

# Chapter 1

## Initiating the Transfer to CC Discussion

### ABSTRACT

*Chapter 1 has four objectives. The first objective is to set a foundation for what is at stake in transferring juvenile offenders to criminal court (CC). The second is to address an anti-transfer crowd (ATC) criticism that transfer to CC exists in a theoretical vacuum, explained by something other than reason and logic. This chapter begins to provide a theoretical explanation for and defense of transfer to CC, revealing its logic and reason. This is the major focus of the work. The third objective is to explain that, although a good deal of the purpose of and benefits derived from transfer cannot be “proved” by social science research, it does not mean the purpose and benefits lack tangible and discernable outcomes that help maintain juvenile court’s (JC’s) existence. The fourth and final objective of this chapter is to lay out the organization and overall mission of the book.*

### PART 1: THE DEARTH OF THEORY BEHIND THE TRANSFER DEBATE

*Excluding* defendants who are chronological juveniles from prosecution in the JCs that were founded to address their misbehaviors is a critical decision.<sup>2</sup> Elsewhere, exclusion has been called “the most intriguing and contentious topic pertaining to the juvenile justice system.... (and) an emotionally charged issue.... (Sanborn, 2003, p.198).” Prosecution in JC has serious advantages, such as relatively brief, rehabilitation-oriented sanctions, most likely situated in the community or, at worse, at an institution that could be nicer than the youth’s home/community, and will most often operate more like a school than as a prison (Sanborn & Salerno, 2005).

Those excluded youths will most likely face trial instead in CC. The potential outcome awaiting a CC conviction is significant, although it can no longer result in a death sentence. The death penalty for juvenile murderers was abolished by the U.S. Supreme Court in 2005 (*Roper v. Simmons*). Nevertheless, most other CC sentencing options are still available equally to both adults and chronological juveniles convicted there. Assuming conviction, the youth will likely experience a punitive and lengthy sanction. If prison is involved, the youth will likely be incarcerated with adult, hard-core criminals (Sanborn & Salerno, 2005).

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Whereas a juvenile court adjudication does not entail civil disabilities and can expire or be sealed when the youths reach adulthood (assuming no more arrests/convictions), a CC conviction is likely to be long lasting, if not permanent, and to be replete with civil disabilities, such as voting and licensing disqualifications (Sanborn & Salerno, 2005).

The high stakes involved in the decision to prosecute juvenile offenders in CC help explain the contention and emotion attending the issue, and account for the immense amount of disinformation and misrepresentation found in the literature on exclusion. Virtually every aspect of the phenomenon has been falsely portrayed, ranging from its history (as well as the history of JC's — see Chapters 4 and 5) to transfer's nature and effect, among other elements.

*Transfer to CC (also called waiver and certification)*, a major way in which exclusion occurs (see chapter 3),<sup>3</sup> has received nearly all the attention of critics/researchers. It has been particularly vilified and misrepresented; this topic is the primary focus of the book. The literature attacking transfer by the ATC has been so voluminous and misinformative that any explanation of the benefits derived from and purposes served by it cannot occur until there is a lengthy and complete examination of the anti-transfer accounts (see chapters 6-11).

Defenses of transfer or minimal pro-transfer comments are rare, if not non-existent, at least among juvenile/criminal justice professionals and academics. The fact that all 51 jurisdictions in the United States (50 states and Washington, D.C.) provide for transfer partly explains this absence of support; no applause by pro-transfer practitioners seems needed when it is permitted in every state. Another explanation is that any academics who comment on the wisdom or necessity of transfer (unless this support occurs in the most limited capacity) are disinclined to do so because: they have a biased view of the phenomenon (transfer does not fit their ideology); they have consulted only a one-sided narrative of transfer in the literature (i.e., there are not aware of any positive features); or they believe (correctly) that defending transfer puts them at risk of being equated with those who support child abuse (literally) or domestic violence. Transfer advocates have cited only a limited number of reasons some juvenile offenders warrant prosecution in CC. This book intends to fill that substantive void.

Many critics of transfer have gone as far as to allege that transfer lacks validity and rationality. They often accuse transfer supporters of having nefarious motives. Beyond asserting that transfer is immoral and never permissible under any circumstances, the ATC's fallback strategy centers mostly around granting transfer the narrowest legitimacy and then arranging the research, complete with appropriately selected findings, that conclusively proves transfer fails to accomplish any positive objective (see Chapter 12); this default strategy is brilliant, if not disingenuous. The anti-transfer wagons have been strategically positioned and defy breaching.

Franklin Zimring and Jeffrey Fagan, two prominent representatives from the ATC, fault both sides of the controversy and claim the topic lacks "principled and sustained analysis." Even worse, "there has been almost no thoughtful analysis of the transfer problems..." (2000, p. 408). They reveal their bias as they criticize the shortcomings of their ATC compatriots' approach:

*Those who strongly support juvenile courts have approached the waiver (i.e., transfer) issue by believing that youth welfare is always better served in juvenile courts than in criminal courts, so that the task of drafting standards or laws is to hold the practice to an absolute minimal level. Under such circumstances, it might not have been considered a profit-able enterprise to inquire about the appropriate principles to decide when transfer to criminal court should be chosen because many youth advocates believed there were no such appropriate cases... (Id.).*

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