

## Chapter 7

# Mischaracterizing the Nature and Effect of Transfer

### ABSTRACT

*Chapter 7 continues unraveling the confusion in the transfer literature. This anti-transfer crowd (ATC) misinformation deals with misrepresenting the effect of transfer, exaggerating its reach, and distorting its operation. Chapter 7 shows prosecutors' transfer powers are never unreviewable beyond the charging itself; excessiveness on the prosecutor's part is subject to nullification by a judge and/or jury at trial. The Chapter explains how, contrary to ATC assertions, transfer is not sentencing; it is charging. Similarly, granting prosecutors transfer authority is not a violation of the separation of powers; actually, granting judges this authority arguably is. Although prosecutorial transfer (PT) certainly means the offenders' best interests are not paramount, that does not mean they are irrelevant. Even still, PT is not a rejection of JC, nor does it contribute to the criminalization of JC. Finally, Chapter 7 explains why transfer is neither inextricably tied to a crime rate nor acts primarily like a safety valve.*

### INTRODUCTION

The explosion in transfer laws due to the explosion in violent juvenile crime in the mid-1990s has been under continuous attack by the ATC since those provisions were adopted. Most of the anger has been directed at PT, especially at offense exclusion (OE), primarily because it appears to provide the greatest potential to transfer juvenile offenders to CC. Critics began their attack mostly on the illogical or nefarious motivations behind that expansion in transfer law. For example, Zimring (1998a) argued:

*“The current concern with juvenile violence has produced a flood of legislative activity designed to increase the number of violent offenses by juveniles that qualify for transfer to criminal court.”*

*(This is very true).*

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*“In large part, this stance is a specific type of get-tough strategy that is more focused on increasing the punishment for such offenses...”*

*(This also is very true)*

*“than in fine tuning the niceties of court jurisdiction.”*

*(Cherry-picking-transfer of chronic/violent offenders is the very essence of fine tuning, however).*

*“But something more than the wish for greater punishment is at work....”*

*(This alleged “something more” was never disclosed or explained).*

*“If the strategic mission was to get tough on as many juvenile offenders as possible,”*

*(It never was)*

*“a downward shift in jurisdiction maximum age would have vastly more impact on adolescent offenders than relaxing the standards for transfer to criminal court for specific offenses (p. 108).”*

*(True, but, again, this was never the objective of the pro-transfer legislation).*

Zimring set up a false premise (i.e., the so-called, never identified “strategic mission”), guaranteed to reach a nasty but irrelevant conclusion (the alleged legislative mistake in not reducing JC maximum age). Beginning with false premises about and attributing negative motivations to pro-transfer measures are common ATC tactics.

## **A. THE SPECIAL PROBLEM OF PROSECUTORIAL TRANSFER (PT)**

### **Why PT Is Purportedly Wrong and Amounts to A Betrayal of Justice, Society And/Or JC**

#### **(1) The Supposedly Unreviewed/Unreviewable Prosecutorial Powers in Offense Exclusion (OE)**

Numerous ATC critics have complained about OE’s supposed nonreviewability:

*[T]ransfer is possible...at the discretion of a prosecutor, who might choose whether to file for the most serious charge **without a judge’s final authority** (Zimring, 1998a, pp. 13-14, cite omitted, emphasis added).*

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