

Chapter 2

Developing JC and Transfer to CC Theories/ Propositions (T/Ps): Original JCs

ABSTRACT

Chapter two addresses the anti-transfer crowd's (ATC's) claim that juvenile court (JCs) were founded primarily to be diversion outlets for criminal courts (CCs). Although the current purpose of JCs might legitimately be identified in that manner, diversion from CC was not the exclusive, or even primary, motivation of the JC founders in promoting the JC's introduction in 1899, or in later explaining its critical role in resolving social problems in the first half of the twentieth century. Instead, as disclosed in this chapter, there were at least 20 other purposes that were as important, if not more important, than simply diverting juvenile offenders from CC. Understanding these 20 typically ignored "other" purposes helps the reader to put the original JCs and their operation into context. It also helps explain why transfer to CC would have been mostly irrelevant to the original JCs, which would remain the case for decades.

INTRODUCTION: THEORIES/PROPOSITIONS (T/Ps): ORIGINAL JCs

One criticism of transfer concerns "the paucity of careful attention to matters of theory when discussing transfer policy..." (Fagan & Zimring, 2000, p. 3).¹ The overarching *Theory/Proposition* (hereinafter T/P) is:

Transfer to criminal court is designed to remove young offenders, who, due to their problems or behavior, are considered by a judge or a prosecutor to be too chronic, too old and/or too violent to be rehabilitated or punished within the sanctions/treatment programs available to the system (Sanborn, 1994a. p. 267).²

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These juvenile offenders do not deserve immunity from criminal prosecution; they deserve to be transferred to CC. Not all juvenile offenders deserve relatively benevolent JC treatment.

The Original Purposes of JC And Transfer To CC

Proponents claimed that JCs were developed to address and remedy “the inadequacy and barbarity of our methods of dealing with the helpless and erring little ones,” “to stop the spiritual slaughter of the innocents,” (Schoff, 1904, p. 133). Society needed a JC that “protects and fosters helpless, unprotected childhood” who were

victims of environment, neglect, or bad homes.... Society ignores them. The churches giving millions to missions, yet blind, unconscious of the need at their very doors. No mother thought for those little ones; only the cold legal procedure of the criminal court (Id., p. 135).³

The ATC contends that JC was created to remove juvenile offenders from the harsh outcomes of prosecution in CC. JC’s prime directive, then, was to serve as diversion of from CC.

Where once the juvenile court was to be a diversion from the punitive and rigid institutions of criminal justice, we have now been at work to divert youths from this first great diversion... (Zimring 1998a, p. 193).

[T]he juvenile justice system provided alternatives to the harsher penalties meted out by criminal courts... (Sabo, 1996, p. 2431).

[T]he juvenile court was founded not mainly as a means of facilitating intervention in the lives of young offenders but rather as a means of diverting juveniles under arrest from the harms inflicted by jails and criminal courts.... (Zimring, 2019, p. 31; see, also, Zimring, 2002; Fagan, Kupchik, & Liberman, 2007).⁴

Transfer to CC is portrayed, then, as a betrayal or refutation of what JCs were created to do. If accurate, this diversion purpose would seem to challenge the validity of transfer to CC.

There had been child-centered reform experiments preceding JCs, aimed at sparing a handful of juvenile offenders from the rigors of CC. Some CC judges imposed diversion-like measures on some juvenile offenders before JCs were created. To promote physical separation between juvenile and adult criminals, separate trial dockets were adopted within the CC. These initiatives were insufficient, however. To bring about meaningful child-saving an entire, self-contained system needed to be created. This new JC was child-focused: *comprehensive* in addressing *all* problems affecting youths, and *completely ameliorative* in solving those problems. The JC plan of wide-spread care and improvement of child, family, and neighborhood was essential in giving youths a chance to succeed in life as well as in erasing the causes of juvenile delinquency. None of this critical reform was plausible or permitted within the halls of CCs.

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