

# Chapter 14

## Benefits to Defendants

### ABSTRACT

*Chapter 14 demonstrates the myriad ways in which transfer benefits juvenile offenders, especially, but not only, those retained in juvenile court (JC). The anti-transfer crowd (ATC) completely ignores the fate of these juveniles; the ATC's focus, instead, is towards transfers exclusively. The JJ system remains more able to be committed to offering rehabilitative services because the worst of the worst, in terms of violent and chronic offending, are denied those services. Retained youths benefit from this. Jurisdictions' practicing OE offer retained offenders the potential benefit of facing a reduced charge that was arranged to keep the case in JC. Contrary to ATC assertions, some offenders will benefit from transfer, especially because of the increase in due process protections they should experience in CC; some youths might transfer themselves. Some adult defendants can also benefit by not looking as chronic and/or violent in their offending, and could experience greater opportunities for leniency as a result.*

### INTRODUCTION

#### Part 1: Benefits to Juvenile Court's (JC's) Retained and Transferred Offenders

It is possible to identify ways in which youthful offenders retained in JC can benefit from transfers made to CC in ways that differ from the benefits the transfers, themselves, can realize. It is also possible to identify how both groups equally reap benefits from cases' being sent to CC.

The ATC is hyper-focused on the plight of transfers, disregarding all other considerations. Completely lost on the ATC is that the vast majority of transfers will have experienced JC (perhaps several times) prior to being transferred; first-time violent offenders are relatively rare among transfer cases. All of the benefits that apply to retained youths and to JC benefit future transfer-bound youths as well, often for years on end. In other words, transfer to CC helps JCs persevere, offering significant, multiple opportunities for reform to offenders, or, in Zimring's words, to preserve life chances. Most transfers have had those still available JJ opportunities and have failed to take advantage of them; their negative evolution relates to only a minority of juvenile offenders, however. For most transfers, criminal behavior and court experiences would be much worse if JCs cease to exist. The ATC's rigid focus on those im-

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mediately threatened with transfer results in their ignoring retained offenders who will eventually desist under the auspices of JC and will avoid transfer due to that JC experience. Perhaps the threat of transfer helped some offenders, otherwise bound to be transfer material, to avoid that outcome due to fearing a CC prosecution and sentence.

Transfer takes pressure off legislatures to reduce the maximum age of JC jurisdiction (see Feld, 2000, p. 83), which seems unnecessary, if not completely inappropriate when transfer exists: why is it necessary to remove *all* offenders below a reduced age when only a relatively few of them merit prosecution in CC? Perhaps this realization is what led ten states recently to raise their maximum JC age to from 15- and 16-years-old to 17-years-of-age. On the other hand, the elimination/serious reduction of transfer availability makes the reduction of the maximum age seem very desirable, if not inevitable. Having to keep all juvenile offenders, regardless of crime and record is self-defeating, dangerous and unacceptable. Retained and future transfers benefit from having a longer time (higher maximum age) within which to misbehave before being held criminally accountable.

Transfer to CC also allows for less pressure on legislatures to expand the problematic policy of factoring the JC record into subsequent CC sentencing (which could mean serious outcomes awaiting the offender after this transfer to CC). Sanborn (2003) noted 20 years ago, the lack of transfer could have serious impacts:

*[T]otal retention likely would expand the recent tendency to allow juvenile court adjudications to be factored into subsequent criminal court sentencing, following eventual conviction in that forum. Currently, many jurisdictions permit adult court judges to significantly enhance the sentence offenders will receive in criminal court due to their juvenile court records.*

*In some situations, juveniles effectively can carry two strikes from juvenile court and “strike out” on their first “pitch” (or conviction) in criminal court (Sanborn, 1998, 2000). Removing transfer to adult court would create even greater pressure to not ignore the indiscretions of youth, marked by adjudications in juvenile court. The desire to “get even” with youth who continue to commit crime as adults, after having been given repeated, considerable leniency (and complete immunity from criminal liability throughout their juvenile years), would seem to be irrepressible. Allowing a juvenile court record to have such an impact in criminal court when that record was secured without serious due process in that forum only serves to exacerbate the relatively weak foundation of justice in juvenile court. Of course, the challenges to due process that have been identified by individuals who endorse the total exclusion position could prompt legislatures to convert juvenile court into the functional equivalent of criminal court, complete with the procedural rights granted adult defendants. Of course, juvenile court also could adopt a sentencing response similar to adult court and completely abandon any pretense at rehabilitation or legislatures could perceive this evolution of juvenile court as a signal of the time for its abolition. Arguably, a good deal of the recent criminalization of juvenile court can be explained by the retention of too many serious juvenile criminals (p. 206).*

What seems lost on the ATC in the transfer “debate” is that transfers are not the only ones benefitted by restricting the use of the JC record in CC sentencing. Some youths (retained in JC for the time being) will age out of the JJ system and then commit another crime (their first) as a chronological adult. These never-transferred youths would be equally threatened with disastrous results via JC record use in CC sentencing via a no-transfer policy. Current transfer candidates are not the only juveniles that stand

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