

# THE WORST OF BOTH WORLDS: THE RISE AND IMPACT OF YOUTHFUL OFFENDER LAWS

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Youthful offender laws corrupt the intended purpose of the juvenile court system and expose children to the harms of the criminal legal system outside of traditional transfer mechanisms.<sup>1</sup> By enabling juvenile court judges to impose criminal sentences, youthful offender laws subject children to criminal proceedings and punishments under the guise of the more protective and rehabilitative juvenile court.<sup>2</sup>

At the turn of the twentieth century, juvenile courts were specifically designed to treat children as different from adults.<sup>3</sup> Children were not to be punished but rather rehabilitated and nurtured. Until the 1960s, these courts lacked formality and denied children procedural safeguards. Following a series of United States Supreme Court cases in the latter half of the twentieth century, juvenile courts across the country began to resemble adult criminal courts by extending constitutional protections not otherwise afforded to children, such as the right to counsel and the right to confront and cross-examine witnesses.<sup>4</sup> Twenty-five years later, amid widespread panic about youth crime in the “super-predator” era, legislatures made it easier to prosecute children in adult court through traditional transfer mechanisms and expanded the sentencing authority of juvenile court judges with youthful offender laws.<sup>5</sup>



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## What Are Youthful Offender Laws?

Generally, youthful offender laws take one of two forms. First, they can apply to children transferred to adult criminal court through traditional transfer or waiver mechanisms. In this form, children prosecuted as adults may receive a youthful offender designation, and with that, a criminal blended sentence<sup>6</sup> or a more lenient adult sentence, such as a shorter probation period or term of imprisonment.<sup>7</sup> Youthful offender status may also come with specific legal protections, including replacing an adult conviction with a youthful offender finding<sup>8</sup> and keeping records confidential.<sup>9</sup> In Alabama, for example, a person under the age of 21 charged in adult court with an offense that “involves moral turpitude” or is subject to a sentence of at least one year incarceration may be tried as a youthful offender.<sup>10</sup> Alabama’s youthful offender statute, which dates back to the 1970s, “is intended to extricate persons below twenty-one years of age from the harshness of criminal prosecution and conviction. It is designed to provide them with the benefits of an informal, confidential, rehabilitative system.”<sup>11</sup> To that end, under the state’s Youthful Offender Act, the court must impose an alternative sentence, such as a suspended sentence or probation for a maximum of three years.<sup>12</sup>



Second, youth designated as youthful offenders may also remain under juvenile court jurisdiction. Here, a case may proceed in juvenile court with adult procedural protections, like the right to a jury trial.<sup>13</sup> The court may impose a juvenile blended sentence—a juvenile disposition, an adult sentence, or both.

Youthful offender laws transformed the juvenile system into a quasi-adult criminal court by “increas[ing] the sentencing authority and punishment capacities of juvenile courts.”<sup>14</sup> In adult criminal court, youthful offender laws enable judges to impose a more lenient sentence on a child than they would receive under more traditional transfer mechanisms.<sup>15</sup> However, in juvenile court, youthful offender laws provide judges with the authority to impose an adult sentence on a child who has not been transferred to adult criminal court.

In the early 1990s, Minnesota enacted a first-of-its-kind statute expanding the sentencing authority of juvenile judges and exposing children to adult punishments.<sup>16</sup> The state created “a new legal category of juvenile” known as the Extended Jurisdiction Juvenile (EJJ), which functions similarly to a youthful offender designation.<sup>17</sup> The creation of this new category directly responded to concerns that the state’s juvenile system “need[ed] additional tools to adequately respond to the growing percentage of older juvenile offenders that commit serious crimes.”<sup>18</sup> In its 1994 report, the Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System acknowledged that the juvenile court for EJJ youth would “not differ fundamentally from an adult criminal court,” and thus all youth in that category would receive the same due process rights as adults in criminal court, including the right to a jury trial.<sup>19</sup> Unlike youth adjudicated in juvenile court, youth who receive EJJ designation receive a juvenile-inclusive blended sentence—a juvenile disposition and a suspended adult sentence. The purpose of establishing this quasi-adult category in juvenile court was to provide the child “one last chance at success in the juvenile justice system, with the threat of adult actions as an incentive not to re-offend.”<sup>20</sup> By giving juvenile court judges the ability to impose a blended sentence, Minnesota took a significant step in altering the original function of the juvenile court and in creating a “back-door” to transfer.

Following Minnesota’s lead, states across the country enacted similar laws. By 1999, ten states had expanded the authority of juvenile court judges to impose adult sentences on youth with a specific legal status designation, specifically “youthful offender” or “extended jurisdiction juvenile.”<sup>21</sup> For example, in 1993 New Mexico<sup>22</sup> established a category of youthful offender as a child adjudicated in juvenile court who has attained at least 14 years of age and is subject to juvenile or adult sanctions for a felony offense.<sup>23</sup> Children designated as youthful offenders are subject to a specific form of blended sentencing called juvenile-exclusive blended sentencing, where the juvenile court may impose either a juvenile disposition or an adult sentence (neither suspended).<sup>24</sup> The intention in enacting new categories of young offenders was “to up the ante for those youngsters charged with violent offenses, and especially for those with persistent offending patterns.”<sup>25</sup>

Similarly, Massachusetts enacted youthful offender sentencing provisions in the mid-1990s in “response to societal concerns about violent crimes committed by juveniles” and “to reduce or eliminate certain protections previously available to all juvenile offenders.”<sup>26</sup> Although youthful offender cases proceed in juvenile court, their treatment is more akin to criminal court prosecution than juvenile adjudications. The Supreme Judicial Court has recognized as much:

Although youthful offenders are proceeded against in Juvenile Court, their treatment may, in other respects, resemble that of adult offenders: their court proceedings are not shielded from public inspection; they are eligible for enhanced penalties, including any adult sentence provided by law; and they can be confined in an adult house of correction or state prison.<sup>27</sup>

Massachusetts juvenile court judges impose a juvenile-contiguous blended sentence—the child receives a juvenile disposition but if the disposition exceeds the age of juvenile court jurisdiction, the child is transferred to adult court to serve the remainder of their sentence.<sup>28</sup>

# How Youthful Offender Laws Harm Children

In allowing juvenile court judges to impose adult sanctions, youthful offender laws operate as “back-door” transfer mechanisms.<sup>29</sup> Transfer laws, which permit or require the prosecution of children in adult criminal court, outright deny children the purported rehabilitative services of the juvenile court system and expose them to lasting harms, including lengthy and often excessive adult sentences, overuse of solitary confinement, and higher risk of physical and sexual assault in adult facilities. In bypassing transfer mechanisms, youthful offender laws compound these harms.

States enacted youthful offender laws as an alternative to transfer with detrimental effects through blended sentencing.<sup>30</sup> Beginning in the 1990s with the first youthful offender laws, “[j]udges imposed blended sentences on younger, less serious, offenders whom they previously handled as delinquents, subsequently revoked their probation primarily for technical violations, and doubled the number of youths sent to prison.”<sup>31</sup> Rather than mitigate the harmful effects of transfer, youthful offender laws and blended sentencing have accomplished the opposite. As the Office of Juvenile Justice and Delinquency Prevention has flagged:

Because juvenile blended sentencing thresholds are actually lower than transfer thresholds in most states, there is a possibility that such laws, instead of providing a mitigating alternative to transfer, are instead being used for an “in-between” category of cases that would not otherwise have been transferred at all.<sup>32</sup>

Scholars have also suggested that blending sentencing may have a “net-widening effect,” which “occurs when prosecutors and judges . . . draw the pool of offenders sentenced to the ‘alternative’ not from those whom they otherwise would have sentenced to prison, but from those who otherwise would have received a less restrictive punishment.”<sup>33</sup> The result is an increase in the number of children subject to adult punishments.

Youthful offender laws and similar legal status designations for children in juvenile court, such as extended jurisdiction juvenile, expanded the authority of juvenile court judges to impose adult sanctions, further blurring the historically distinctive aims of the juvenile and criminal legal systems. These statutes persist as a relic of a developmentally inappropriate and racist response to concerns about youth crime. Policymakers should question the purpose and efficacy of youthful offender laws and take steps to reverse decades of misguided laws and policies that deny children their childhood and futures.

# Endnotes

1. Traditional transfer mechanisms include discretionary transfer, mandatory transfer, prosecutorial discretion, and statutory exclusion.
2. Barry C. Feld, *Punishing Kids in Juvenile and Criminal Court*, 47 *Crime & Just.* 417, 452-53 (2018).
3. Illinois Juvenile Court Act (1899); Katharine F. Lenroot, *The Evolution of the Juvenile Court*, 105 *Annals Am. Acad. Pol. and Soc. Sci.* 213, 213 (1923).
4. *Kent v. United States*, 383 U.S. 541 (1966); *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).
5. See TIARA GREENE, *SUSPENDED EMPATHY: HOW THE MYTH HEARD ROUND THE WORLD FUNNELED BLACK AND BROWN YOUTH INTO THE ADULT COURT SYSTEM*, JUVENILE LAW CENTER (2025), <https://jlc.org/resources/suspended-empathy>.
6. Criminal blended sentencing is when a criminal court imposes a juvenile disposition and/or a suspended adult sentence. In Iowa, for example, children prosecuted in criminal court receive both a juvenile disposition and a suspended adult sentence (criminal-inclusive blended sentencing). The sentence is deferred and supervision over the child is transferred back to juvenile court. Prior to the youthful offender's birthday, the court decides whether the youthful offender should continue on youthful offender status after their 18th birthday. IA Code § 907.3A. In Oklahoma, the criminal court imposes either a juvenile disposition or an adult sentence (criminal-exclusive blended sentencing). 10A Okl.St. Ann. § 2-5-208A.
7. See, e.g., AL ST § 15-19-6(a); C.R.S. § 18-1.3-407, 407.5; S.C. Code § 24-19-10(d), 24-19-50.
8. In New York, for example, a child may receive youthful offender status at sentencing, which replaces a criminal conviction with a youthful offender finding. NY CRIM PRO § 720.20, 720.35.
9. See, e.g., CGS § 54-76l.
10. AL ST § 15-19-1. Youth must consent to the court determining whether they should be tried as a youthful offender and to a trial without a jury. Similarly, in Connecticut, a child must consent to a trial without a jury to be adjudged a youthful offender. CT ST §§ 54-76d(a) & (c), 54-76e.
11. *Raines v. State*, 317 So.2d 559, 561 (Ala. 1975).
12. AL ST § 15-19-6(a).
13. Although children who face adult sentences in juvenile court receive "the full panoply of due process rights" afforded to adults and children prosecuted in the criminal system, "it may be questionable whether a juvenile court adjudication does, in fact, provide the full level of due process afforded in criminal court." Richard E. Redding & James C. Howell, *BLENDED SENTENCING IN AMERICAN JUVENILE COURTS, IN THE CHANGING BORDERS OF JUVENILE JUSTICE* 157 (Jeffrey Fagan & Franklin E. Zimring eds., 2000).
14. Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 *J. Crim. Law & Criminology* 68, 73, 88 (1997). See also Marcy R. Podkopacz & Barry C. Feld, *The Back-Door to Prison: Waiver Reform, "Blended Sentencing," and the Law of Unintended Consequences*, 91 *J. Crim. Law & Criminology* 997 (2001); Feld, *supra* note 2, at 417 (2018); Redding & Howell, *supra* note 13 at 167.
15. Even in states without such statutes, youth transferred to adult criminal court through traditional transfer mechanisms, such as mandatory or discretionary transfer, may be eligible for similar sentencing alternatives, such as blended sentencing. In Rhode Island, for example, the court may impose an adult prison term on a child transferred to and convicted in adult criminal court. RI ST § 14-1-7.3(a)(1-2).
16. See PATRICIA TORBET ET AL., *JUVENILES FACING CRIMINAL SANCTIONS: THREE STATES THAT CHANGED THE RULES*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 28 (2000), <https://www.ojp.gov/pdffiles1/ojdp/181203.pdf>.

17. MN ST § 260B.130; Scholars have referred to Minnesota as the “pioneer of extended juvenile jurisdiction.” Chauncey E. Brummer, *Extended Juvenile Jurisdiction: The Best of Both Worlds?*, 54 Ark. L. Rev. 777, 792 (2002); See also Anabel Cassady, *The Juvenile Ultimatum: Reframing Blended Sentencing Laws to Ensure Juveniles Receive a Genuine “One Last Chance at Success,”* 102 Minn. L. Rev. 391, 405 (2017) (explaining that “Minnesota spearheaded the promulgation of juvenile-inclusive blended sentencing schemes when it began working on the nation’s first model in 1992”); Jeffrey A. Butts & Ojmarrh Mitchell, *Brick by Brick: Dismantling the Border Between Juvenile and Adult Justice*, 2 Crim. Just. 167, 188 (2000) (noting that “[b]lended sentencing was virtually unheard of in the juvenile justice system until the 1990s”).
18. *Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System: Final Report*, 20 William Mitchel Law Review, 595, 610 (1994), <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=2207&-context=wmlr>.
19. *Id.* at 648.
20. *Id.* at 603.
21. Redding & Howell, *supra* note 13 at 151.
22. New Mexico also introduced a category of offender known as a “serious youthful offender.” A serious youthful offender is “an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder.” Serious youthful offenders are not considered delinquent children. NM Stat § 32A-2-3H.
23. NM Stat § 32A-2-20; NM Stat § 32A-2-3J.
24. NM ST § 32A-2-20(A).
25. G. Larry Mays & Peter R. Gregware, *The Children’s Code Reform Movement in New Mexico: The Politics of Expediency*, 18 Law & Pol’y 179, 184, 187 (January/April 1996).
26. *Commonwealth v. Clint C.*, 715 N.E.2d 1032 (Mass. 1999); *Doe v. Attorney Gen. (No. 1)*, 680 N.E.2d 92 (Mass. 1997). For a more robust analysis of Massachusetts’s youthful offender statute, see JOSHUA DANKOFF & SARAH SHEPLEY, *INEQUITABLE OUTCOMES, SEVERE CONSEQUENCES: RETHINKING THE YOUTHFUL OFFENDER STATUTE IN MASSACHUSETTS*, CITIZENS FOR JUVENILE JUSTICE (2024), <https://www.cfjj.org/youthful-offender>.
27. *Commonwealth v. Mogelinski*, 1 N.E.3d 237, 242 (Mass. 2013).
28. MGLA 119 § 58.
29. See Podkopacz & Feld, *supra* note 14 at 1062.
30. See Feld (2018), *supra* note 14, at 452-53.
31. *Id.* See also Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 Minn. L. Rev. 965, 1050 (1995).
32. PATRICK GRIFFIN, *TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 7 (2011) <https://www.ojp.gov/pdffiles1/ojdp/232434.pdf>.
33. Podkopacz & Feld, *supra* note 14 at 1028.