actions of the county attorney' offices regarding this provision in the law, and determine whether there might be general agreement in changing the current chronic offender definition. Currently Maricopa, Pima and Pinal are looking at cases to determine if there is a qualitative basis for making the distinctions rather than a quantitative one.