

## Chapter 9

# The Elimination Argument, Part 2: Juvenile Offenders Cannot Go to CC

### ABSTRACT

*Chapter 9 deals with the part of the anti-transfer crowd (ATC) campaign that argues juvenile offenders cannot go to criminal court (CC) for two reasons. The first is the ATC claim that the best interests (BI) of juvenile offenders must always prevail, which, impliedly, means transfer can never occur. This Chapter reveals how both segments of the sentence are incorrect. Nowhere in JC history has any reasonable authority asserted that the juveniles' BI were sacrosanct and that all offenders must be prosecuted in JC. Also ironic is that there are occasions in which the juveniles' BI would be served by transfer. The second alleged obstacle is that juveniles, en masse, are incompetent to stand trial (IST) due to the same characteristics we saw in Chapter 8 that were engineered to establish their lesser culpability. Chapter 9 debunks this contention, including a thorough critique of the concepts and research relied upon by the ATC to make their claim.*

### INTRODUCTION

The ATC has constructed two categoricals to ensure that juvenile offenders *cannot go to CC*. The ATC condemned categoricals when they mistakenly perceived them to be present in offense exclusion (OE). Seemingly, categoricals are acceptable to the ATC, however, provided they work in favor of their ideology.

#### **A. Juveniles' Best Interests (BI) Must Always Prevail; Transfer is Illegitimate/Wrong**

Although it is typically not the main or sole argument, the ATC frequently offers the primacy of juveniles' BI as an insurmountable obstacle to transfer (see Sabo, 1996, pp. 2446-53).

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## **The Elimination Argument, Part 2**

*The scope of the prosecutor's virtually unfettered discretion makes her an inappropriate party to make the waiver decision. Prosecutorial waiver ignores the best interests of the juvenile ... and may place the prosecutor in the double bind of trying to ascertain the juvenile's best interests while simultaneously attempting to represent the community's best interests. Furthermore, prosecutorial waiver is not procedurally fair because it does not provide a hearing or written finding from which a juvenile can meaningfully appeal (Id., p. 2446).*

If "prosecutorial waiver ignores the best interests of the juvenile," why there would be a double (or any) bind for the prosecutor? Moreover, if there is a conflict between the defendant's BI and society's BI, why are not prosecutors permitted to make the call since they are charged to represent society's interests. Moreover, judges make the same transfer decision. Unlike the prosecutor, however, the judge is charged with acting and serving as the embodiment of *parens patriae* in JC. *Parens patriae* is supposedly the doctrine establishing the state as the ultimate parent for errant children. Considering the judge's assigned and recognized role, wouldn't that make putting the transfer decision in the judge's hands also constitute a conflict of interests. The conflict would seem even greater with judges, leaving no one, then, who could make the transfer call without an alleged conflict, which some ATC members would cite as a reason for abolishing transfer.

The point of prosecutorial transfer (PT) is to give the juvenile offenders' BI much less, if any, weight. There is a hearing with PT; it just does not involve the amenability consideration. Instead, the sufficiency of the charge serves as the focus of the hearing. And there is an appeal for being charged or transferred, it is called trial in CC.

Similarly, Zimring and Fagan contended:

*The best interests of serious delinquents might be better served by **not allowing transfer at all...** (Zimring & Fagan, 2000, p. 412, emphasis added; see, also, Liwanga & Ibe, 2021; Notes, 2002; Rudman, Hartstone, Fagan, & Moore, 1986; Skibinski & Koszuth, 1986).*

The ATC claims JC was founded on that exclusive commitment to juveniles' BI (i.e., rehabilitate all offenders).

*The Progressives who created the juvenile court envisioned a benevolent treatment agency staffed by expert judges and assisted by social services personnel. They emphasized informality, flexibility, and discretionary dispositions in the "best interests of the child..." (Feld, 1987, pp. 482-83).*

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*The juvenile court's "rehabilitative ideal" envisioned a specialized judge trained in social science and child development whose empathic qualities and insight would enable her to make individualized therapeutic dispositions in the "best interests" of the child... (Feld, 1997, p. 71).*

Transfer supposedly betrays this commitment to juveniles' BI; juveniles' BI must prevent transfer.

The first incorrect assertion, here, is that remaining in JC is always in the juvenile's BI. Some juvenile offenders would be better off in CC. The BI of retained juveniles are better served through the transfer

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