

# Chapter 15

## Benefits to Society

### ABSTRACT

*Chapter 15 itemizes the benefits transfer offers society. Like the benefits associated with juvenile court (JC) and defendants, the benefits society realizes are mostly, if not completely, immeasurable; and, not surprisingly, have not been researched. One critical benefit is that transfer allows for a balance of society's and the juvenile's best interests (BI). If the no-transfer policy prevails and JC becomes all and only about juvenile offenders, there is little likelihood that the juveniles' BI will be operationalized in JC. Transfer allows a realistic prospect that JCs' and retained juveniles' BI can co-exist, which, in turn, serves society's BI. Transfer also promotes community protection, with the ability for CC to impose lengthy sentences for the severely violent and seriously chronic juvenile offender. Transfer and prosecution in CC also serves numerous important concepts and pursuits, such as justice, moral condemnation, proportionality, incapacitation, deterrence and retribution. The Chapter concludes by explaining how prosecutors benefit by transfer.*

### INTRODUCTION

Benefits accruing to the JC and to retained juvenile offenders apply equally to society, which can retain confidence that the juvenile justice (JJ) system is doing the right thing to both retained and transferred offenders. JCs can continue to receive the support of the community. A no/limited-transfer policy would have to appear both dangerous and unacceptable to the general population.

### Transfer Promotes a Proper Balance of Best Interests (BI)

At some point in the spectrum of juvenile criminal behavior, society's and victims' interests must be vindicated (PCC, 1967, p. 81; Springer, 1991, p. 6); some ATC members acknowledge this (Zimring, 2000a, 2000b). Above a certain threshold of chronic and violent juvenile criminality it simply should not be all about the juveniles' BI. That simply sends the wrong message to JCs, youths and society.

Although it is rare, some of the ATC have admitted that society can support JCs' both transferring dangerous juvenile offenders and promoting the rehabilitation of other offenders.

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*The poll data indicate strong support for juvenile justice reforms that respond to public safety concerns and simultaneously advance improved treatment for juvenile offenders (Krisberg & Austin, 1993, p. 4).*

Transfer puts proper emphasis on society's BI and gives more reassurance to everyone in the community that society can afford the best interests of juveniles' being the primary focus of JC; it is a matter of reasonableness and acceptability. JC can do its job with the 90% or more of the juvenile offender population retained in JC without much push back because society is not asked to tolerate too much.

*The problem (with total criminal immunity) becomes expecting society to have none of its interests served or protected in juvenile court, which would be a result of total retention. Diverting every young criminal from criminal court asks society always to look the other way, again regardless of the circumstances.... (Recently there has been a) revision of juvenile court purpose clauses so as to include protecting the public and promoting society's interests. These purposes become more pivotal to juvenile court proceedings when violent/chronic offenders are processed there. These purposes do not appear to be served by total retention, and it does not seem reasonable or plausible to simply ignore or marginalize society's interests, especially when it comes to serious criminal behavior. It certainly does not seem unreasonable to question whether only the juvenile's best interests should be served when serious, chronic or violent crimes are at hand, and to doubt whether the juvenile system can maintain a one-dimensional, imbalanced purpose in this situation (Sanborn, 2003, pp. 204-05).*

## **Transfer Furthers Community Protection**

Perhaps the most frequently acknowledged purpose served by transfer is the potential enhancement of community protection (Wizner, 1995). Both pro-transfer types and the ATC tend to offer only this purpose.<sup>1</sup> Feld (2000) suggested that OE and DF "symbolize a fundamental change in juvenile justice...from amenability to treatment to public safety... (pp. 128-29). Ironically, transfer allows JJ systems to remain mostly faithful to "amenability to treatment," consigning to CCs/CJ systems the primary responsibility of "public safety;" JCs can largely duck the latter.

Discussions aimed at the *greater-punishment* group have gone astray, mostly due to a narrow explanation of PT. Protecting society was likely the reason prosecutors cited for seeking more transfer power via PT.<sup>2</sup> The ATC has taken advantage of this narrow perspective and has emphasized how CC does not do a better job than JC in protecting society from chronic or violent juveniles.

It is critical for pro-transfer types to acknowledge that transfer will not better protect society in *every* case, and that prosecution in JC can *at times* better serve the protection of society. The greater likelihood of a transfer's securing bail in CC can threaten the protection of society (Myers, 2001; Redding, 2003). There is, indeed, a "custody gap" between JC and CC (Myers & Kiehl, 2001). Moreover, unlike in CC, preventive detention is constitutionally recognized and openly practiced in JC (*Schall v. Martin*, 1984). CCs usually provide the accused the opportunity to post bail and to gain freedom pending trial, increasing the potential for these pre-trial releases to end in criminal behavior. The abundance of cases and cumbersomeness of prosecutions in CC could encourage more *nol pros* outcomes for transfers who appear less threatening to prosecutors than adult offenders. Substantive and procedural rights in the CC make acquittals more possible. Depending upon the circumstances, sentences in CC may not be as harsh/long as JC dispositions (see Chapter 12).<sup>3</sup>

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