

Chapter 16

Developing Transfer Policy and Integrating JCs and CCs

ABSTRACT

Chapter 16 begins by very briefly revisiting the misinformation that dominates the transfer literature (see Chapters 6-11), and by briefly reaffirming the dimensions of transfer identified in Chapter 3. The Chapter then explains the three tasks associated with developing transfer policy: 1) choosing an option, such as no transfer, no transfer, but serious modifications to JC, selective transfer, or total transfer (abolition of JC); 2) selecting a transfer method, such prosecutorial transfer (PT) and/or judicial transfer (JT) (assuming transfer is the option chosen); and, 3) discussing implications associated with the available policies. The Chapter concludes by attempting to accomplish reconciliations in three contexts: whether there is a lack of fit between transfer and CC/CJ System outcomes; whether transfer should be backwards-looking (based on current offense and/or delinquent/treatment record) or forward-looking (based on future behavior forecasts, such as future dangerousness or desistance from crime); and, whether reverse transfer from CC should be available.

Three tasks surround the creation of transfer policy. The **first task** is to select the proper policy among the four available: 1) no transfer to CC or total retention of all juvenile offenders; 2) no transfer, but serious modifications to JC; 3) selective transfer to CC, via JT and/or PT, with or without modifications; and, 4) total or complete transfer to CC (or total exclusion), meaning the abolition of JC. The fourth option will be mostly ignored here since it would end JC.

Some from the anti-transfer crowd (ATC) suggest that JC abolition and/or reducing the maximum JC age, a partial abolition, is less radical than transfer. These critics suggest that it would be more “honest” to reduce the JC’s maximum age or to abolish JC completely than to selectively transfer.

(T)he abolitionist reform preserves the traditionalist’s insistence that, all else being equal, juveniles are less culpable for the harm they cause than their adult counterparts, and so are deserving of less punishment; whereas, the transfer trend rejects this commitment to differential desert and punishment. From this perspective, the transfer’s trends reforms are much more radical than the abolitionist reforms. Because

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the abolitionist reforms do not threaten differential desert and punishment, they are less threatening to the traditional rationale for a separate juvenile court... (Brink, 2003-2004, p. 1580).

Abolition of JC does not guarantee a youth discount sentence, however; Brink admits that two pages later (Id., p. 1582). Discounts across-the-board have not happened to date, and arguably present problems of their own (see Zimring, 1998a). Transfer does not rely upon any particular CC sentencing model. Transfer only sometimes means a longer CC sentence, which often is not the goal of transfer.

The **second task** arises if the second or third policy choices are adopted and that task is to select the proper method(s) for transferring juvenile offenders to CC: judicial transfer (JT) and/or prosecutorial transfer (PT).

Finally, the **third task** involves discussing the implications of the four policy choices.

Task # 1: Selecting the Proper Transfer to CC Policy

Accounting for the Misinformation

Before adopting policy, it is important to reiterate that mandatory exclusion (ME) measures exist independently of transfer provisions and considerations. Whether the maximum JC jurisdictional age should be 15, 16, or 17 requires a separate conversation. Whether prior transfers to and/or convictions in CC should permanently disqualify a juvenile defendant from JC prosecution also requires a separate conversation. Suffice it to say, a maximum JC age of 17 makes sense, especially (but perhaps only) if transfer to CC remains an option. Not allowing juvenile offenders to return to JC from CC, especially (but perhaps only) when there has been a CC conviction, also makes sense.

It is also beneficial to briefly revisit the take-aways from Section II. First, *all* transfer (both JT and PT) is *discretionary*. Adjectives such as *nondiscretionary*, *mandatory*, and *automatic* should be banned from *all* conversations regarding transfer. There are *only two* forms of transfer, JT and PT, each of which has two versions. JT is either *regular* (amenability burden on state) or *presumptive* (amenability burden on defendant). While a JT hearing may be called mandatory, it really is not because it depends completely on a prosecutor's charging the qualifying offense. No such charge means no such hearing. Moreover, judges cannot be forced to transfer anyone.

PT is either concurrent jurisdiction (or direct file — DF) or offense exclusion (OE), which is not mandatory, etc. In DF, the prosecutor can charge qualifying offenses in *either* JC *or* CC. It is no more or less discretionary than OE. OE means that a prosecutor's charging the excluded offense requires that offense be prosecuted in CC. The prosecutor *can never be forced* to charge an excluded offense so there is nothing mandatory about the decision. The prosecution *must occur* in CC, but *only if* the excluded offense is charged. OE is not a third version of transfer and should never be referred to as legislative or statutory since *all* transfer is legislatively authorized and all transfer provisions are in a statute (are statutorily based). Employing these terms adds to the confusion in the literature. While the legislature is the source transfer power, it cannot exercise the power itself; it can only delegate that authority to judges and prosecutors. It should be called OE because it is the offense that is excluded from JC jurisdiction.

Hyperbole must be removed from the discussion. The debate is not furthered when the ATC portrays transfer candidates as *children* who have done virtually *nothing wrong*, and that transfer amounts to an "attack upon unsuspecting, mere mistake-prone youth (Sanborn, 2003, p. 211)." Adolescent offending is portrayed as simply committing mistakes during a period in which juveniles are simply learning rules.

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