THE ROLE OF THE JUDGE IN TRANSFORMING JUVENILE PROBATION

A Toolkit for Leadership

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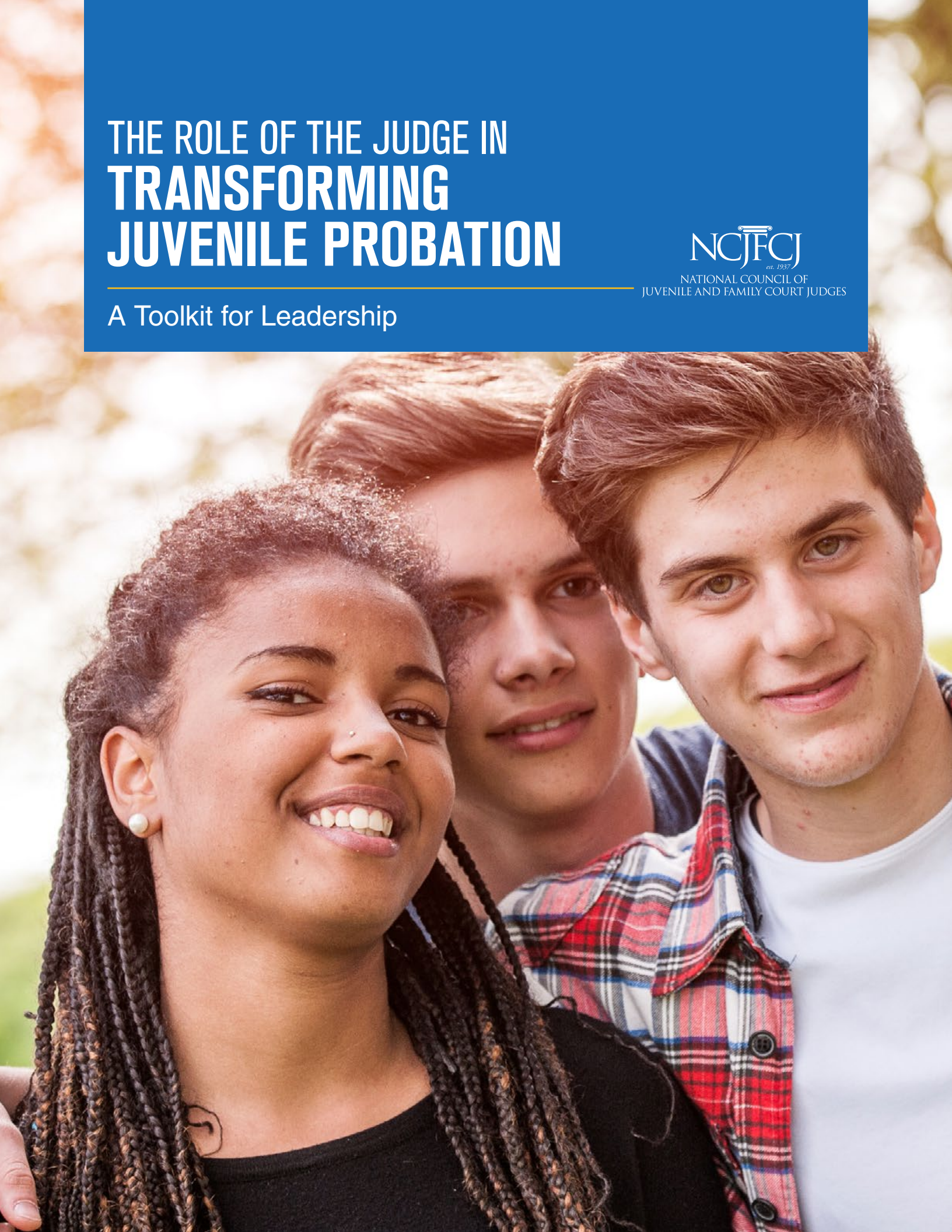



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INTRODUCTION

In July 2017, the National Council of Juvenile and Family Court Judges (NCJFCJ) issued the "Resolution Regarding Juvenile Probation and Adolescent Development,"[1] (Resolution) that called for a fundamental shift in how juvenile court systems nationwide should supervise youth on probation. Drawing on the findings of numerous studies, the Resolution critiqued the prevailing approach to juvenile probation and how probation has operated for decades. The Resolution then spelled out a new approach to probation that was rooted in adolescent development, brain research, and research on effective approaches to help justice-involved youth with behavior change.

The Resolution observed that "too many juvenile courts and juvenile probation departments impose conditions of probation that are not individualized, have too many requirements, and lead to unnecessary detention or incarceration for technical violations." Instead, it called on juvenile court systems to organize the probation experience around individualized case plans, developed in partnership with the young person and their family members, with the ultimate goal of promoting long-term behavior change and success.

"Rather than expecting perfect compliance with probation requirements, goals, and expectations," the Resolution recommended that probation should "[e]mphasize effort and improvement through a process of behavior change," and it should "[u]tilize incentives and rewards to motivate youth to meet expectations and goals." The Resolution recommended that juvenile courts end the practice of confining youth as a response to violating probation rules, and it urged probation agencies to "provide youths with opportunities to take part in prosocial activities and engage with positive peers (e.g., playing in a sports league, taking art classes)."

In the four years since the Resolution was adopted, there has been a welcome flurry of energy and attention devoted to juvenile probation practice. Of note is the attention following the comprehensive white paper that the Annie E. Casey Foundation issued in 2018 spelling out a new vision for juvenile probation practice and the research behind it.[2] In recent years, other leading organizations – including The Council of State Governments,[3] the Georgetown Center

1 National Council of Juvenile and Family Court Judges (July 15, 2017) "Resolution Regarding Juvenile Probation and Adolescent Development," available online at https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-juvenile-probation-and-adolescent-development.pdf.

2 Annie E. Casey Foundation (2018), *Transforming Juvenile Probation: A Vision for Getting it Right*, available online at https://www.aecf.org/resources/transforming-juvenile-probation/.

3 Weber J., Umpierre M., and Bilchik, S., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes* (Washington, DC: Georgetown University Center for Juvenile Justice Reform, 2018), available online at https://csgjusticecenter.org/

for Juvenile Justice Reform,[4] the Urban Institute,[5] and the Stoneleigh Foundation[6] – have also issued reports promoting transformation of juvenile probation practices.

The field's emerging consensus for transforming juvenile probation is informed by the excessive number of youth involved in the formal juvenile justice system and the pervasive racial and ethnic disparities in systems across the country. Designed to align probation with emerging research on adolescent behavior and brain development, the vision has two key components: expanded diversion and probation practices designed to achieve long-term behavior change, primarily for youth with serious arrest histories and complex needs.

First, to reduce the number of youth involved in the juvenile justice system, diversion is a key practice that must be expanded significantly. Increasing the number of youths receiving diversion will reduce unnecessary and potentially harmful system involvement. Responsibility for diversion should be shifted to community-based partner organizations that are better positioned to connect young people with natural supports and positive youth development opportunities.

Second, to improve outcomes for those young people who are placed on probation and to ensure that juvenile justice supervision aligns with research on adolescent development, probation practice should be a time-limited and purposeful intervention. As an intervention, probation should be grounded in relationships, driven by individualized case plans that are developed in partnership with young people and their families, and oriented toward brokering positive community connections for young people that will outlast juvenile court oversight and support long-term behavior change, growth and success. Both components—diversion and transformed probation practices—are informed by brain science and research on adolescent development, both require a more deliberate focus on community partnerships, and both center on race equity.

In the time since the NCJFCJ adopted the Resolution, many jurisdictions have begun to review and reform their approaches to probation. In 2019, seven juvenile courts enrolled in a Transforming Juvenile Probation Certificate Program operated by Georgetown University's

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wp-content/uploads/2020/02/Transforming-Juvenile-Justice-Systems.pdf; and Weber J., Rethinking the Role of the Juvenile Justice System: Improving Youth's School Attendance and Educational Outcomes (Washington, DC: The Council of State Governments (CSG) Justice Center, September 2020), available online at https://csgjusticecenter.org/wp-content/uploads/2020/09/CSG_RethinkingtheRoleoftheJuvenileJusticeSystem_15SEPT20.pdf.

4 Weber, J., Umpierre, M., and Bilchik, S., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes* (Washington, DC: Georgetown University Center for Juvenile Justice Reform, 2018), available online at https://csgjusticecenter.org/wp-content/uploads/2020/02/Transforming-Juvenile-Justice-Systems.pdf.

5 Harvell, S., Derrick-Mills, T., Warnberg, C., Russo, M., Hull, C., Matei, A., Winkler, M., Love, H., Willison, J., Liberman, A., *Bridging Research and Practice: A Handbook for Implementing Research-Informed Practices in Juvenile Probation* (Washington, DC: Urban Institute, October 2019), available online at https://www.urban.org/research/publication/bridging-research-and-practice-handbook-implementing-research-informed-practices-juvenile-probation; and Harvell, S., Sakala, L.and Matei,A., *Transforming Juvenile Probation: Restructuring Probation Terms to Promote Success* (Washington, DC: Urban Institute, April 2021), available online at https://www.urban.org/research/publication/transforming-juvenile-probation-restructuring-probation-terms-promote-success.

6 Schwartz, R., "Youth on Probation: Bringing a 20th Century Service Into a Developmentally Friendly 21st Century World," (Philadelphia, PA: Stoneleigh Foundation, November 2017), available online at https://stoneleighfoundation.org/wp-content/uploads/2018/02/Youth-on-Probation-Report.pdf.

Center for Juvenile Justice Reform in partnership with The Council of State Governments Justice Center and the Annie E. Casey Foundation.

The state of Ohio has made probation transformation a focus of state policy, offering training for dozens of local court personnel and requiring counties to incorporate principles of probation transformation into their court practices. Moreover, countless other jurisdictions nationwide have begun reexamining their probation strategies in light of the new evidence.

These emerging efforts remain in their early stages; however, jurisdictions are still working through the challenges of how to adopt new approaches and practices and have them taken up by all system stakeholders.



That is why the NCJFCJ has prepared *The Role of the Judge in Transforming Juvenile Probation: A Toolkit for Leadership* (hereafter also referred to as the Toolkit).

As the oldest and largest judicial membership organization in the United States, the NCJFCJ has been providing training, guidance, and supports to judges for almost 85 years. With support from its research arm, the National Center for Juvenile Justice (NCJJ), the NCJFCJ has become an important resource for the entire juvenile justice field and has created many seminal guidebooks and research reports on recommended practice for juvenile courts and related systems. For instance, in just the past two years, the NCJFCJ and NCJJ have released two comprehensive new resources: the *Enhanced Juvenile Justice Guidelines*,[7] which provides judges with research-informed standards for practice and guidance for system improvement, and a new and updated edition of the Desktop Guide to Good Juvenile Probation Practice.[8]

7 National Council of Juvenile and Family Court Judges, Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases (Reno, NV: National Council of Juvenile and Family Court Judges, 2018), available online at https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

8 Taylor, M.; Livengood, Z.; and Sickmund, M. Desktop Guide to Good Juvenile Probation Practice. (Pittsburgh, PA: National Center for Juvenile Justice, 2020), Online. Available: https://www.goodjuvenileprobationpractice.org.

The Toolkit builds upon these prior efforts, and it reflects the NCJFCJ's deep involvement in and commitment to transforming juvenile probation. Its deep involvement began in 2016 when judicial officers from across the nation participated in a day-and-a-half roundtable seminar convened by the Annie E. Casey Foundation. The conclusions reached at that seminar informed the 2017 NCJFCJ Resolution. In 2019, the NCJFCJ convened a panel of judges to look more closely at the role of judges in promoting probation transformation, and in 2020, the NCJFCJ conducted a survey of juvenile justice leaders nationwide (including judicial officers) to learn about supports for and barriers to reform.

In the 2020 survey, an overwhelming majority of judges and probation administrators responded that efforts to promote probation practice changes should be grounded in research and be data-driven. In addition, most indicated that support for probation transformation would grow if reforms helped to address the challenge of improving racial/ethnic equity. More specifically, judges and probation administrators asked for information documenting the negative impacts of current practices and for guidance on how to improve their efforts in data-collection and analysis to bolster reform efforts. They also asked how to address race equity issues as part of the probation transformation process. Finally, the survey responses highlighted the importance of developing a compelling and unifying vision for reform and the need to build a strong consensus for change among all key juvenile justice partners (judges, prosecutors, defenders, community leaders) and among staff at all levels of the probation agency.

The Toolkit is designed to respond to these needs. It provides judges with concrete strategies and recommendations to help them jumpstart or accelerate probation transformation efforts in their jurisdictions. The Toolkit offers detailed descriptions of recommended changes in five areas of probation practice:

- Individualized Case Planning
- Incentives and Rewards
- Minimizing Conditions of Probation
- Alternatives to Confinement in Response to Violations
- Probation as a Disposition for Youth Involved in Serious Delinquency

For each of these areas, the Toolkit includes the specifics of the recommended practice and the research behind it. Each section also explains how the practice can promote racial and ethnic equity, suggests key data points for planning and analysis, and reviews possible challenges to implementation. At the close of each section, judges will find specific ideas about how they can promote effective implementation of the practice—both on the bench in individual cases and off the bench as they lead or advocate for system-wide reforms to support needed changes.

The concluding section offers suggestions on how judges can lead efforts to adopt recommended reforms, with a special focus on collaboration.

The Toolkit is built upon the recognition that juvenile court judges have significant power to influence probation practices and lead probation reform efforts—even in systems where juvenile probation is not part of the judiciary. In all systems, judges have ultimate authority to determine what conditions should or should not be included in young people's probation orders and to limit or entirely eliminate the use of confinement in response to non-compliant behavior. These are practices that the 2017 NCJFCJ Resolution recommends.

Just as importantly, judges have considerable influence as leaders in their local justice systems. They can use that influence to convene key stakeholders, including not only justice system partners (prosecutors, defenders, probation departments) and other youth-serving agencies of the government (schools, mental health, child welfare), but also community organizations and advocates rooted in the neighborhoods where the largest number of system-involved youth reside. They can also ensure that young people and families directly impacted by the system have a meaningful role in substantive discussions about probation policy and practice.

As detailed in the final section of the Toolkit, judges can leverage their influence to foster needed discussion among the stakeholders, and they can play a key role in forging consensus on a new vision for juvenile probation. Judges can get the ball rolling on reform efforts, and they can also help hold other stakeholders accountable by sustaining a focus on outcomes and results.

The NCJFCJ offers this Toolkit with the aspiration that judges across the nation will take advantage of these opportunities to promote adoption of the reforms highlighted in the 2017 Resolution on juvenile probation. We hope the Toolkit will help judges and other system partners advance urgently needed changes in how our courts work with youth on probation and foster their success.

JUDICIAL INVOLVEMENT IN PROMOTING JUVENILE PROBATION TRANSFORMATION

In its 2017 Resolution, the NCJFCJ embraced deep and far-reaching changes in how juvenile courts and probation agencies supervise and support court-involved youth. The Resolution pre-dated and anticipated a series of subsequent publications on juvenile probation also calling for fundamental change in juvenile probation. Indeed, there is now a budding consensus among thought leaders in the juvenile justice field supporting wholesale changes in many longstanding juvenile probation practices.

Why the sudden focus on transforming juvenile probation?

First, probation is where most of the system-involved young people are, with more than a quarter million young people placed on some form of probation each year. In 2018, the most recent year for which national data are available, 159,000 young people were disposed to probation after an adjudication, with an additional 72,000 placed on probation without an adjudication and another 50,000 on "informal probation."[9]

Second, in many jurisdictions, probation resources are primarily focused on young people who should be diverted at the expense of youth for whom probation could be a game-changer. Juvenile arrests have dropped by nearly 60 percent over the past 25 years, but the odds that a case will be handled informally have barely changed, despite a compelling and growing body of research establishing that formal processing typically does more harm than good.[10] A 2020 study that tracked five-year outcomes for a cohort of over 1,000 young people arrested for a moderately severe offense found that:

> youth who were formally processed during adolescence were more likely to be re-arrested, more likely to be incarcerated, engaged in more violence, reported a greater affiliation with delinquent peers, reported lower school enrollment, were less likely to graduate high school within five years, reported less ability to suppress aggression, and had lower perceptions of opportunities than informally processed youth.[11]

9 Sickmund, M., Sladky, A., and Kang, W. (2019). "Easy Access to Juvenile Court Statistics: 1985-2018" Online. Available: https://www.ojjdp.gov/ojstatbb/ezajcs/.

10 The Annie E. Casey Foundation, Transforming Juvenile Probation: A Vision for Getting It Right (May 7, 2018) at p.12, available at https://www.aecf.org/resources/transforming-juvenile-probation/.

11 Cauffman, E., Beardslee, J., Fine, A., Frick, P., and Steinberg, L. (2021). Crossroads in juvenile justice: The impact of initial processing



By misusing probation for young people who should be diverted, many jurisdictions also miss opportunities to rely on probation instead of out-of-home placement for young people with more serious offenses. This is despite an equally compelling body of research establishing the harms of institutionalization and the promise of community-based approaches.[12]

Third, the conventional model of juvenile probation, with its emphasis on surveillance and rule compliance, is inconsistent with what we have learned about adolescent development and brain science. Indeed, studies examining juvenile probation outcomes have typically found that surveillance-oriented probation is not an effective strategy for reversing delinquent behavior.[13] Unlike many research-informed intervention strategies for court-involved youth, probation has typically shown insignificant effects on recidivism, and it has shown especially poor results for youth at low risk of rearrest.[14]

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decision on youth 5 years after first arrest. *Development and Psychopathology, 33*(2), 700-713. doi:10.1017/S095457942000200X

12 National Academies of Sciences, Engineering, and Medicine. (2019). The promise of adolescence: Realizing opportunity for all youth (pp. 295–345). Washington, DC: The National Academies Press. Retrieved from https://doi.org/10.17226/25388. And, Augustyn, M. B. and McGloin, J. M. (2017) Revisiting juvenile waiver: Integrating the incapacitation experience. Criminology, 56(1), 154–190, 158. And, Fabelo, T., Arrigona, N., Thompson, M. D., Clemens, A., and Marchbanks, M. P. III. (2015). Closer to home: An analysis of the state and local impact of the Texas juvenile justice reforms. New York, NY: The Council of State Governments Justice Center. Retrieved from https://csgjusticecenter.org/publications/closer-to-home. And, Aalsma, M. C., Lau, K. S. L., Perkins, A. J., Schwartz, K., Tu, W., Wiehe, S. E., Monahan, P., and Rosenman, M. B. (2015). Mortality of youth offenders along a continuum of justice system involvement. American Journal of Preventive Medicine, 50(3): 303–310. And, Aizer, A. and Doyle, J. Jr. (2015). Juvenile incarceration, human capital, and future crime: Evidence from randomly assigned judges. The Quarterly Journal of Economics, 130(2): 759–803. And, Howell, J. C. and Lipsey, M. W. (2012). Research-based guidelines for juvenile justice programs. Justice Research and Policy, 14(1), 1–18. And, Gatti, E., Tremblay, R. E., and Vitaro, F. (2009). Iatrogenic effect of juvenile justice. Journal of Child Psychology and Psychiatry, 50(8), 991–998. And, Latessa, E. J. and Lowencamp, C. T. (2006). What works in reducing recidivism? University of St. Thomas Law Journal, 3(3), 521–535. Retrieved from https://ir.stthomas.edu/ustlj/vol3/iss3/7. And, Lipsey, M. W. (2009). The primary factors that characterize effective interventions with juvenile offenders: A meta-analytic overview. Victims and Offenders, 4(2):124–147. And, Lowencamp, C. T. and Latessa, E. J. (2005, May). Increasing the effectiveness of correctional programming through the risk principle: Identifying offenders for residential placement. Criminology and Public Policy, 4(2), 263–290.

13 Latessa, E. J., Smith, P., Schweitzer, M., and Labrecque, R. M. (2013, February 22). Evaluation of the Effective Practices in Community Supervision model (EPICS) in Ohio (Draft report). Cincinnati, OH: University of Cincinnati School of Criminal Justice. Available online at www.uc.edu/content/dam/uc/ccjr/docs/reports/Final%20OCJS%20Report%202.22.13.pdf ; Robinson, C. R., Lowenkamp, C. T., Holsinger, A. M., VanBenschoten, S., Alexander, M., and Oleson, J. C. (2012). A random study of Staff Training Aimed at Reducing Re-arrest (STARR): Using core correctional practices in probation interactions. Journal of Crime and Justice, 35(2); Dowden, C., and Andrews, D. A. (1999). What works in young offender treatment: A meta-analysis. Forum on Corrections Research, 11(2), 21–24; and Lipsey, M. W. (2009). The primary factors that characterize effective interventions with juvenile offenders: A metaanalytic overview. Victims and Offenders, 4, available online at https://humanrights.iowa.gov/sites/default/files/media/Lipsey_Effective%20interventions%20-%202009.pdf.

14 Latessa, E. J., Lovins, B., and Lux, J. (2014, April 30), *Evaluation of Ohio's RECLAIM programs* (Cincinnati, OH: University of Cincinnati

Recent research has yielded groundbreaking advances in our understanding of adolescent behavior and in our knowledge of what works and does not work to reverse delinquent behavior. This research and the experience of trailblazing jurisdictions make clear that probation could be far more effective if probation agencies revamped their approaches to align better with emerging evidence. Specifically, research shows that better outcomes can be achieved when probation agencies:

- Connect youth on probation with credible messengers,[15] youth advocates,[16] or other community members who can serve as mentors[17] and help young people develop the internal motivation to change;
- Support and work in partnership with families. Adolescent development research makes clear that parents and family members remain the most important people in young people's lives and that—especially with support—they can do far more than any probation officer to promote their children's success;[18]
- Engage young people on probation in positive youth development activities tailored to their interests and talents,[19] heeding the research showing that court-involved youth are far more likely to desist from delinquency when they are surrounded by positive influences and involved in constructive and rewarding activities;[20]
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School of Criminal Justice), available online at www.uc.edu/content/dam/uc/ccjr/docs/reports/FINAL%20Evaluation%20of%20OHs%20RECLAIM%20Programs%20(4-30-2014)%20.pdf; and Early, K. P., Hand, G. A., and Blankenship, J. L. (2012, February). Validity and reliability of the Florida PACT risk and needs assessment instrument: A three-phase evaluation (Tallahassee, FL: Justice Research Center), available online at http://www.djj.state.fl.us/docs/probation-policy-memos/jrc-comprehensive-pact-validity-and-reliability-study-report-2012.pdf.

15 L. Cramer, M. Lynch, M. Lipman, L. Yu and N.M. Astone, Evaluation Report on New York City's Advocate, Intervene, Mentor Program (Washington, DC: Urban Institute, October 2018), available online at https://www1.nyc.gov/assets/opportunity/pdf/evidence/AIM_Final_2018.pdf; and M. Lynch, N.M. Astone, J. Collazos, M. Lipman and S. Esthappan, Arches Transformative Mentoring Program: An Implementation and Impact Evaluation in New York City (Washington, DC: Urban Institute, February 2018) available online at https://www.urban.org/sites/default/files/publication/96601/arches_transformative_mentoring_program_0.pdf.

16 M.J. Karcher, % D.A. Johnson, Final Technical Report: An Evaluation of Advocacy-based Mentoring as a Treatment Intervention for Chronic Delinquency (Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, December 2016), available online at https://www.ojp.gov/pdffiles1/ojjdp/grants/250454.pdf; and Evidence Supporting YAP's Model, (Harrisburg, PA: Youth Advocate Programs, undated), available online at https://www.yapinc.org/Portals/0/Docs/YAP%20Evidence%20Base%20-%20booklet.pdf.

17 P.H. Tolan, D.B. Henry, M.S. Schoeny, P. Lovegrove and E. Nichols, "Mentoring Programs to Affect Delinquency and Associated Outcomes of Youth at Risk: A Comprehensive Meta-Analytic Review" Journal of Experimental Criminology, vol. 10, no. 2, 2014, available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4224303/pdf/nihms509978.pdf.

18 Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice (Oakland, CA: Justice for Families, 2012), available online at https://njjn.org/uploads/digital-library/Families_Unlocking_FuturesFULLNOEMBARGO.pdf; Burke, J. D., Mulvey, E. P., Schubert, C. A., and Garbin, S. R. (2014). "The challenge and opportunity of parental involvement in juvenile justice services," *Children and Youth Services Review, 39*, 39–47. Available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3989100/; Development Services Group, Inc. 2018. "Family Engagement in Juvenile Justice." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. Available online at https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/family-engagement-in-juvenile-justice.pdf; and MW Lipsey, JC Howell, MR Kelly, G Chapman and D Carver, Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice (Washington, DC: Georgetown University Center for Juvenile Justice Reform, 2010), available online at https://njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of-Juvenile-Justice_2010.pdf.

19 Barton, W. H., and Butts, J. A. (2008). Building on strength: Positive youth development in juvenile justice programs. Chicago, IL: Chapin Hall Center for Children at the University of Chicago. Available online at https://www.aecf.org/m/resourcedoc/aecf-BuildingOnStrengthPositiveYouthDevelopment-2008.pdf.

20 L. Steinberg, "Adolescent Development and Juvenile Justice," Annual Review of Clinical Psychology, vol.5. 2009, available online at http://commissiononsexoffenderrecidivism.com/wp-content/uploads/2014/09/Steinberg-Laurence-2009-Adolescent-development-and-juvenile-justice.pdf; and L. Steinberg, E. Cauffman and K.C. Monahan, Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders (Washington, DC: U.S. Office of Juvenile Justice and Delinquency Prevention, March 2015), available online at https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf.

- Seek to motivate behavior change primarily through incentives and rewards, rather than the threat of sanctions, in light of research showing that adolescents are particularly receptive to incentives and unlikely to shift behavior based on fear of future consequences;[21]
- Expect and plan for occasional behavioral setbacks by youth on probation and avoid overreacting by revoking probation and confining young people in response to these kinds of mistakes, which are common occurrences for most adolescents;[22] and
- Keep probation terms to a few months rather than a year or two years as is often the case currently, given the research showing that extended involvement in the justice system is often counterproductive.[23]

Of course, many juvenile probation agencies across the nation do employ some of these approaches to at least some extent. At the same time, many practices still commonly employed in juvenile probation contradict the clear lessons of current research. Meanwhile, the available research and the experience of trailblazing jurisdictions that are adopting new approaches make clear that juvenile probation can be much more effective.

Fourth, it is clear that traditional, compliance-based approaches to juvenile probation consume substantial public dollars. "Available evidence suggests that our nation's juvenile probation workforce includes 15,000 to 20,000 professionals, and that total juvenile probation costs nationwide—including personnel costs plus expenditures for probation-funded programming, supplies, technology, transportation and administration—likely amount to more than two billion per year."[24] Redesigning how probation operates and redirecting efforts toward more meaningful probation, with reduced caseload sizes and for those youth that truly need it, is essential to cost savings of public dollars. Probation resources are too valuable to waste on young people who would be better off diverted.

Given the immense size of the juvenile probation population and the manifest opportunities to achieve better outcomes by redesigning probation practices and targeting probation services more carefully to youth who can most benefit, the potential benefits of probation transformation

21 National Institute of Corrections. (n.d.). Get smart about… rewards and sanctions: The facts about contingency management. Available online at https://info.nicic.gov/nicrp/system/files/027244.pdf; Wodahl, E. J., Garland, B., Culhane, S. E., and McCarty, W. P. (2011). Utilizing behavioral interventions to improve supervision outcomes in community-based corrections. Criminal Justice and Behavior, 38, 386–405, available online at https://indigo.uic.edu/articles/journal_contribution/Utilizing_Behavioral_Interventions_to_Improve_Supervision_Outcomes_in_Community-Based_Corrections/10773617/files/19286294.pdf; and Goldstein, N. E. S., NeMoyer, A., Gale-Bentz, E., Levick, M., and Feierman, J. (2016). "You're on the right track!" Using graduated response systems to address immaturity of judgement and enhance youths' capacities to successfully complete probation. *Temple Law Review,* 88, 805–836, available online at www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf.

22 Goldstein, N. E. S., NeMoyer, A., Gale-Bentz, E., Levick, M., and Feierman, J. (2016). "You're on the right track!" Using graduated response systems to address immaturity of judgement and enhance youths' capacities to successfully complete probation. T*emple Law Review*, 88, 805–836, available online at www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf.

23 S. Harvell, L. Sakala and A. Matei, Transforming Juvenile Probation: Restructuring Probation Terms to Promote Success (Washington, DC: Urban Institute, April 2021), available online at https://www.urban.org/research/publication/transforming-juvenile-probation-restructuring-probation-terms-promote-success/view/full_report.

24 Annie E. Casey Foundation (2018), *Transforming Juvenile Probation: A Vision for Getting it Right*, available online at https://www.aecf.org/resources/transforming-juvenile-probation/.

are immense. As the Annie E. Casey Foundation concluded in its 2018 report, "taking action to get probation right presents an enormous opportunity for improving the entire juvenile justice system. It is the reform strategy likely to deliver the best results for the most young people."[25]

In the following pages, the NCJFCJ provides a description, research rationale, and detailed guidance on needed changes in five key areas of probation practice. For each of these areas, the Toolkit includes the specifics of the recommended practice and the research behind it. The discussion of each practice area highlights the implications for racial and ethnic equity, pinpoints data that should be collected to measure results and monitor progress, and identifies possible challenges to implementation. Each section concludes with specific recommendations for steps that judges can take both on the bench and off the bench to promote needed reforms and improve outcomes for youth in our juvenile justice systems.

25 Ibid.

PROMOTING SPECIFIC PROBATION PRACTICE REFORM: Goal-Oriented, Individualized Case Plan for Long-Term Behavior Change

What is the Practice?

Goal-oriented, individualized case plans to promote long-term success and behavior change, not short-term rule compliance

In its 2017 Resolution regarding juvenile probation and adolescent development, the NCJFCJ recommended that "courts cease imposing 'conditions of probation' and instead support probation departments' developing with families and youth individualized case plans that set expectations and goals." To implement this recommendation, probation officers should spend the first month of each young person's probation period getting to know the young person and their family and developing an individualized case plan in close consultation with them. POs cannot rely on a formulaic process to quickly assemble case plans based on standardized tools and other information obtained in the initial intake process.

The case plan should focus on a limited number of priorities, based both on the results of the risk and needs assessment process and the views and interests expressed by the young person and family. The plan should include activities both to address the challenges faced by the young person and to offer positive youth development opportunities of interest to the young person. For each priority, the plan should identify a sequence of achievable goals that are meaningful to the young person and family. Once written, the plan should be reviewed and modified regularly throughout the probation period. The young person should be offered an array of incentives, including an early termination of probation for meeting expectations and achieving case plan goals. (Failure to meet expectations and achieve agreed-upon case plan goals will result in the loss of incentives and denial of other privileges, ensuring accountability.) In these ways, the "goal-focused" case plans will boost young people's internal motivation to change rather than seek to influence behavior through external threats involving sanctions or punishment.

Why Implement This Practice?

Individualized case planning that involves family members and youth themselves, focuses on long-term success, and relies on positive incentives represents a critical strategy to improve probation's success. By tailoring case plans to the particular circumstances of each young person and allowing probation case managers to concentrate on specific areas of concern, individualized case planning can prevent judges from ordering unnecessary or less relevant conditions or an overwhelming number of conditions. This will avert the need for probation officers to expend energy and resources on areas that are not related or necessary for the positive change of the youth.

As detailed in depth by the Annie E. Casey Foundation in its 2018 publication, *Transforming Juvenile Probation: A Vision for Getting it Right*,[26] the available research indicates that juvenile probation—as it has been commonly practiced in the United States—is not an effective strategy for reversing delinquent behavior, and it yields little or no effect on young people's likelihood of rearrest.[27] Moreover, many common practices in juvenile probation contradict the findings from recent research about adolescent brain development.

These contradictory practices include:

- an orientation toward short-term compliance rather than long-term behavior change;[28]
- a focus on punishment—rather than incentives and opportunities—to promote behavior change;[29]
- the limited role played by parents and other family members;[30] and

26 Annie E. Casey Foundation (2018), *Transforming Juvenile Probation: A Vision for Getting it Right*, available online at https://www.aecf.org/resources/transforming-juvenile-probation/.

27 Latessa, E. J., Smith, P., Schweitzer, M., and Labrecque, R. M. (2013, February 22). Evaluation of the Effective Practices in Community Supervision model (EPICS) in Ohio (Draft report). Cincinnati, OH: University of Cincinnati School of Criminal Justice. Retrieved from https://www.uc.edu/content/dam/uc/ccjr/docs/reports/Final%20OCJS%20Report%202.22.13.pdf; Robinson, C. R., Lowenkamp, C. T., Holsinger, A. M., VanBenschoten, S., Alexander, M., and Oleson, J. C. (2012). A random study of Staff Training Aimed at Reducing Re-arrest (STARR): Using core correctional practices in probation interactions. Journal of Crime and Justice, 35(2), 167–188; Dowden, C., and Andrews, D. A. (1999). What works in young offender treatment: A meta-analysis. Forum on Corrections Research, 11(2), 21–24; and Lipsey, M. W. (2009). The primary factors that characterize effective interventions with juvenile offenders: A metaanalytic overview. Victims and Offenders, 4, 124–147. Retrieved from https://forumfyi.org/wp-content/uploads/2019/05/Lipsey_Effective-interventions-2009.pdf.

28 Annie E. Casey Foundation (2018), *Transforming Juvenile Probation: A Vision for Getting it Right*, available online at https://www.aecf.org/resources/transforming-juvenile-probation/.

29 National Institute of Corrections. (n.d.). Get smart about… rewards and sanctions: The facts about contingency management. Retrieved from https://info.nicic.gov/nicrp/system/files/027244.pdf; Wodahl, E. J., Garland, B., Culhane, S. E., and McCarty, W. P. (2011). Utilizing behavioral interventions to improve supervision outcomes in community-based corrections. *Criminal Justice and Behavior,* 38, 386–405. Retrieved from https://indigo.uic.edu/articles/journal_contribution/Utilizing_Behavioral_Interventions_to_Improve_Supervision_Outcomes_in_Community-Based_Corrections/10773617/files/19286294.pdf; and Goldstein, N. E. S., NeMoyer, A., Gale-Bentz, E., Levick, M., and Feierman, J. (2016). "You're on the right track!" Using graduated response systems to address immaturity of judgement and enhance youths' capacities to successfully complete probation. *Temple Law Review*, 88, 805–836. Retrieved from www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf.

30 *Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice* (Oakland, CA: Justice for Families, 2012), available online at https://njjn.org/uploads/digital-library/Families_Unlocking_FuturesFULLNOEMBARGO.pdf; Burke, J. D., Mulvey, E. P., Schubert, C. A., and Garbin, S. R. (2014). "The challenge and opportunity of parental involvement in juvenile justice services," *Children and Youth Services Review*, 39, 39–47. Available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3989100/; Development Services Group, Inc. 2018. "Family Engagement in Juvenile Justice." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. Available online at https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/family-engagement-in-juvenile-justice.pdf; and MW Lipsey, JC Howell, MR Kelly, G Chapman and D Carver, *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (Washington, DC: Georgetown University Center for Juvenile Justice Reform, 2010), available online at https://

- a reliance on long lists of standardized rules and conditions rather than individualized plans.[31]

Given that youth of color are far more likely than white youth to be confined for technical violations under the prevailing surveillance-oriented model of probation with its reliance on standard conditions, the individualized case planning approach can also be an important step for reducing racial and ethnic disparities in probation.

njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of-Juvenile-Justice_2010.pdf.

31 National Juvenile Defender Center. (2016, September). Promoting positive development: The critical need to reform youth probation orders (Issue brief). Washington, DC: Author. Available at https://www.njjn.org/uploads/digital-library/Promoting_Positive_Development.pdf.

Key Elements of Individualized, Goal-Oriented Case Planning

By the end of 2021, the Annie E. Casey Foundation will publish an in-depth practice guide providing guidance on how to implement family-engaged case planning. The publication is relevant to individualized, goal-oriented case planning and describes several key ingredients:

- Limit probation caseloads by making widespread use of diversion in lieu of formal processing for youth who do not have extensive arrest histories for serious offending.
- Abandon the use of standard conditions.
- Ensure that POs are well-trained in forging relationships and building rapport with young people and their families.
- Identify a circle of care for each young person including not only blood relatives but also other adults whom the young person considers family and who have a stake in their success.
- Provide support to help parents and other family members participate effectively in the process–if possible, through a peer support program in which individuals with prior experience as parents/ family members of system-involved youth provide information and support for those currently involved in the process.
- Employ a strengths-based assessment tool that explores young people's skills, interests and assets, not just risk factors and needs.
- Engage young people and their families in a series of open-ended conversations in the initial period of probation to hear their thoughts about what may be triggering the problem behavior and what might be helpful to promote behavior change.
- Insist that the case plans forged by POs in consultation with youth and families focus on a limited number of priority areas and that—once these priorities are established—POs work with youth and families to identify a sequence of achievable short-term goals in each of the priority areas.
- Require that each case plan include activities aimed both to address identified risks and needs and to involve young people in positive youth development activities geared toward their interests.
- Ensure that the probation agency develops and adheres to a response grid that offers positive incentives for achieving case plan goals as well as graduated responses (not confinement) when young people disobey rules or fail to complete responsibilities detailed in their case plan.
- Create a diverse continuum of positive youth development opportunities that allow youth on probation to engage in constructive activities related to their personal interests and to forge positive connections in the community.
- Solicit input from young people through surveys or focus groups to identify incentives and rewards they believe would help motivate them to complete case plan goals and comply with probation rules and expectations.
- Limit the duration of probation, and give young people an opportunity to reduce the period of probation by achieving their probation goals in a timely manner.

Promoting Race Equity in the Case Planning Process

On individual cases, judges can undertake cultural humility—perhaps with the aid of bench cards.[32] They can ask relevant questions in every case to identify and root out any lingering bias in the procedures employed by the local court or probation agency. They can also review data to identify any disparities in the probation conditions and terms they impose on youth from different racial and ethnic backgrounds.

To promote equity more generally, judges can push to ensure that probation staff receive adequate cultural humility training, solicit input from system-involved youth and families and from interested community members, insist on rigorous data collection and analysis to identify where disparities are occurring, and—perhaps most important—lead or support an active and engaged racial and ethnic equity team or task force that works continually to promote equity and combat disparities.

Using Data to Support Individualized, Goal-Oriented Case Planning

To support effective planning, implementation, and continuous improvements in the individualized case planning process, jurisdictions should collect and utilize data on three levels: administrative data bases, case file reviews, and periodic surveys.

From their **administrative databases**, jurisdictions should collect and analyze data from:

- Probation caseloads;
- Technical violations filed;
- The number of conditions imposed in the standard probation order, share of cases where additional conditions are imposed, and average number of additional conditions;
- The duration of probation imposed in the probation order/plan and the actual duration of probation; and
- The success rates of youth in completing probation—including the share of youth completing probation successfully vs. youth arrested for new offenses vs. youth placed in custody for probation violations.

All of these data should be disaggregated to identify any disparities by race, ethnicity, gender, disability and/or LGBTQ/SOGIE (lesbian, gay, bisexual, transgender, and questioning/sexual orientation, gender identification, and intersex) status. A more comprehensive list of probation-specific measures can be found in the probation module for the Fundamental Measures of Juvenile Justice (2019).[33]

32 For instance, see: "Addressing Bias in Delinquency and Child Welfare Cases: Eliminating Racial and Ethnic Disparities in Juvenile and Family Courts is Critical to Creating a Fair and Equitable System of Justice for All Youth," NJDC/NCJFCJ Benchcard, available online at: https://njdc.info/wp-content/uploads/2018/07/Addressing-Bias-Bench-Card-1.pdf.

33 Deal, T. and Ehrmann, S. (2019). "Fundamental measures for juvenile justice" [interactive database]. Smith, J. [web developer]. Pittsburgh, PA: National Center for Juvenile Justice [producer]. Retrieved from http://www.ncjj.org/fmjj/.

In addition to the aggregate data above, court and probation administrators should conduct periodic **case file reviews** to determine:

- Whether/how well POs adhered to case planning guidelines and engaged youth and families in the case planning process;
- The ratio of positive incentives vs. negative consequences written into the case plan to reward youth for making progress vs. punish them for struggling; and
- Whether case plans connected youth to services, supports, interventions, and opportunities that build community connections, promote positive youth development, and are responsive to identified risks and needs.

Here, too, jurisdictions should disaggregate all data to identify any disparities.

Finally, given the critical importance of family and youth engagement, jurisdictions should commission **periodic surveys to ascertain the views of family members and youth themselves** about the case planning process. The surveys, which could be supplemented by focus groups, should be conducted by a non-governmental community partner that has earned the trust of young people and families.[34] The involvement of trusted community partners here is essential because young people and families will be reluctant to provide candid feedback directly to system actors. Survey and focus group results should be presented to the court and probation in the aggregate to protect confidentiality. The surveys should be designed by community partners but could include questions for youth and family members to ascertain:

- Their overall satisfaction with the case planning process;
- The extent to which the PO clearly explained the court and probation process and made sure they fully understood;
- How respectful and helpful they found the PO; and
- The extent to which they believe the PO heeded their comments and tailored the case plan to their beliefs, priorities, and concerns.

To the extent possible, feedback from community partners should describe the demographics of the young people and families with whom they consult. Judges should encourage community partners to flag notable differences by race, ethnicity, gender, and LGBTQ/SOGIE status.

34 Justice for Families, a national advocacy organization led by family members has produced detailed guidance on how to conduct focus groups, including advice for governmental and community partners. Justice for Families, *Focus on Youth and Families: A Guide for Conducting Focus Groups with Youth and Families Impacted by the Juvenile Justice System*, available at https://www.aecf.org/m/privy/Deep-End-Resource-Guide-5d-Guide-for-Conducting-Focus-Groups.pdf.

Challenges to Effectively Implementing Individualized, Goal-Oriented Case Plans

Efforts to implement individualized case planning may face challenges on several levels, including:

- lack of support for this approach among system personnel;
- inadequate training and resulting lack of skills for probation officers to apply this approach effectively;
- absence of clear and workable protocols for POs to follow as they undertake the case planning process;
- practical and logistical challenges that conflict with smooth implementation of individualized case planning, such as:
  - assessment tools that focus narrowly on risk and need, without also focusing on strengths, interests and assets;
  - software conflicts where existing case management data software are incompatible with the individualized case planning process or lack flexibility to suit case plans to the circumstances of individual youth;
- legal barriers that may conflict with some elements of individualized case planning, such as:
  - state/local laws or formal policies that require the imposition of standard conditions of probation;
  - laws or policies that mandate judicial approval for creating or changing probation terms and conditions, thereby limiting POs' capacity to oversee the development and oversight of youth on their caseloads;
- limited use of diversion in lieu of formal processing, which can lead to high caseloads that leave POs without sufficient time to work with youth and families in formulating and monitoring case plans; and
- lack of programs, resources, and community partnerships needed to create case plans offering the kinds of opportunities, services, and incentives required to maximize young people's likelihood of success.

All of these challenges reflect the fact that individualized, goal-oriented case planning is part of a larger vision for transforming juvenile probation. Therefore, any jurisdiction's success in implementing individual case plans will necessarily depend on its progress in making complementary changes in other aspects of juvenile probation.

Though more and more jurisdictions across the nation are working to improve case planning and are adopting other key elements of the probation transformation model, nowhere in the United States has a probation agency or juvenile court yet adopted all aspects of this vision.

Rather, any effort to adopt individualized case planning will necessarily be a work in progress.

None of this is reason for jurisdictions to hesitate before adopting the individualized case planning approach. Quite the opposite, in fact. While all elements of probation transformation are mutually independent, individualized case planning represents perhaps the most important first step any jurisdiction can take to advance probation transformation. Only when POs begin partnering with families and embracing a more collaborative model of probation aimed at promoting long-term success, rather than short-term rule compliance, can progress be expected in improving probation. Therefore, judges should do anything and everything in their power to promote the adoption of individualized case planning and to lead in efforts to overcome all of the related challenges involved in achieving probation transformation.

How Can Judges Support Effective Implementation of Individualized, Goal-Oriented Case Planning?

➔ On the Bench?

To support the proper use of individualized case plans in cases they oversee from the bench, judges should take several best practice steps:

- Create a new probation order template without a long list of standard conditions. Probation orders should have no more than four standard conditions. A sample one-page order is included as part of this Toolkit on page 48 and can be accessed here.
- Engage with parents or other family members during review and other court hearings to ensure that they have had a hand in and support the goals of the case plan and that they fully understand the proceedings and expectations moving forward.
- Empower POs to oversee most aspects of their probation cases, including the authority to craft the case plan in partnership with the young person and family and manage the use of incentives and measured consequences in response to the young person's progress or difficulties.
- Avoid making emphatic statements like "I am giving you one more chance." Such statements undermine POs' ability to exercise their own judgment about responding to inevitable struggles. If concerns arise about a PO's approach, judges should address those concerns outside the courtroom.
- Enhance POs' authority by avoiding frequent review hearings. When a review and revocation hearing is necessary, use the court appearance as an opportunity to revisit the case plan and learn about how the probation officer has been working with the young person and family, connecting the young person to relevant opportunities and services in the community, and providing positive incentives and opportunities for youth who complete case plan goals and meet behavioral expectations.
- Impose a reasonable duration of probation and make it clear to young people that they

have an opportunity to end probation earlier if they meet expectations and achieve case plan goals. In a recent practice guide on duration of juvenile probation, The Urban Institute recommended initial probation terms of no more than six months.[35]

➔ Off the Bench?

Beyond their role in overseeing individual cases, judges can exercise leadership in probation transformation by using their influence and authority to promote system-wide policies and practices to support effective implementation of individualized case planning in several ways.[36]

First, judges can communicate clearly their expectation that all case plans will be individualized, based on extensive give and take between the youth and family members with the PO as well as input from mentors, teachers, coaches, clergy, and court-appointed special advocates (CASAs), in addition to victims, who have an interest in the young person's progress. Judges should also make clear that all case plans will be strengths-based and focus on positive youth development, will address identified risk and needs, and will promote behavior change through positive incentives as well as measured responses to any rule breaking or failure to complete case plan goals.

Second, judges can promote and help secure funding for system-wide efforts to strengthen the probation agency's capacity to implement individualized, goal-oriented case planning. These efforts should include:

- in-depth training for POs on family engagement, motivational interviewing, and strengths-based assessment;
- adoption of assessment tools that are strengths-based, rather than narrowly focused on risk and needs;
- peer support for family members of system-involved youth;
- development of a response grid that includes many types of positive incentives (ranging from letters of praise, to coupons and gift cards, to recreational events, to job/internship opportunities, to early release from probation) as well as measured responses to negative behavior;
- an active and engaged team or task force dedicated to promoting racial and ethnic equity;
- development of research-informed and evidence-based intervention programs (family therapy, substance abuse treatment, cognitive behavioral therapy) to address underlying needs and issues that may be driving delinquent behavior;

35 Harvell, S., Sakala, L. and Matei, A., Transforming Juvenile Probation: Restructuring Probation Terms to Promote Success (Washington, DC: Urban Institute, April 2021), available online at https://www.urban.org/research/publication/transforming-juvenile-probation-restructuring-probation-terms-promote-success.

36 Chiamulera, C. and Gueller, M. (2020). Redefining Judicial Leadership: Stories of Transformative Practice. Reno, NV: National Council of Juvenile and Family Court Judges, available online at https://www.ncjfcj.org/publications/redefining-judicial-leadership-stories-of-transformative-practice/.

- creation/expansion of community partnerships to ensure a diverse menu of youth development opportunities in the community;
- regular meetings with front-line probation staff and supervisors to review policy and procedures and promote quality assurance in the case planning process; and
- a quality assurance process including regular data collection and analysis to measure how well case planning process is being implemented in practice.

Finally, judges can be a powerful force for improved outcomes by creating an appetite and expectation for data that is critical to plan, to elevate racial and ethnic equity, to monitor progress, and to build evidence for the effectiveness of individualized, family-engaged case planning.



PROMOTING SPECIFIC PROBATION PRACTICE REFORM: Incentives and Rewards to Support Behavior Change

What is the Practice?

Reliance on incentives and rewards, rather than sanctions and punishment, to promote positive, long-term behavior change

In its 2017 Resolution regarding juvenile probation and adolescent development, the NCJFCJ urged juvenile probation agencies to "utilize incentives and rewards to motivate youth to meet expectations and goals" as part of a process to help youth achieve positive behavior change in the long-term rather than expecting young people to comply with long lists of probation rules and requirements in the short-term.

To implement this recommendation, juvenile probation agencies must do two things: (a) work collaboratively with young people and their families to identify a continuing sequence of achievable short-term goals in each of the priority areas of the case plan; and (b) motivate youth to achieve those goals primarily by offering rewards and incentives for positive behavior, rather than the threat of punishment for bad behavior and non-compliance.

SMART Goals: As the NCJFCJ Resolution specified, probation should be "designed in such a way that enables youths to experience success almost immediately." Therefore, one outcome of the PO's very first meeting with the youth and family should be to identify an initial "common ground goal" that is readily achievable and that all participants in the meeting agree would be beneficial. To build on initial success on this initial goal, the case plan should identify a series of "SMART Goals" in each focus area that are specific, measurable, attainable, relevant and timely. As the probation period continues, the case plan should be continually updated to reflect the young person's progress in achieving goals and to add new goals and expectations in light of the young person's progress.

Incentives and Rewards: Given the powerful evidence (see below) showing that youth are more motivated by rewards than threats or sanctions, POs should work with the young person and family to identify opportunities and incentives that are valued by the youth and

will help encourage them to meet expectations and achieve the goals spelled out in the case plan. These incentives can range from easing of curfew restrictions, passes to recreational or entertainment events, gift cards and other prizes, opportunities to work in paid jobs or participate in popular enrichment activities, and—ultimately—a chance for the young person to shorten the period of probation. At the organizational level, the probation agency should solicit input from youth and family members to identify and secure rewards and incentives that are of high interest to youth.

Why Implement This Practice?

Because their brains remain underdeveloped (and will not reach full maturity until age 25),[37] adolescents are particularly ill-suited to the traditional approach to probation. As a team of scholars led by Dr. Naomi Goldstein of Drexel University explained in a recent article, "the current structure of most juvenile probation systems fails to recognize the unique characteristics of adolescent development, and thus, many youths likely fail to comply with probation, facing harsh consequences."[38]

Indeed, strategies commonly employed by many probation agencies, such as imposing a long list of rules on youth and seeking to motivate compliance through the threat of punishment, fly in the face of young people's tendencies "to impulsively focus on and value potential short-term, positive outcomes rather than long-term, negative consequences."[39] Probation can be much more effective, the research suggests, when POs and the courts focus on short-term positive outcomes; provide incentives to reward goal-attainment and other positive behaviors; and respond in consistent and measured ways to young people's predictable mistakes. Studies suggest that to maximize positive behavior change, probation should offer youth four times as many positive incentives as threats of punishment.[40] Incentives "are an important component of behavioral management systems because they help youths learn and implement new, desired behaviors," explained Goldstein and colleagues. Punishment, by contrast, "only inhibits undesired behaviors; it does not replace them with desired ones."[41]

37 L. Steinberg, "Adolescent Development and Juvenile Justice," *Annual Review of Clinical Psychology, vol.5*. 2009, available online at http://commissiononsexoffenderrecidivism.com/wp-content/uploads/2014/09/Steinberg.

38 Goldstein, N. E. S., NeMoyer, A., Gale-Bentz, E., Levick, M., and Feierman, J. (2016). "You're on the right track!" Using graduated response systems to address immaturity of judgement and enhance youths' capacities to successfully complete probation. *Temple Law Review, 88*, 805–836, available online at www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf; and National Institute of Corrections. (n.d.). Get smart about… rewards and sanctions: The facts about contingency management. Available online at https://info.nicic.gov/nicrp/system/files/027244.pdf.

39 Goldstein, N. E. S., NeMoyer, A., Gale-Bentz, E., Levick, M., and Feierman, J. (2016). "You're on the right track!" Using graduated response systems to address immaturity of judgement and enhance youths' capacities to successfully complete probation. *Temple Law Review, 88*, 805–836. Retrieved from www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf.

40 Wodahl, E., Garland, B., Culhane, S. and McCarty, W., "Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections," *Criminal Justice and Behavior, vol. 38*, 2011.

41 Ibid.

Key Elements of Using Incentives and Rewards to Promote Behavior Change

In their work on individual cases, POs should adopt the following practices:

- During the first meeting, collaborate with the youth and participating family members to identify a readily attainable "common ground goal" that all agree will be beneficial for the young person.
- If/when the young person completes the initial common ground goal, recognize and reward their success and build on it by setting a small number of additional goals that are likewise valued by all parties and readily attainable by the young person.
- In crafting case plans, work with youth and families to identify a sequence of SMART goals (specific, measurable, attainable, relevant and timely) in each of the identified priority areas.
- Specify in the case plan the precise rewards and incentives the young person will earn by achieving identified goals and meeting behavioral expectations, including recognition, material rewards, privileges, and opportunities.
- Also specify a set of measured consequences—including loss of privileges and missed opportunities for rewards and incentives—that the youth will face if they fail to achieve goals or meet expectations.
- Continually emphasize to young people their opportunity to shorten the period of probation if they achieve case goals and meet behavioral expectations.

At the organizational level, probation agencies and their partners in the court and larger community should:

- Develop and provide training to POs on a set of well-defined and workable protocols for POs to follow as they undertake the case planning process, including clear guidance on goal-setting and use of incentives.
- Develop and adhere to a detailed response grid that offers positive incentives for achieving case plan goals as well as graduated responses (but not confinement) when young people disobey rules or fail to complete responsibilities detailed in their case plan.
- Ensure that POs are fully trained in the use of rewards and incentives and also in family engagement, motivational interviewing, and cultural humility skills that will maximize their capacity to collaborate effectively with youth and families.
- Solicit input from young people through surveys or focus groups to identify incentives and rewards they believe would help motivate them to complete case plan goals and comply with probation rules and expectations.
- Work with community partners to secure valued rewards and incentives, including passes to recreational or entertainment events, gift cards and other prizes, and job and/or internship opportunities.
- Limit the duration of probation and grant young people the opportunity to reduce the period of probation by achieving their probation goals in a timely manner.

Promoting Race Equity when Using Incentives and Rewards

As part of their larger ongoing agenda of efforts to promote racial and ethnic equity, probation agencies and their court and community partners should concentrate in particular on the following steps to ensure equity in the use of incentives:

- Ensure that POs are well-trained in cultural humility, family engagement, and motivational interviewing.
- Provide peer mentors and other support to help parents and families of color (and all families) understand and participate effectively in the process of goal setting, case planning, and identifying incentives and rewards that are meaningful and motivating to youth to help them achieve their goals and reward their success when they do.
- Partner with community organizations in neighborhoods where many court-involved youth of color reside to provide mentoring services.
- Solicit input from youth and families from all racial and ethnic groups to help identify and offer rewards and incentives that are culturally relevant and motivating.
- In addition to other data monitoring and analysis, use periodic case file reviews to monitor how well POs are adhering to best practice in goal setting and the use of incentives and to determine if there are any racial or ethnic disparities in young people's success in achieving common ground and SMART goals.

Using Data to Support the Use of Incentives and Rewards

To support effective and equitable use of incentives and rewards, jurisdictions should collect and analyze data from their **administrative databases** on:

- Probation caseloads;
- The number of conditions imposed in the standard probation order, share of cases where additional conditions are imposed, and average number of additional conditions;
- Duration of probation imposed in the probation order and the actual duration of probation;
- The number of review hearings scheduled to address non-compliant behavior and number of technical violations formally filed with the court for rule-breaking and non-compliance (as opposed to new offenses);
- Success rates of youth in completing probation, including the share of youth completing probation successfully vs. youth arrested for new offenses vs. youth placed in custody for probation violations; and
- The ratio of incentives provided vs. sanctions imposed to measure the extent to which youth are rewarded for making progress vs. punished for struggling.

All of these data should be disaggregated to identify any disparities by race, ethnicity, gender, disability, and/or LGBTQ/SOGIE status. A more comprehensive list of probation-specific measures can be found in the probation module for the *Fundamental Measures of Juvenile Justice (2019)*.

In addition, court and probation administrators are encouraged to conduct periodic **case file reviews** to determine:

- Whether/how well POs are adhering to case planning guidelines, including engaging youth and families in the case planning process and establishing the common ground goal and SMART goals;
- Success of young people in achieving goals and meeting expectations;
- The ratio of positive incentives vs. negative consequences written into the case plan to reward youth for making progress vs. punish them for struggling; and
- The number of positive incentives and rewards actually earned and provided.

Here, too, jurisdictions should disaggregate all data to identify any disparities.

Finally, court and probation administrators should commission a trusted non-governmental community partner organization to conduct **periodic surveys (and perhaps focus groups) to ascertain the views of family members and youth themselves**. The involvement of trusted community partners here is essential because young people and families will be reluctant to provide candid feedback directly to system actors.[42] Regarding goal-setting and incentives, the surveys and focus groups should ask youth and family members about:

- Their overall satisfaction with the process of setting goals and identifying incentives and rewards when youth make progress and/or achieve their goals;
- How respectful and helpful they found the PO;
- The extent to which the PO took their comments into account when setting the common ground goals and selecting incentives and rewards to encourage and recognize success;
- How relevant and useful they believe the goals and incentives were in helping the young person overcome challenges, engage in positive new activities, and achieve positive behavior change; and
- How fair they believe the PO and the court were in providing rewards for achieving case plan goals and in imposing consequences for failing to achieve goals or meet expectations.

To the extent possible, feedback from community partners should describe the demographics of the young people and families with whom they consult. Judges should encourage community partners to flag notable differences by race, ethnicity, gender, and LGBTQ/SOGIE status.

42 Justice for Families, a national advocacy organization led by family members has produced detailed guidance on how to conduct focus groups, including advice for governmental and community partners. Justice for Families, *Focus on Youth and Families: A Guide for Conducting Focus Groups with Youth and Families Impacted by the Juvenile Justice System*, available at https://www.aecf.org/m/privy/Deep-End-Resource-Guide-5d-Guide-for-Conducting-Focus-Groups.pdf.

Challenges to Maximizing the Use of Incentives and Rewards

Efforts to increase the use of incentives and rewards face many of the same challenges affecting work required to adopt individualized, goal-oriented case planning. These include lack of staff support, inadequate training, absence of clear protocols, incompatible assessment tools and/or software, legal requirements for standard conditions or duration of probation, and inadequate data collection and analysis.

With regard to use of incentives specifically, probation agencies and their court and community partners will face particular challenges on:

- Developing a set of forms, templates, and software that POs can use smoothly in setting SMART goals and tracking achievement and completion over time;
- Crafting an integrated graduated response system of rewards, incentives, and measured consequences to encourage youth success that is informed by what individual youth have identified as motivating and rewarding to them;
- Identifying and securing passes, gift cards, and other material rewards for use as incentives;
- Forging strong partnerships with community organizations that are located where many court-involved young people reside and that are trusted by the community, and collaborating with these organizations to offer valued opportunities and activities to youth on probation as a reward for goal attainment and good behavior; and
- Changing—or finding ways to work with—existing rules requiring the imposition of standard conditions, mandating specific (and long) lengths of stay on probation, or prohibiting early release from probation.

How Can Judges Support Effective Implementation of Incentives and Rewards?

➔ On the Bench?

To promote effective goal setting and use of incentives in individual cases that encourage and reward progress with achieving goals and behavior change, the main roles for judges will be to support and empower probation officers and to refrain from imposing long lists of standard conditions, ordering frequent review hearings, or threatening probation violations in any but the most egregious cases.

POs must be given the authority to craft case plans in partnership with young people and their families and to manage the use of incentives and measured consequences in response to the young person's progress or difficulties.

At the same time, judges can and should hold POs accountable to follow best practices in goal-setting and using incentives. Judges can engage with parents or other family members during court hearings to ensure that they have had a hand in and support the terms of the case plan, including the selection of goals and incentives, and that parents and family members understand the proceedings and expectations moving forward. It is also important for judges to impose a reasonable duration of probation and make it clear to young people that they have an opportunity to end probation earlier by meeting expectations and achieving case plan goals.

➔ Off the Bench?

In fostering the effective use of incentives and rewards in relation to youth setting goals and making progress in achieving goals, the judges' most important work will be done off the bench. This work is to use their influence and authority to foster system-wide policies and practices that bolster success.

Judges should communicate clearly their expectation that POs will collaborate with young people and family members to identify common ground and SMART goals and employ incentives more than the threat of sanctions to motivate youth toward positive behavior change.

In addition, judges can promote and help secure funding for system-wide efforts to support goal setting and the use of incentives, including:

- in-depth training for POs;
- development of a response grid that includes many types of positive incentives (ranging from letters of praise, to coupons and gift cards, to recreational events, to job/internships opportunities, to early release from probation) as well as measured responses to negative behavior;
- creation/expansion of community partnerships to ensure a diverse menu of rewards, incentives, and opportunities to motivate young people toward goal attainment;
- regular meetings with front-line probation staff and supervisors to review policy and procedures and to promote quality assurance in goal setting and the use of incentives, as well as case planning and other aspects of probation supervision; and
- a quality assurance process including regular data collection and analysis to measure how well POs are following recommended practices in goal setting and use of incentives.

PROMOTING SPECIFIC PROBATION PRACTICE REFORM: Minimal Court-Ordered Conditions

What is the Practice?

Minimize the number of court-ordered conditions of probation in order to allow probation officers the flexibility they need to work collaboratively with youth and families and maximize young people's success that is supported through the PO-youth relationship

This recommendation requires a fundamental shift in juvenile probation practice—one that unfortunately has not yet been widely implemented. Rather, most juvenile courts continue to impose a standard list of many conditions on youth placed on probation—both formal and informal.[43] Most courts also continue to issue probation violations to young people who do not comply with conditions and continue to detain many youths as a consequence for violating probation conditions.

Instead of imposing long lists of standard conditions, juvenile courts should issue flexible and individualized probation orders that empower probation officers to work collaboratively with young people and their families. The absence of standard conditions with rigid rules will allow probation officers to concentrate their attention on developing individualized case plans aimed at helping youth achieve goals tailored to their individual needs and circumstances. Ideally, the only condition included in any young person's probation order would set an expectation that the youth will cooperate with the probation officer in developing the case plan and pursue case plan goals to the best of their ability.

For those judges and jurisdictions not ready or willing to eliminate conditions quite so entirely, it is critical at the very least to:

- Limit the number of conditions imposed on any youth to a small number (ideally four or less);

43 *Promoting Positive Development: The Critical Need to Reform Youth Probation Orders* (Washington, DC: National Juvenile Defender Center, Fall 2016, available online at https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf. And, T. Fabelo, N. Arrigona, M.D. Thompson, A. Clemens, and M. P. Marchbanks III, Closer to Home: An Analysis of the State and Local Impact of the Texas juvenile Justice Reforms (New York, NY: Council of State Governments Justice Center, January 2015), available online at https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf.

- Ensure that every condition is:
  - specifically tailored to the young person's situation; and
  - necessary to protect public safety and/or minimize the likelihood of rearrest.
- Include the young person and their family in conversations to identify and structure any added conditions;
- Write conditions clearly using simple and easily understandable language;
- Take care not to impose conditions that impact youth of color disproportionately; and
- Avoid conditions that prevent youth from participating in positive youth development opportunities or further disconnect them from positive peers and caring adults in the community, such as curfews that interfere with prosocial activities.



Rethinking Accountability for Youth in Juvenile Court

One thing that every judge, juvenile justice professional, family member, and community representative can agree on is that young people should be held accountable for their behavior.

Because it means different things to different people, accountability can be as polarizing as it is unifying. Accountability can mean actively taking responsibility and working toward lasting change. Accountability can also mean submitting to punishment. Accountability can be used to refer to obedience to authority, or it can be used to signal personal growth.

To understand the meaning behind the word, it is helpful to ask: "Accountable to whom? And for what?"

Too often, the legal system's approach to imposing accountability is problematic. In the context of probation, accountability frequently gets equated with punishment and control. When systems attempt to achieve accountability by imposing long lists of rules and conditions, backed up with threats, this otherwise powerful concept can lose touch with its higher aspirations: healthy and responsible young people contributing to strong and safe communities. When we say we want accountability but our energy is concentrated around demanding obedience and submission to authority, the word "accountability" becomes a bludgeon that harms youth, undermines public safety, and subverts the very purpose of the juvenile court.

As the National Center for Juvenile Justice explained in its revised 2020 edition of the Desktop Guide to Good Juvenile Probation Practice, "Accountability should not be a token term that is synonymous with punishment. Holding youth accountable in the juvenile justice system does not require punishment or a punitive approach." Likewise, accountability should not be reduced to a standard list of rules and behavioral conditions unrelated to the individual needs and circumstances of the young person–especially not when failure to comply with those rules becomes a ticket to incarceration.

In her book, *Until We Reckon*, Danielle Sered argues persuasively that incarceration is precisely the opposite of accountability, because it requires no affirmative action by those who have committed crimes, neither to acknowledge or redress the harm they have caused nor to undertake the effort required to ensure that they avoid subsequent offending in the future. This perspective is especially apt when it comes to youth, who are still works in progress. Brain development research has proven that young people are both more prone than adults to engage in risky and delinquent behavior and more amenable to the growth and change necessary to desist from offending.

How then should young people on probation be held accountable? The answer, as Sered suggests, can be seen where the justice system challenges young people to dedicate their time and energy to an individualized program of self-improvement. Youth should be held accountable to undertake the work necessary to address the circumstances that landed them in trouble by pursuing the opportunities and activities—and meeting the expectations—jointly identified with their families and probation officers and included in their case plans.

The demand for accountability cuts across each of the practice recommendations in this Toolkit, and each one has been crafted with that goal in mind. While it may be tempting to use the number of conditions in a probation order as a measure of accountability, true accountability requires much more than obedience to a list of rules. By empowering probation officers to work intensively with young people and their families to develop individualized case plans, juvenile courts can do much more for accountability than they could via a laundry list of standard conditions. Involving young people in the case planning process promotes accountability by improving their decision-making and goal-setting skills and engaging them to undertake purposeful and conscious behavior changes to achieve goals while boosting their own investment in making good choices.

When youth on probation have caused harm, case plans should include steps to repair that harm. And as young people make progress and confront challenges on probation, accountability requires that they receive appropriate and proportionate responses to their behaviors—including consequences for negative behavior, but even more importantly rewards for positive behavior. Negative consequences are appropriate only to the extent that they advance the mission of juvenile probation, which is to promote behavior change and long-term success. Given all that we know about adolescent development and the lasting damage of confinement, juvenile courts should never—in the name of accountability—impose or threaten confinement as a consequence for rule breaking.

Why Implement This Practice?

The use of standard conditions is rooted in a surveillance-compliance model of probation that has dominated the juvenile justice field for several decades. However, that model—often justified upon a problematic conception of "accountability" (see text box)—is contradicted by emerging research on adolescent development, and it has not proven effective in limiting rearrest rates or promoting positive behavior change.

As the NCJFCJ Resolution explained, "too many juvenile courts and juvenile probation departments impose conditions of probation that are not individualized, have too many requirements, and lead to unnecessary detention or incarceration for technical violations."

The National Juvenile Defender Center (NJDC) reports that "[i]n some places, youth are required to manage over thirty conditions of probation—a near impossible number of rules for children to understand, follow, and even recall."[44] In Texas, the Council of State Governments examined eight large counties and found that probation youth routinely faced anywhere from 10 to 40 conditions of supervision.[45]

In a 2019 paper entitled "Applying the National Council of Juvenile and Family Court Judges' Resolution to Juvenile Probation Reform," a team of juvenile justice scholars and practitioners explained that problems with the surveillance-compliance approach to probation can be traced to "the misalignment between probation expectations and youths' developmental decision-making capacities."[46]

Specifically, the available research evidence shows that the use of long lists of standard conditions in juvenile probation is problematic in several ways:

- ***It is difficult for adolescents to remember a long list of conditions.*** Indeed, one study found that only minutes after the court hearing in which their probation conditions were ordered, "most [youth] were confused and mistaken about what the judge had stated and ordered" and were able to recall only one-third of the conditions imposed on them.[47]
- ***It is neither helpful nor realistic to demand total and complete compliance*** with rules regarding drug use, school attendance, and other behavior issues that have long been problematic in a young person's life. Behavior change is a process. Probation should recognize and account for the reality that setbacks and detours are inevitable.[48]

44 *Promoting Positive Development: The Critical Need to Reform Youth Probation Orders* (Washington, DC: National Juvenile Defender Center, Fall 2016, available online at https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf.

45 T. Fabelo, N. Arrigona, M.D. Thompson, A. Clemens, and M. P. Marchbanks III, Closer to Home: An Analysis of the State and Local Impact of the Texas juvenile Justice Reforms (New York, NY: Council of State Governments Justice Center, January 2015), available online at https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf.

46 Goldstein, N. E. S., Gale-Bentz, E., McPhee, J., NeMoyer, A., Walker, S., Bishop, S., Soler, M., Szanyi, J., and Schwartz, R. G. (2019). "Applying the National Council of Juvenile and Family Court Judges' resolution to juvenile probation reform," *Translational Issues in Psychological Science*, vol. 5, no.2, 2019, available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6863450/pdf/nihms-1011975.pdf.

47 TeamChild and the Juvenile Indigent Defense Action Network, "A Guide for Improving Communication and Understanding in Juvenile Court," Washington Judicial Colloquies Project, (Washington, D.C.: Models for Change, 2012).

48 *Promoting Positive Development: The Critical Need to Reform Youth Probation Orders* (Washington, DC: National Juvenile Defender

➔ ***Adolescents have a hard time focusing on long-term goals.*** Far more than adults, adolescents are focused on short-term rewards. As a 2016 paper in the Temple Law Review explained, research shows that adolescents find it difficult to "consistently prioritize the long-term objective of successful probation completion over the immediate gratification of tempting behaviors."[49]

➔ ***Adolescents are motivated far more by rewards and incentives than by threats and punishments.*** Rewards and incentives "help youths learn and implement new, desired behaviors," noted the Temple Law Review paper. "In contrast, although applying punishment often results in a reduction or suppression of certain conduct, this technique only inhibits undesired behaviors; it does not replace them with desired ones... [and] also tends to lose its effectiveness over time."[50]

➔ ***Youth find it difficult to adhere to rules consistently over a long period.*** As Goldstein and colleagues explain, "Given their still-developing executive functioning skills, youth can face tremendous difficulty engaging in the logical decision-making required to consistently adhere to probation conditions, foregoing impulses for immediate gratification on a daily basis over a long time period."[51]

➔ ***The still-common practice of detaining youth for violating probation rules is deeply counterproductive***, increasing the odds that the young person will return to the justice system, sharply reducing future success in education and employment, and damaging the young person's health, mental health, and even life expectancy.[52] In addition, many probation conditions commonly imposed by juvenile courts place unfair burdens on young people that reduce their likelihood of success.[53] For instance, many standard probation conditions lists include provisions to:

- mandate drug testing for youth even when drug use has not been identified as a significant risk factor;
- require youth to wear electronic monitors;
- compel youth to submit to search and seizure by the probation officer at any time or place, with or without cause;

Center, Fall 2016, available online at https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf; and N.E. Goldstein, A. NeMoyer, E. Gale-Bentz, M. Levick and J. Feierman,"'You're on the Right Track!' Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths' Capacities to Successfully Complete Probation," *Temple Law Review*, vol. 88, 2016, available online at https://www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf.

49 N.E. Goldstein, A. NeMoyer, E. Gale-Bentz, M. Levick and J. Feierman,"'You're on the Right Track!' Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths' Capacities to Successfully Complete Probation," *Temple Law Review*, vol. 88, 2016, available online at https://www.templelawreview.org/lawreview/assets/uploads/2016/08/Goldstein-et-al-88-Temp.-L.-Rev.-803.pdf.

50 Ibid.

51 Goldstein, N. E. S., Gale-Bentz, E., McPhee, J., NeMoyer, A., Walker, S., Bishop, S., Soler, M., Szanyi, J., and Schwartz, R. G. (2019). "Applying the National Council of Juvenile and Family Court Judges' resolution to juvenile probation reform," *Translational Issues in Psychological Science*, vol. 5, no.2, 2019, available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6863450/pdf/nihms-1011975.pdf.

52 *Research in Brief to Transform Juvenile Probation: Eliminate Confinement as a Response to Probation Rule Violations* (Baltimore, MD: Annie E. Casey Foundation, 2020), available online at https://www.aecf.org/m/resourcedoc/aecf-eliminateconfinementasresponse-2020.pdf.

53 *Promoting Positive Development: The Critical Need to Reform Youth Probation Orders* (Washington, DC: National Juvenile Defender Center, Fall 2016, available online at https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf.

- impose inflexible curfews that do not allow youth to participate in prosocial activities where they can build skills, explore interests, and/or connect with positive peers and caring adults in the community; and
- prohibit youth from associating with entire classes of people—individuals with a criminal record, those currently on probation, those with a felony record, etc.

These kinds of restrictions are inconsistent with a probation model focused on long-term behavior change, and they interfere with the development of trusting relationships between youth and their POs. Also, they often cause disproportionate harm to youth of color, given the much higher rates of justice system involvement suffered in communities of color nationwide. These conditions can make compliance difficult or impossible for youth whose family member(s) may have a record or who reside in neighborhoods where crime is prevalent and police enforcement activity is concentrated. Conditions prohibiting contact with individuals with prior justice system contact send a damaging message to youth—that anyone with a criminal (or delinquency) record is undesirable. These conditions can also preempt the possibility for youth to participate in promising "credible messenger" programs where adults with lived experience in the justice system support and mentor court-involved youth.

As NJDC has written, "Unwieldy conditions of probation can lead to technical violations and cause lasting harm in the lives of children, including removal from their communities and incarceration.... Overly broad and unclear orders that are not tailored to the strengths, interests, and challenges of an individual youth can result in significant numbers of youth failing on probation, ultimately leading to costly and unnecessary out-of-home placement."[54]

Further, "By reducing the number of probation conditions and ensuring that each condition correlates to the youth's interests and goals of probation," writes NJDC, "youth will be more likely to understand the expectations and more able to comply with the conditions of probation.[55]

54 Ibid.

55 *Promoting Positive Development: The Critical Need to Reform Youth Probation Orders* (Washington, DC: National Juvenile Defender Center, Fall 2016, available online at https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf.

Key Elements of Minimal Court-Ordered Conditions

In their work on individual cases, juvenile court judges and the POs who prepare court recommendations advising judges about conditions should adopt the following practices:

- Abandon the use of any standard list of probation conditions.
- Streamline and simplify probation orders by making the primary (or only) condition be for young people to cooperate with the probation officer in devising the case plan and then to pursue case plan goals and meet expectations to the best of their ability.
- To the extent the probation order includes additional conditions, these conditions should be:
  - few in number (no more than four);
  - tailored specifically to the young person's situation;
  - essential to protect public safety and/or minimize the likelihood of rearrest;
  - clearly defined and written in easily understandable language;
  - equitable in terms of their impact on youth of color;
  - limited in scope to avoid interfering unnecessarily with the young person's ability to participate in positive youth development opportunities; and
  - restrained in imposing conditions that heighten the risk that youth will be dragged deeper into the justice system, such as: allowing POs to search the young person and their property, including their family home, without cause: requiring youth to wear an electronic monitor; limiting whom youth may be in contact with; and mandating regular drug tests.
- Create an expectation that all terms of the probation order, including conditions, will be fashioned through discussions between the PO, the young person and their family members, and that all terms in the order will be consistent with the young person's emerging case plan.
- Assign a peer mentor to advise and support family members of the young person and help family members participate effectively in discussions about conditions.
- At the state or county level, court administrators and legislators should:
  Repeal any laws or administrative rules that mandate specific conditions in juvenile probation cases.
  - Develop simplified new templates for probation orders that sharply limit the number of conditions.
  - Prohibit the imposition of unduly restrictive conditions, such as unlimited search and seizure and prohibitions on associating with individuals involved in the justice system, and strictly limit the circumstances under which restrictive conditions like electronic monitoring and mandatory drug testing may be imposed; and
  - Provide training to POs on how to work with young people and families to identify a minimal list of conditions for the probation order that will be consistent with the case plan they are developing together.

Promoting Race Equity in Minimal Court-Ordered Conditions

Judges, probation officials, and other system leaders must carefully examine how their approach to conditions of probation may affect racial and ethnic equity. National data show that youth of color are far more likely than their white peers to be confined for technical violations of probation.[56] In 2019, youth of color were confined for technical violations at a higher percentage than their share of the population ordered to probation (55 percent)[57] and dramatically more than their share of the general youth population (47 percent).[58]

In addition, some conditions often included in standard probation orders clearly impact youth of color more severely than white youth. For instance, the requirement to avoid associating with other individuals involved in the justice system—commonly included in many juvenile probation orders—has a disproportionate impact on youth of color given the far greater arrest rates and justice system involvement of people of color.[59]

Therefore, as part of their larger ongoing agenda of efforts to promote racial and ethnic equity, judges, probation agencies, and their court and community partners should concentrate on the following steps to ensure equity in the imposition of conditions of probation:

- Carefully examine all imposed conditions to identify conditions that might have a disparate impact on youth of color and ideally engage young people in that process.
- Eliminate any blanket conditions prohibiting youth from associating with entire classes of individuals based on their current or past involvement in the justice system.
- Ensure that POs are well-trained in cultural sensitivity and humility, implicit bias, structural racism, family engagement, and motivational interviewing—and that they use this knowledge to engage with youth and families in a collaborative process to identify appropriate conditions that should be recommended to the judge for inclusion in the probation order.
- Provide peer mentors and other support to help parents and families of color (and all families) understand and participate effectively in conversations to identify appropriate conditions of probation.
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56 Sickmund, M. Sladky, T.J., Kang, W. and Puzzanchera C. (2021). "Easy Access to the Census of Juveniles in Residential Placement." Available: https://www.ojdp.gov/ojstatbb/ezajrp/.

57 Sickmund, M. Sladky, T.J., Kang, W. and Puzzanchera C. (2020). "Easy Access to Juvenile Court Statistics: 1985-2018" Online. Available: https://www.ojdp.gov/ojstatbb/ezajcs/.

58 Puzzanchera, C., Sladky, A., and Kang, /w. (2020). "Easy Access to Juvenile Populations: 1990- 2019" Online. Available: http://www.ojjdp.gov/ojstatbb/ezapop/.

59 The Sentencing Project (2018). Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance Regarding Racial Disparities in the United States Criminal Justice System. Washington, DC, available online at https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf; Sawyer, W (2020). Visualizing the racial disparities in mass incarceration: Racial inequality is evident in every stage of the criminal justice system - here are the key statistics compiled into a series of charts, online article, Prison Policy Initiative, July 27, 2020, available online at https://www.prisonpolicy.org/blog/2020/07/27/disparities/; and Hinton, E. Henderson, L., Reed, C. (2018). An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System. New York, Vera Institute and available online at https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf.

- Make sure to provide conditions—as well as the case plans and all other relevant documents—in the native language of the youth and family, and provide interpreters during all steps in the process.
- Use surveys and/or focus groups to solicit input from youth and families regarding policies and practices around conditions, and make adjustments based on this input.
- As described below, monitor and analyze data from administrative databases, case file reviews, and occasional surveys and/or focus groups to identify any racial or ethnic disparities in conditions imposed on young people or in the relative success of youth in adhering to conditions.

Using Data to Minimize the Number of Court-Ordered Conditions

To aid in their efforts to minimize the number of court-ordered conditions, jurisdictions should collect and analyze data from their **administrative databases** on:

- The number of conditions included in the standard probation order, the share of cases where additional conditions are imposed, and the average number of additional conditions;
- The share of cases receiving specific conditions, such as drug testing and electronic monitoring, and the extent to which these conditions are applied only for youth who demonstrate high risks relevant to these conditions (such as problematic drug use or a history of fleeing the home);
- The success rates of youth in completing probation—including the share of youth cited for violating court-ordered conditions; and
- The number of violations filed for each specific condition.

All of these data should be disaggregated to identify any disparities by race, ethnicity, gender, disability, and/or LGBTQ/SOGIE status.

Through periodic **case file reviews**, court administrators can determine:

- Whether probation officers are engaging in collaborative discussions with the young person and family to identify appropriate conditions;
- Whether judges are adhering to recommended conditions, imposing additional conditions in individual cases, or insisting on standard conditions in many or all cases; and
- The extent to which conditions are being individualized, with conditions imposed only to address specific risks faced by the young person.

Here, too, jurisdictions should disaggregate all data to identify any disparities.

Through **periodic surveys (and perhaps focus group)** with family members and youth themselves, probation agencies and courts, working through community partners, should ask youth and family members about:

- Their overall satisfaction with the conditions imposed and the process for defining them;
- How respectful and helpful they found the PO in conversations about conditions;
- The extent to which the PO took their comments into account in identifying conditions to be included in the probation order; and
- How fair they believe the PO and the court have been in ordering conditions—and monitoring compliance with them.

The involvement of trusted community partners here is essential because young people and families will be reluctant to provide candid feedback directly to system actors.[60] To the extent possible, community partners undertaking surveys and focus groups should describe the demographics of the young people and families with whom they consult. Judges should encourage community partners to flag notable differences by gender, race, ethnicity, disability, and LGBTQ/SOGIE status.

Challenges to Minimizing the Number of Court-Ordered Conditions

Efforts to end the use of standard conditions lists and sharply curtail the imposition of overly restrictive conditions may face several obstacles, both attitudinal and practical. These include:

- Turning around the attitudes of those who continue to believe, contrary to evidence, that long lists of standard conditions reduce lawbreaking behavior and protect public safety (again, research makes clear that they do not);
- Overcoming resistance to change – given that, in most jurisdictions, the practice of imposing standard conditions has been in effect for decades;
- Forging buy-in to the vision of probation transformation and the understanding that probation should be about fostering positive long-term behavior change rather than imposing rules and monitoring compliance;
- Building judges' confidence in the ability of probation officers to succeed with youth in the absence of detailed conditions by taking steps to:
  - Provide POs with the training they require in family engagement, adolescent development, motivational interviewing, and positive youth development;
  - craft new policies and practices to shift probation toward use of rewards and incentives;

60 Justice for Families, a national advocacy organization led by family members has produced detailed guidance on how to conduct focus groups, including advice for governmental and community partners. Justice for Families, *Focus on Youth and Families: A Guide for Conducting Focus Groups with Youth and Families Impacted by the Juvenile Justice System*, available at https://www.aecf.org/m/privy/Deep-End-Resource-Guide-5d-Guide-for-Conducting-Focus-Groups.pdf.

- forge community partnerships to expand positive youth development programming opportunities available to youth; and
- make family engagement a centerpiece of probation practice.

■ Changing any existing laws or rules requiring the imposition of standard conditions.

How Can Judges Support Efforts to Use Minimal Conditions of Probation?

➔ On the Bench?

To minimize the number of conditions of probation, the main task for judges will be to abandon the practice of imposing long lists of standard conditions. Instead, judges should begin issuing simplified probation orders with few conditions. At the same time, they need to empower probation officers to craft and oversee case plans in partnership with young people and their families without the threat of a violation for any misstep. The core condition for any probation order should be that the young person will cooperate with the probation officer in crafting the case plan, do their best to achieve the goals, and meet the expectations identified in the plan.

Probation orders should set an expected time limit for probation, preferably not more than six months, and should include two types of early termination provisions. One provision should authorize probation officers to exercise their own discretion to close a case when the probation period is more than halfway over and a young person has made reasonable progress on the case plan. The other provision should invite requests for early termination from the parties closest to the case: the youth, the youth's attorney, and the probation officer. This second provision creates incentives for progress while preserving judicial discretion over early termination proceedings (see sample order).

Remember that a probation order is not only for the court and the lawyers. It is also for the youth and family. The order should be written in clear and developmentally appropriate language, informed by adolescent brain development research.

Sample Probation Order

The Juvenile Court has found that you violated the law. As a result, you are being placed on probation for six (6) months. During that time, you will receive court-ordered support and guidance to keep you and others safe and to help you be successful.

Specific time frame helps the young person understand the probation is time limited.

Or other title

While you are on probation, you will have a probation officer. The Court expects:

- That you will work with your probation officer to develop a case plan that includes short-term goals for you to work on; and
- That you will try your best to achieve your case plan goals.

Encourages a relationship between the PO and the youth; together they focus on creating short-term goals that are meaningful, relevant, and realistic for the youth; the youth and PO share an expectation the youth will work toward achieving goals and the PO will provide needed support.

The teenage brain struggles with future timing, and six months can feel unimaginably far away. This provision gives clarity about expectations and conveys that the young person's progress with short-term goals can shorten or extend their time on probation.

You will be on probation for six (6) months, which means your probation is expected to be over on _____ [date]. If you make reasonable progress toward the short-term goals on your case plan:

- You, your attorney, or your probation officer (separately or together) may request an Early Termination hearing for this Court to decide whether your probation can end early.
- Your probation officer may close your case after four (4) months, on _____, without coming back to this Court.

Invites advocacy by the people most likely to have information about progress – the young person, their attorney and the PO – while preserving judicial discretion.

Empowers the PO to exercise their discretion to close the case without coming back to court.

Reasonable progress means you have taken steps toward the goals and have talked to your probation officer about problems.

If you do not work with your probation officer to develop a case plan and make progress toward goals, the Court may extend your time on probation.

Stresses the importance of taking responsibility and making progress while explaining there may be consequences if expectations are not met.

Defines reasonable progress to provide helpful guidance while preserving discretion.

It is so ORDERED.

If they are necessary at all, additional conditions should be: few in number (no more than four); necessary to protect public safety and/or minimize the likelihood of rearrest; clearly defined and written in easily understandable language; and respectful of a young person's rights against self-incrimination and undue search and seizure.

In weighing the merits of any additional conditions, judges should consider the following questions and include conditions only when all of the following questions can be answered in the affirmative:

1. Perhaps most importantly, is this condition the responsibility of the justice system, or (like attending school, completing homework, obeying parents) is it best left to others?
2. Does this condition directly tie to the charge and offense and/or to the young person's identified risk factors for rearrest?
3. Does this condition foster growth for the young person and/or support the family?
4. Is this condition something that is best ordered by the court, or can it rather be fostered by the PO as part of the process of overseeing the case plan?

Judges are strongly encouraged to NOT include additional conditions unless answers to the following questions would be in the negative regarding the additional condition(s) being considered:

1. Does this condition reflect any biases based on race, geographic area, or preconceived assumptions about the youth or the family? Would it disproportionately impact young people of color?
2. Does this condition rely on restriction/confinement of opportunity or movement and would it likely limit, rather than contribute, to a youth's positive growth?

At the court hearing, judges should make sure that parents and family members fully understand the conditions and respond to any questions and concerns they raise.

➔ Off the Bench?

In their work off the bench to minimize conditions, judges can use their influence and authority to foster system-wide policies and practices that bolster success.

Judges should create an expectation that POs will collaborate with young people and their families to discuss and generate ideas about possible conditions of probation in advance of the young person's adjudication hearing. Judges should also create an expectation that POs will provide recommendations of minimal conditions and that the conditions are appropriate and specific to the individual young person.

In addition, judges can promote system-wide efforts to support a shift toward minimizing court-ordered conditions in a number of ways:

- Encourage and lead in the formulation of a new standard format for probation orders that omits standard conditions.
- Take the lead in changing any existing court rules that mandate the inclusion of restrictive conditions in juvenile probation orders and in advocating with legislators for the repeal of any conditions required by law.
- Support training to equip POs with the necessary skills and knowledge (family engagement, motivational interviewing, cultural humility/sensitivity, implicit bias, structural racism, adolescent brain development, use of rewards and incentives, and positive youth development to engage youth and families, craft appropriate case plans, and oversee probation cases in ways that foster behavior change and connect youth to community organizations and/or mentors who will support them beyond their probation experience.
- Support other policy and practice changes described above—and help secure adequate funding—that allow the probation agency to embrace a new model of juvenile probation focused on behavior change.
- Conduct regular meetings with front-line probation staff and supervisors to review policy and procedures and to promote quality assurance in the process of engaging youth and families, identifying appropriate conditions, and crafting and implementing individualized case plans.
- Create (or insist upon) a quality assurance process including regular data collection and analysis to measure how well POs and judicial officers are following recommended practices in minimizing conditions of probation.

PROMOTING SPECIFIC PROBATION PRACTICE REFORM: Alternatives to Confinement in Response to Technical Violations

What is the Practice?

Develop effective responses to progress and challenges that youth experience with probation and eliminate confinement as a consequence for violating conditions of probation.

In its 2017 Resolution on Juvenile Probation and Adolescent Development,[61] the NCJFCJ urged jurisdictions across the country "to develop alternatives to formal revocation for technical violations and to ensure that detention or incarceration is never used as a sanction for youth who fail to meet their expectations or goals."

The first steps toward achieving this practice reform are described in the preceding sections:

- Engage in a case planning process with youth and the family that identifies achievable individualized goals and brokers community connections in order to spur positive long-term behavior change that will outlast the young person's time on probation.
- Make extensive and creative use of incentives to motivate the young person, rather than attempting to change behavior with the threat of sanctions and punishment.
- Minimize the inclusion of restrictive conditions in the probation order.

In addition, achieving this practice reform will also require juvenile courts and probation agencies to develop non-custodial responses to address compliance challenges. Court and probation agencies will need to implement effective response grids that calibrate the consequences for rule breaking to the seriousness of the misbehavior, while continuing to incentivize behavior change by offering rewards and recognition for progress.

Perhaps most important of all is for judges, probation personnel, and other court leaders to take seriously the powerful research (see below) showing that even brief stays in custody harm young people and significantly increase the likelihood of rearrest in the short-term and

61 National Council of Juvenile and Family Court Judges (2017). Resolution Regarding Juvenile Probation and Adolescent Development. Available at https://www.ncjfcj.org/about/resolutions-and-policy-statements/

incarceration in the long-term. Even the best residential facility imperils a young person's progress because it disrupts the family and community ties that are crucial in fostering long-term behavior change.

Therefore, adhering to the core recommendation of this section of the Toolkit – rejecting the use of confinement as a response to probation rule violations – represents one of the single most important and valuable steps that juvenile courts can take to reduce system disparities.

Why Implement This Practice?

Testing boundaries and breaking rules are a rite of passage for teenagers. But the ways adults respond vary considerably. Unfortunately, that variance is not only based on context, but often also on race, gender, sexual orientation, sexual identity or expression, and disability. With respect to schools, for example, the National Academy of Sciences observed:

> Pressing boundaries, taking risks, and seeking autonomy and independence are hallmark features of adolescence, yet they often lead to misbehavior and rule violations at schools, especially when coupled with adolescents' general sensitivity to cues of respect or disrespect. . . . A starkly punitive disciplinary orientation is problematic for all youth, but it is all the more harmful when it is administered with an unequal hand. Unfortunately, youth of color, LGBTQ youth, and youth with disabilities are more likely to experience harsh and punitive discipline, even for similar infractions, than other students.[62]

In the context of juvenile probation, confinement is the most "harsh and punitive" way to respond to rule breaking. As in schools, the most punitive responses are more likely to be used for youth of color.[63]

There is now overwhelming evidence that even short periods of confinement can and do cause serious lasting harm to young people and that confinement does nothing to reduce future arrests or protect public safety. Indeed, compared to other youth arrested for the same offenses with comparable backgrounds and prior court histories, youth placed in detention are more likely to be incarcerated and suffer mental health symptoms as adults[64] and far less likely to

62 National Academies of Sciences, Engineering, and Medicine 2019. The Promise of Adolescence: Realizing Opportunity for All Youth, at pp. 145-46. Washington, DC: The National Academies Press. https://doi.org/10.17226/25388.

63 Dir, A. L., Magee, L. A., Clifton, R. L., Ouyang, F., Tu, W., Wiehe, S. E., and Aalsma, M. C. (2021). The point of diminishing returns in juvenile probation: Probation requirements and risk of technical probation violations among first-time probation-involved youth. Psychology, Public Policy, and Law, 27(2), 283-291.

64 U. Gatti, R.E. Tremblay and F. Vitaro (2009). Iatrogenic effect of juvenile justice. *Journal of Child Psychology and Psychiatry*, vol. 50. No. 8, available online at http://www.caycj.org/documents/EffectsofJuvyJusticeonYouth.pdf;;AB. Gilman, K.G. Hill and J.D. Hawkins (2015). When Is a Youth's Debt to Society Paid? Examining the Long-Term Consequences of Juvenile Incarceration for Adult Functioning,*Journal of Developmental Life Course Criminology*, vol.1, available online at https://link.springer.com/content/pdf/10.1007/s40865-015-0002-5.pdf

graduate high school,[65] attend college,[66] or earn a good living in the legitimate labor force.[67] A long-term study involving more than 35,000 youth in Cook County, Illinois, found that detention led to lower high school graduation rates and higher incarceration rates in adulthood.[68] As the study authors explained, even relatively short periods of detention "can be very disruptive and have severe long-term consequences" for detained youth.[69] In 2019, a study in Washington found that every day a young person spends in detention is associated with an increase in the likelihood of a new delinquency referral.[70]

Also, research consistently finds severe racial and ethnic disparities in detention and other forms of institutionalization: study after study shows that youth of color, and particularly black and Hispanic youth, are far more likely to be detained than comparable white youth.[71] These disparities are especially troubling given the consistent research finding that youth placed in detention are far more likely to receive severe dispositions in subsequent court proceedings than comparable youth allowed to remain in the community – exacerbating the glaring inequities seen in juvenile justice systems nationwide.[72]

A recent review of research related to race and youth justice found disparities in 81 percent of study comparisons analyzing decisions to detain African American vs. white youth and in 88 percent of comparisons measuring detention of Hispanic vs. non-Hispanic white youth.[73] Moreover, studies consistently find that the more frequent use of detention for youth of color is a significant factor in higher rates of post-adjudication confinement. As juvenile justice scholars Donna Bishop and Michael Lieber explained in a recent review of research, "Two of the most consistent findings in the literature are that minority youths are more likely to be detained than otherwise similar whites, and that being detained strongly predicts harsher treatment at disposition."[74]

65 E.S. Barnert, R. Dudovitz, B.B. Nelson, T.R. Coker, C.Biely, N. Li , P.J. Chung, " How Does Incarcerating Young People Affect Their Adult Health Outcomes?" *Pediatrics*, Vol. 139 , No, 2, February 2017, available online at https://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf.

66 R. Hjalmarsson, (2008). Criminal Justice Involvement and High School Completion, *Journal of Urban Economics*, vol.63, no. 2. available online at https://www.sciencedirect.com/science/article/abs/pii/S0094119007000642 (abstract only)

67 R. Apel and G. Sweeten, *The Effect of Criminal Justice Involvement in the Transition to Adulthood* (Washington, DC: U.S. Department of Justice, 2009), available online at https://www.ojp.gov/pdffiles1/nij/grants/228380.pdf.

68 Ibid.; H. Jung, "The Long-Term Impact of IncarcerationDuring the Teens and 20s on the Wagesand Employment of Men," *Journal of Offender Rehabilitation*, vol. 54, no. 5, 2015, available online at https://www.tandfonline.com/doi/abs/10.1080/10509674.2015.1043480 (abstract only).

69 A. Aizer and J.J. Doyle, Juvenile Incarceration, Human Capital and Future Crime:Evidence from Randomly-Assigned Judges (National Bureau of Economic Research, Working Paper 19102), available online at https://www.nber.org/system/files/working_papers/w19102/w19102.pdf.

70 Ibid.

71 Walker, S. C., and Herting, J. R. (2020). The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study. Crime and Delinquency, 66(13-14), 1865–1887. https://doi.org/10.1177/0011128720926115

72 Spinney, E., Cohen, M., Feyerherm, W., Stephenson, R., Yeide, M., and Shreve, T. (2018). Disproportionate minority contact in the U.S. juvenile justice system: a review of the DMC literature, 2001-2014, Part I. *Journal of Crime and Justice*, 41(5), 573–595. ; Leiber, M. J., and Peck, J. H. (2013). Race in juvenile justice and sentencing policy: an overview of research and policy recommendations. *Law and Inequality*, 31(2), 331–.

73 Rodriguez, N. (2010). The Cumulative Effect of Race and Ethnicity in Juvenile Court Outcomes and Why Preadjudication Detention Matters. *The Journal of Research in Crime and Delinquency*, 47(3), 391–413.; Leiber, M. J., and Peck, J. H. (2013). Race in juvenile justice and sentencing policy: an overview of research and policy recommendations. Law and Inequality, 31(2), 331–.

74 Spinney, E., Cohen, M., Feyerherm, W., Stephenson, R., Yeide, M., and Shreve, T. (2018). Disproportionate minority contact in the U.S. juvenile justice system: a review of the DMC literature, 2001-2014, Part I. *Journal of Crime and Justice*, 41(5), 573–595.

As the Annie E. Casey Foundation noted in its report, "Leading with Race to Reimagine Juvenile Justice," which documented the success of jurisdictions working to reduce confinement, especially for youth of color:

> Denying young people their freedom puts a formidable barrier between a young person and a healthy life of opportunity because it disrupts family, work and community ties and stymies normal adolescent development. Young people in institutions lose the opportunity to participate in many important rites of passage associated with adolescence…Further, well-designed community-based programs are more likely than institutional confinement to facilitate healthy development and reduce recidivism.[75]



75 Annie E. Casey foundation (2020). Leading With Race to Reimagine Youth Justice (Baltimore, MD: Annie E. Casey Foundation), available online at https://www.aecf.org/resources/leading-with-race-to-reimagine-youth-justice/.

Key Elements of Eliminating Confinement in Response to Violations

The first step to eliminating detention as a consequence for rule breaking is simply to make the choice that **confinement will no longer be considered an appropriate sanction for youth on probation absent a serious new offense**. In other words, judges and other system leaders must decide that probation rule violations will always be addressed in other ways.

The more difficult challenge involves steps to **promote positive behavior and lower the odds of non-compliance** and to **develop an array of developmentally appropriate and constructive alternative consequences** that can be applied when youth break rules or fail to meet expectations.

Steps to lower the odds that youth will engage in problematic or non-compliant behavior and to raise the likelihood of young people's success include:

- **Develop individualized case plans** in consultation with young people and their families.
- **Set a series of short-term goals** that are achievable and targeted to the interests of the young person.
- **Identify a rich array of rewards, incentives, and opportunities** in the community, and **employ them** to motivate youth on probation to meet expectations and achieve case plan goals.
- **Craft strong partnerships with community organizations and other community leaders** to forge lasting positive connections with young people and foster their success.

Steps to respond more effectively to problematic and non-compliant behavior include:

- **Minimize conditions included in the probation order** to reduce the chances that the young person will violate the order and put themselves at risk of a violation.
- **Develop a response grid** that identifies an array of developmentally appropriate alternative responses to the seriousness of the behavior.
- **Train POs on how to apply responses effectively**, while continuously building all of the other necessary skills for engaging youth and families, enhancing cultural sensitivity, developing individualized case plans, setting SMART goals, and more.
- **Use the response grid**; resist the temptation to let exceptions swallow the rule, so that young people lose (or gain) privileges, recognition, and access to rewards and opportunities when they struggle or make progress in meeting expectations; ensure that youth always have the power to expand their access to rewards and privileges by working hard to achieve their case plan goals.
- **Refrain from using the threat of a detention stay** or a formal violation to motivate compliance.
- **Require POs to pursue alternative strategies and responses to problematic behavior and to seek a supervisor's approval before filling for a violation of probation**.
- **Minimize the number of hearings** scheduled to review and address rule violations and other non-compliant behavior, leaving primary responsibility to POs (rather than the court) to oversee the case plan and work with youth and their families.

Promoting Race Equity through Eliminating Confinement for Rule Violations

The use of confinement for rule violations is a significant driver of racial and ethnic disparities in juvenile justice. Year after year, national data reveal that youth of color account for a disproportionate share of youth confined for technical violations.[76] In fact, the overrepresentation of youth of color among young people confined for technical violations is more intense now than it was in 2007. Although more research is needed, there is also evidence that Black youth are more likely to receive a technical violation and have a shorter time to technical violation compared with white youth.[77]

Other steps to promote equity in the use (or non-use) of confinement are also valuable and important. These include several actions recommended in earlier sections of the Toolkit, such as:

- Providing peer mentors to support and assist the parents and family members of youth of color (as well as other youth) to help them understand and participate in the court and case planning process;
- Analyzing data on the number and nature of conditions imposed on youth in their probation orders to detect racial and ethnic disparities;
- Regularly surveying and/or conducting focus groups with youth and families to hear their perspectives and identify disparities in their experiences with probation; and
- Training POs to enhance their cultural sensitivity and humility, learn about structural racism and implicit bias, and improve their skills in engaging youth and families and in setting appropriate goals.

In addition, it is critical that jurisdictions closely monitor the frequency of confinement for probation violations, warrants, and other reasons that do not involve a new offense to identify disparities and the factors underlying them.

Using Data to Eliminate Confinement for Rule Violations

To eliminate custodial responses to technical violations and promote alternative responses, jurisdictions should collect and analyze data from their **administrative databases** on:

- The number of youth detained for probation violations, including warrants and other behaviors that did not involve a new offense;
- The specific conditions these detained youth were cited for violating, plus a breakdown of

76 Bishop, D.M., Lieber, M.J. (2011). Racial and Ethnic Differences in Delinquency and Justice System Responses, *The Oxford Handbook of Juvenile Crime and Juvenile Justice* (Edited by Donna M. Bishop and Barry C. Feld), Oxford University Press, available online at https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195385106.001.0001/oxfordhb-9780195385106-e-20 (abstract only).

77 Dir, A. L., Magee, L. A., Clifton, R. L., Ouyang, F., Tu, W., Wiehe, S. E., and Aalsma, M. C. (2021). The point of diminishing returns in juvenile probation: Probation requirements and risk of technical probation violations among first-time probation-involved youth. *Psychology, Public Policy, and Law,* 27(2), 283-291 at 288 (finding that "even when accounting for other factors, such as charge severity and probation requirements, Black youth showed higher risk of and shorter time to technical violation compared with White youth.")

the other behaviors (not counting new offenses) that court-involved youth were detained for;
- The number of hearings scheduled to address non-compliant or otherwise problematic behavior for which youth faced the possibility of a probation violation, outcomes of those hearings in terms of the share of youth where a probation violation was imposed, and use of detention as the share of youth receiving violations; and
- The number of youth where probation was revoked as a result of a technical violation as a percentage of all youth disposed to probation.

All of these data should be disaggregated to identify any disparities by race, ethnicity, gender, disability, and/or LGBTQ/SOGIE status.

Through periodic **case file reviews**, court and probation administrators can determine:

- Whether probation officers are engaging in collaborative discussions with the young person and family to understand and address problematic behavior, and to adjust the case plan goals and incentives in ways that will enhance the likelihood of success;
- Whether review hearings are being scheduled at the first sign of difficulties (thereby undercutting the PO's autonomy), or if review hearings are reserved only for serious situations after the PO has made determined efforts to address the situation with the young person and family (as is best practice);
- The extent to which particular conditions are proving difficult for young people to comply with and thereby triggering a disproportionate share of review hearings and formal violations;
- Which parties (e.g., prosecutors, probation, etc.) are making requests for contempt or revocation hearings and why in order to inform the development of alternative responses that provide accountability without confinement.

Here, too, jurisdictions should disaggregate all data to identify any disparities.

Through **periodic surveys (and perhaps focus groups) with family members and youth themselves**, probation agencies and courts, working through community partners, should ask youth and family members about:

- Whether they feel the PO is working collaboratively with them to help the young person meet expectations, achieve case plan goals,overcome challenges, learn new skills, and enhance their strengths and avoid violations;
- Whether the PO has used the threat of a violation, detention, or revocation to promote compliance, rather than seeking to motivate the youth with rewards/incentives and applying measured responses to problematic behavior; and
- How fair they believe the PO and the court have been in monitoring the young person's progress on probation.

The involvement of trusted community partners here is essential because young people and families will be reluctant to provide candid feedback directly to system actors.[78] To the extent possible, community partners undertaking surveys and focus groups should describe the demographics of the young people and families when they share a summary of the feedback with the court and probation department. Judges should encourage community partners to flag notable differences by race, ethnicity, gender, and LGBTQ/SOGIE status.

Challenges to Eliminating Confinement for Violations and Minimizing the Use of Detention Generally

Efforts to end the use of confinement in response to rule violations, and to reduce confinement for youth on probation generally, may face several obstacles. These include:

- Overcoming resistance to change—given that, in most jurisdictions, the practice of detaining youth for probation violations and the problematic conception of probation as "one last chance" have been commonplace for decades;
- Shifting the attitudes of those who continue to believe, contrary to evidence, that threats of detention or revocation are effective motivators for youth, and that confinement is a fruitful strategy to improve behavior and promote youth success (as detailed above, research makes emphatically clear that threats of punishment do not motivate youth and that detention harms youth and increases future justice system involvement);
- Changing policies and practices regarding bench warrants and other responses that frequently lead youth to be detained for non-compliant behaviors such as failure to appear in court, non-attendance at school, failed drug tests, or non-participation in treatment activities included in the probation case plan; and
- Clarifying the definition of "accountability" to make clear that it is not about punishment; rather, youth must be held accountable for their behaviors in ways that promote their well-being and help them to develop the skills and understanding necessary to mature into successful law-abiding adults; detention does just the opposite.

78 Justice for Families, a national advocacy organization led by family members has produced detailed guidance on how to conduct focus groups, including advice for governmental and community partners. Justice for Families, *Focus on Youth and Families: A Guide for Conducting Focus Groups with Youth and Families Impacted by the Juvenile Justice System*, available at https://www.aecf.org/m/privy/Deep-End-Resource-Guide-5d-Guide-for-Conducting-Focus-Groups.pdf.

How Can Judges Support Efforts to Eliminate Detention in Response to Rule Violations and Minimize Confinement Generally?

➔ On the Bench?

To eliminate the use of confinement for probation rule violations, judges should begin by resolving that this longstanding practice will no long be permitted. Instead, probation and the court will apply other responses when young people on probation break rules and/or fail to meet expectations and pursue the goals in their case plans.

Beyond this central step, judges can employ a variety of strategies to support POs in their efforts to encourage and assist young people in meeting their case plan goals, foster a healthy approach to accountability, and address any problematic or non-compliant behavior. These strategies include:

- Minimize conditions included in probation orders;
- Empower POs to take the lead in working with youth and families to promote success and address problematic behavior by limiting the use of review hearings;
- Set an expectation that POs will apply best practices in their work with youth and families to maximize the likelihood of success, including everything from family-engaged case planning, use of incentives, and connections to community partners and positive youth development opportunities;
- When review hearings do occur, impose only those consequences that will promote the young person's growth and likelihood of success—rather than punishments—and encourage POs to continue working with the young person and family to set new goals that address the issues and challenges underlying the problem behavior—and identify new incentives that might motivate the youth toward success; and
- Explore every opportunity to avoid using detention for youth who are brought to court on bench warrants or for other types of rule violations (failure to appear, truancy, runaway, etc.).

➔ Off the Bench?

In their work off the bench to eliminate detention in response to probation violations and minimize confinement generally as a response to rule breaking, judges can use their influence and authority to promote needed policy and practice changes and to continuously build essential community partnerships:

- Encourage and lead in the formulation of a response grid that emphasizes positive incentives, requires measured responses to non-compliant behavior, and prohibits detention in response to rule violations;
- Promote the adoption of rules requiring POs to work collaboratively with youth and families to address problematic behavior and failure to pursue case plan goals, and requiring POs to seek supervisor approval before filing for probation violations or seeking detention in response to rule violations;
- Take the lead in creating a new format for probation orders that omits standard conditions and in changing any existing laws or court rules that mandate the inclusion of restrictive conditions in juvenile probation orders;
- Support training to equip POs with the necessary skills (family engagement, motivational interviewing, use of rewards and incentives, positive youth development, and racial and ethnic equity) to engage youth and families, craft appropriate case plans, and oversee probation cases in ways that foster behavior change and maximize youth success; and
- Create (or insist upon) a quality assurance process including regular data collection and analysis to measure how often (if at all) youth are being detained for violations of probation or other rule breaking.

PROMOTING SPECIFIC PROBATION PRACTICE REFORM: Probation as a Disposition for Youth Involved in Serious Delinquency

What is the Practice?

Strategically narrow the probation population to youth with serious offenses and/or substantial risk of rearrest while substantially increasing the use of diversion (informal processing) for youth who pose lesser risk

The goals of the NCJFCJ's 2017 Resolution on Juvenile Probation and Adolescent Development cannot be realized unless juvenile courts take action to target probation more narrowly. Specifically, to retarget their probation populations, juvenile courts will have to undertake two parallel sets of reform efforts:

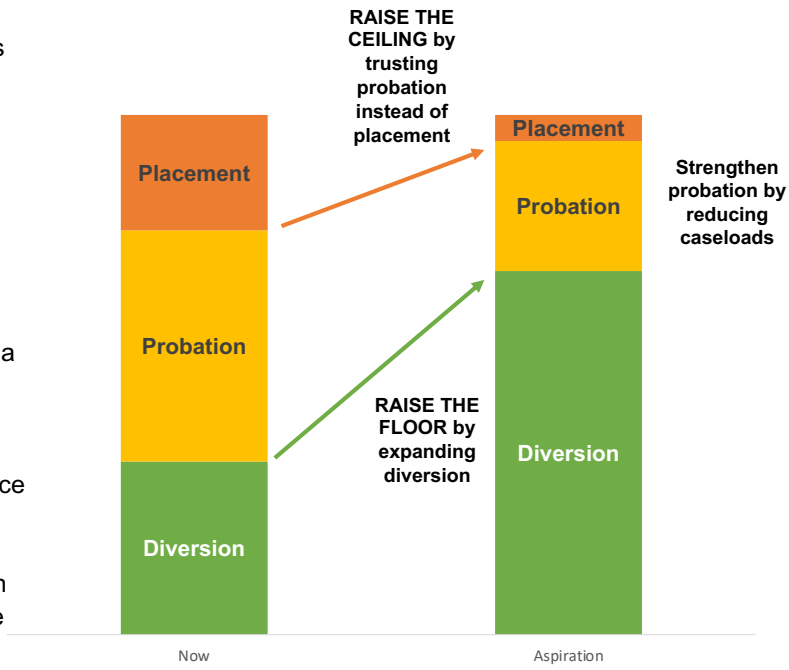
1. Expand probation as an appropriate disposition and opportunity for youth involved in more serious offending, including many youth who would be placed in residential facilities under current practices; and
2. Expand diversion/informal processes as a response to youth who have not committed serious offenses and score as low or moderate risk of rearrest, and ensure such youth are not placed on formal or informal probation.



Target Probation Resources More Efficiently

Focusing probation resources requires jurisdictions to –

- RAISE THE CEILING by trusting probation instead of placement for young people with serious offenses and complex risk/needs, and
- RAISE THE FLOOR by expanding diversion.
  In order to transform probation into a focused intervention that promotes personal growth, positive behavior change and long-term success, jurisdictions must dramatically reduce the size of the probation population and probation officer caseloads by diverting far more youth so they can mature without being pulled into the justice system.



As the first conclusion of the 2017 Resolution on Juvenile Probation, the NCJFCJ stated that it "supports and is committed to juvenile probation systems that conform to the latest knowledge of adolescent development and adolescent brain science." Perhaps the strongest and most consistent finding of recent research on how to address delinquent conduct has been the so-called "risk principle," which finds that targeting interventions to youth with more serious risk factors produces far better results than targeting interventions to youth with fewer and less serious risk factors.

Indeed, many studies find that processing the cases of youth at lower risk in the justice system, imposing additional rules, and subjecting them to surveillance, often does more harm than good.[79] Meanwhile, many youth currently removed from home by juvenile courts do not score as high risk to reoffend, and many are not adjudicated for serious offenses.[80]

Even for youth who are adjudicated for more serious delinquency, research finds that the key to desistance lies in hastening the pace of young people's psychosocial maturation,[81]

79 Annie E. Casey Foundation (2018), Transforming Juvenile Probation: A Vision for Getting it Right, available online at https://www.aecf.org/resources/transforming-juvenile-probation/.

80 Indeed, fewer than 10,000 of the 62,000 youth committed to custody in 2018 (16 percent) were adjudicated for serious violent offenses; By contrast, 19,000 were removed from home for property crimes, nearly 15,000 youth were placed in facilities for public order offenses like obstruction of justice or disorderly conduct, and 8,500 were placed for simple assault (typically a misdemeanor, often the result of schoolyard fighting). (OJJDP Statistical Briefing Book).

81 L. Steinberg, E. Cauffman and K.C. Monahan, Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders (Washington, DC: U.S. Office of Juvenile Justice and Delinquency Prevention, March 2015), available online at https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf.

which is achieved far more readily if youth remain in the community and have the opportunity to build positive connections, participate in constructive skill-building activities, stay in (or return to) school, and experience the normal rites of passage associated with adolescence.[82] (See section below – "Why Implement This Practice" – for much more about this and related research.)

Given these realities, juvenile courts must extend probation opportunities to youth who are arrested for serious offenses and/or score at higher risk levels. Dispositional matrices (or probation recommendation grids), coupled with policies leaning toward the least restrictive alternative, can be powerful tools to ensure that probation is not misused for cases that should be diverted. Except in unusual cases where the young person has a pattern of serious violence and where determined efforts to develop a safety plan have been unsuccessful, probation should be the presumptive option for young people who score high risk and are adjudicated delinquent for serious offenses. No young person should be automatically placed in a facility until court and/or probation staff have reviewed the circumstances of their case and explored options for safely remaining at home. For youth at the higher end of the risk continuum who are allowed to remain at home, probation plans should include intensive, individualized, high quality, strength-based interventions that connect youth with positive influences, fortify their support systems, address any acute needs facing the youth, and heighten their internal motivation to change. Also, from the very outset of probation, POs should work with the youth and family to devise and then follow emergency intervention plans that spell out steps to quickly and safely address any crisis or conflict situations that might arise while the young person is on probation.

At the other end of the risk spectrum, given the evidence showing that probation is ineffective and often counterproductive for youth with few risk factors and limited prior involvement in delinquency, juvenile courts should encourage and facilitate diversion by all decision-makers and at each decision point: before arrest, before formal filing, and before adjudication. If pre-arrest and prefiling diversion ramp up and low-risk cases continue to land in court, juvenile judges will have an especially critical role—they are the last line of defense. To provide effective accountability for young people and conserve probation resources for the youth who need it most, courts must begin diverting a far larger share of court-referred youth than they have historically. To be consistent with risk principle research, courts and prosecutors should divert the lion's share of youth from formal court processing and toward community-based accountability and opportunity, without imposing conditions or assigning them to informal probation. Finally, courts must identify and revamp any diversion policies or practices that contribute to diversion "failures," particularly given that across the country diversion "failure rates" are higher for youth of color.

82 S. Schaefer and G. Erickson, *The Impact of Juvenile Correctional Confinement on the Transition to Adulthood* (Washington, DC: U.S. Department of Justice, June 2016, available online at https://www.ojp.gov/pdffiles1/nij/grants/249925.pdf.

Given the two-pronged nature of the targeting challenge, this chapter is divided into two pieces. The first section will examine the evidence and required efforts to extend probation opportunities to youth involved in more serious offending; the second section reviews evidence and efforts required to reduce the probation population by diverting a much larger share of referrals to informal processing outside the court system.

Expand Probation Opportunities for Youth Involved in More Serious Offending

Why Implement This Practice?

Based on the research and data available, the case for relying on probation instead of placement for youth with more serious involvement in delinquency is overwhelming. This case rests on five strands of evidence.

- Research finds that the key to desistance from delinquency is maturity, specifically in helping young people develop in terms of psychosocial maturity – to weigh consequences, control impulses, resist peer pressure, etc.[83] When systems employ the practices described in this Toolkit, probation can support and accelerate that process;
  - Keeping youth at home on probation supervision can provide them opportunities to participate in social and educational activities, forge relationships with adult mentors and positive peers, navigate through personal challenges, make individual choices, and build self-reliance – all of the key steps that adolescent development research shows are necessary for youth to become successful, responsible, law-abiding adults.[84]
  - By contrast, research shows that out-of-home placement severely retards personal growth, and it is easy to see why: opportunities for personal growth are deeply constrained while youth are held in detention centers, correctional facilities, and other out-of-home placements.[85] Facility staff tell the young people what to do and when, every minute of every day, and the nature of the confinement experience makes it difficult or impossible for young people to make decisions for themselves, learn by doing, or develop autonomy in their daily lives.

83 L. Steinberg, E. Cauffman and K.C. Monahan, Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders (Washington, DC: U.S. Office of Juvenile Justice and Delinquency Prevention, March 2015), available online at https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf.

84 Barton, W. H., and Butts, J. A. (2008). *Building on strength: Positive youth development in juvenile justice programs*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago. Available online at https://www.aecf.org/m/resourcedoc/aecf-BuildingOnStrengthPositiveYouthDevelopment-2008.pdf.; L. Steinberg, "Adolescent Development and Juvenile Justice," *Annual Review of Clinical Psychology*, vol.5. 2009, available online at http://commissiononsexoffenderrecidivism.com/wp-content/uploads/2014/09/Steinberg-Laurence-2009-Adolescent-development-and-juvenile-justice.pdf.

85 S. Schaefer and G. Erickson, *The Impact of Juvenile Correctional Confinement on the Transition to Adulthood* (Washington, DC: U.S. Department of Justice, June 2016, available online at https://www.ojp.gov/pdffiles1/nij/grants/249925.pdf.

- A variety of intensive community-based intervention models have proven effective with court-involved youth who might otherwise be placed into facilities. These include:
  - Credible Messenger programs, where people with lived experience in the justice system serve as mentors for court-involved youth and help guide them to more healthy behaviors, beliefs, and life choices;[86]
  - Youth advocate programs, which pair young people with mentors and advocates who – like Credible Messengers – live in the same communities and prioritize positive youth development;[87]
  - Evidence-based therapy models such as Multisystemic Therapy or Functional Family Therapy;[88]
  - Wraparound programs that connect youth with targeted treatment services, social supports and recreational programs;[89] and
  - Intensive life skills and employment-focused programs such as ROCA, Inc. (in Massachusetts and Baltimore), exalt (in Brooklyn, NY), and YouthBuild (nationwide).[90]

All of these interventions cost only a fraction as much as confinement in a detention center, youth correction facility, or residential treatment center.

- Placement into a correctional institution or other residential facility – the primary alternative to probation for youth with serious offenses – is not effective in reducing recidivism. Outcome studies consistently find that up to 75 percent of youth committed to juvenile corrections institutions are rearrested within three years of release.[91] Studies also show that even short stays in detention lead to substantially higher rates of incarceration in adulthood.[92]

86 L. Cramer, M. Lynch, M. Lipman, L. Yu and N.M. Astone, Evaluation Report on New York City's Advocate, Intervene, Mentor Program (Washington, DC: Urban Institute, October 2018), available online at https://www1.nyc.gov/assets/opportunity/pdf/evidence/AIM_Final_2018.pdf; and M. Lynch, N.M. Astone, J. Collazos, M. Lipman and S. Esthappan, Arches Transformative Mentoring Program: An Implementation and Impact Evaluation in New York City (Washington, DC: Urban Institute, February 2018) available online at https://www.urban.org/sites/default/files/publication/96601/arches_transformative_mentoring_program_0.pdf.

87 M.J. Karcher, % D.A. Johnson, Final Technical Report: An Evaluation of Advocacy-based Mentoring as a Treatment Intervention for Chronic Delinquency (Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, December 2016), available online at https://www.ojp.gov/pdffiles1/ojjdp/grants/250454.pdf; and Evidence Supporting YAP's Model, (Harrisburg, PA: Youth Advocate Programs, undated), available online at https://www.yapinc.org/Portals/0/Docs/YAP%20Evidence%20Base%20-%20booklet.pdf.

88 S.W. Henggeler, "Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them," *Social Policy Report*, v.25, no.1, 2011, available online at https://files.eric.ed.gov/fulltext/ED519241.pdf.

89 B. Kamradt, "Innovative Approaches to Measuring and Monitoring Outcomes for Youth in Systems of Care – Wraparound Milwaukee's Model," Powerpoint Presentation to the Conference on "Expanding Access to Children's Behavioral Health Care Services," Albany, NY October 8, 2014, available online at http://clmhd.org/img/uploads/Wraparound%20Milwaulkee.pdf; and B. Stroul, "Return on Investment in Systems of Care for Children With Behavioral Health Challenges: A Look at Wraparound," The TA Telescope, vol. 1, no. 2, 2015, available online at https://nwi.pdx.edu/pdf/WrapROI.pdf.

90 M.A. Cohen and A.R. Piquero, " An Outcome Evaluation of the YouthBuild USA Offender Project,"Youth Violence and Juvenile Justice, vol.8, no.4, 2009, available online at https://journals.sagepub.com/doi/10.1177/1541204009349400 (abstract only).

91 R.A. Mendel, No Place for Kids: The Case for Reducing Juvenile Incarceration (Baltimore, MD: Annie E. Casey Foundation, 2011), available online at https://www.aecf.org/resources/no-place-for-kids-full-report/.

92 A. Aizer and J.J. Doyle, "Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges," Quarterly Journal of Economics, vol. 130, no. 2 (2015), available online at https://academic.oup.com/qje/article-abstract/130/2/759/2330376 (abstract only); and S.C. Walker and J.R. Herting, " The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study," *Crime and Delinquency*, vol.66, no. 13-14, 2020, available at https://journals.sagepub.com/doi/pdf/10.1177/0011128720926115.

- Research also finds that confinement causes severe and lasting damage to young people's future health and success. Compared to young people with similar backgrounds and delinquency histories who were permitted to remain at home, youth who have ever been detained or placed in residential facilities have:
  - Lower high school graduation rates;[93]
  - Lower employment and earnings in adulthood;[94]
  - Worse mental health symptoms;[95]
  - Worse physical health;[96] and
  - Higher premature death rates.[97]

- Even for youth who have committed serious offenses, research indicates that in the lion's share of cases, allowing youth to remain home on probation—rather than removing them from home and placing them in a facility—does not threaten public safety. That is true because:
  - Rigorous longitudinal research finds that even among youth adjudicated for serious offenses, the vast majority (91 percent) do not continue to offend at a high level three years after their initial adjudication, and about three-fourths report very low-levels of offending (or none) by the their mid-20s.[98]
  - Indeed, research finds that getting arrested for any single offense—no matter how violent—is not a strong predictor of future arrest or adjudication.[99] Rather, risk of rearrest is most correlated with the presence of multiple risk factors (and absence of corresponding protective factors) and in multiple domains (individual, family, peer, school, and community).[100]

93 R. Hjalmarsson, " Criminal Justice Involvement and High School Completion," *Journal of Urban Economics*, vol.63, no. 2, 2008, available online at https://www.sciencedirect.com/science/article/abs/pii/S0094119007000642 (abstract only).

94 R. Apel and G. Sweeten, The Effect of Criminal Justice Involvement in the Transition to Adulthood (Washington, DC: U.S. Department of Justice, 2009), available online at https://www.ojp.gov/pdffiles1/nij/grants/228380.pdf; and H. Jung, "The Long-Term Impact of Incarceration During the Teens and 20s on the Wagesand Employment of Men," *Journal of Offender Rehabilitation*, vol. 54, no. 5, 2015, available online at https://www.tandfonline.com/doi/abs/10.1080/10509674.2015.1043480 (abstract only).

95 E.S. Barnert, R. Dudovitz, B.B. Nelson, T.R. Coker, C.Biely, N. Li % P.J. Chung, " How Does Incarcerating Young People Affect Their Adult Health Outcomes?" *Pediatrics*, Vol. 139 , No, 2, February 2017, available online at https://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf.

96 Ibid.

97 L.A. Teplin, G.M. McClelland, K.M. Abram and D. Mileusnic, "Early Violent Death Among Delinquent Youth: A Prospective Longitudinal Study," *Pediatrics*, vol.115, no.6, 2005, available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1351295/.

98 E.P. Mulvey, "Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders," (Washington, DC: U.S. Office of Juvenile Justice and Delinquency Prevention, 2014, available at https://www.pathwaysstudy.pitt.edu/documents/OJJDP%20Fact%20Sheet_Pathways.pdf.

99 U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP). 1995. Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. Washington, DC: U.S. Government Printing Office, available online at https://www.ojp.gov/pdffiles/guide.pdf.

100 M. Shader, "Risk Factors for Delinquency: An Overview," (Washington, DC: U.S. Office of Juvenile Justice and Delinquency Prevention, 2003), available at https://www.ojp.gov/pdffiles1/ojjdp/frd030127.pdf.

In addition to these compelling findings from research, the principle of accountability offers a final reason why allowing more adjudicated youth to remain at home on probation is a superior option. Unlike youth sent to placement who are required only to "do their time" and refrain from assaulting staff or other youth, probation can hold young people accountable in a far more meaningful way. As part of their probation experience, youth can and should be asked to take important steps and participate in beneficial activities designed to minimize the likelihood they will reoffend in the future, build skills and maturity necessary to succeed as adults, and—where appropriate—perform tasks that directly repair/address the injury or loss suffered by the harmed party.

Key Elements of Targeting Probation to Youth with More Serious Offending

To expand probation opportunities for youth at the upper end of the risk spectrum, jurisdictions can:

- Develop and/or adopt intervention strategies that probation can employ to supervise and support youth who have been involved in more serious offending behavior. Examples with documented effectiveness include:
  - The Credible Messengers model which employs individuals with lived experience in the justice system to mentor and support youth and encourage them toward personal growth and achievement of case plan goals.
  - Youth Advocate Programs and other similar models that employ community-based mentors (or advocates) to engage and motivate youth toward success.
  - Wraparound services and systems of care that connect youth to an array of available services and activities relevant to their needs and interests
  - Evidence-based family-focused therapy models like Multisystemic Therapy and Functional Family Therapy
  - Intensive life skills and career development programs such as ROCA, exalt, or YouthBuild.
  - Restorative Justice Circles or other facilitated mediation sessions where young people can meet with the victims of their offenses, offer apologies, and make amends in cases where they have damaged property or caused any other type of harm to another member of the community.
- Develop and adhere to a dispositional matrix (or probation-recommended grid) to guide decisions about appropriate dispositions (e.g., diversion, probation, placement), typically organized by risk level and offense severity.
  - This matrix should include probation as an option for young people with even the highest risk scores and most serious offenses. Alternatives to placement should be explored for every young person.
  - Judges should be circumspect in deviating from the matrix to impose more severe consequences than recommended. In a 2020 study, researchers examining case outcomes in Florida found that when judges deviated from the state matrix to impose more stringent consequences, recidivism outcomes were far worse than when the recommended dispositions are applied. The study also found that judges were much more likely to apply more severe than recommended sanctions for children of color rather than white youth, thereby exacerbating the already deep disparities.[101]

101 Lehmann, P., Meldrum, R., and Greenwald, M (2020). Upward departures from structured recommendations in juvenile court 2ispositions: The intersection of race, ethnicity, and gender. *Justice Quarterly* 37(3) 514–540.

- Make it a practice to convene a family-team meeting and/or case staffing for any young person being considered for residential placement, and use these review sessions to explore every available option or alternative to placement. Given the severe known harms associated with removing the young person from their home, all parties participating in these meetings should generate ideas together seeking to answer the question: what will it take to keep this young person at home under probation safely?
- Create a dedicated funding stream to pay for intensive programming to support the success of youth with more serious offending histories on probation, and structure the funding to incentivize the use of these programs by allowing dollars that would otherwise be used to pay residential confinement costs to support at-home programming instead.
- Ensure the POs have small enough caseloads (15 or fewer) that allow them to devote the time and attention required to engage youth and their families and provide the support they need to succeed on probation.

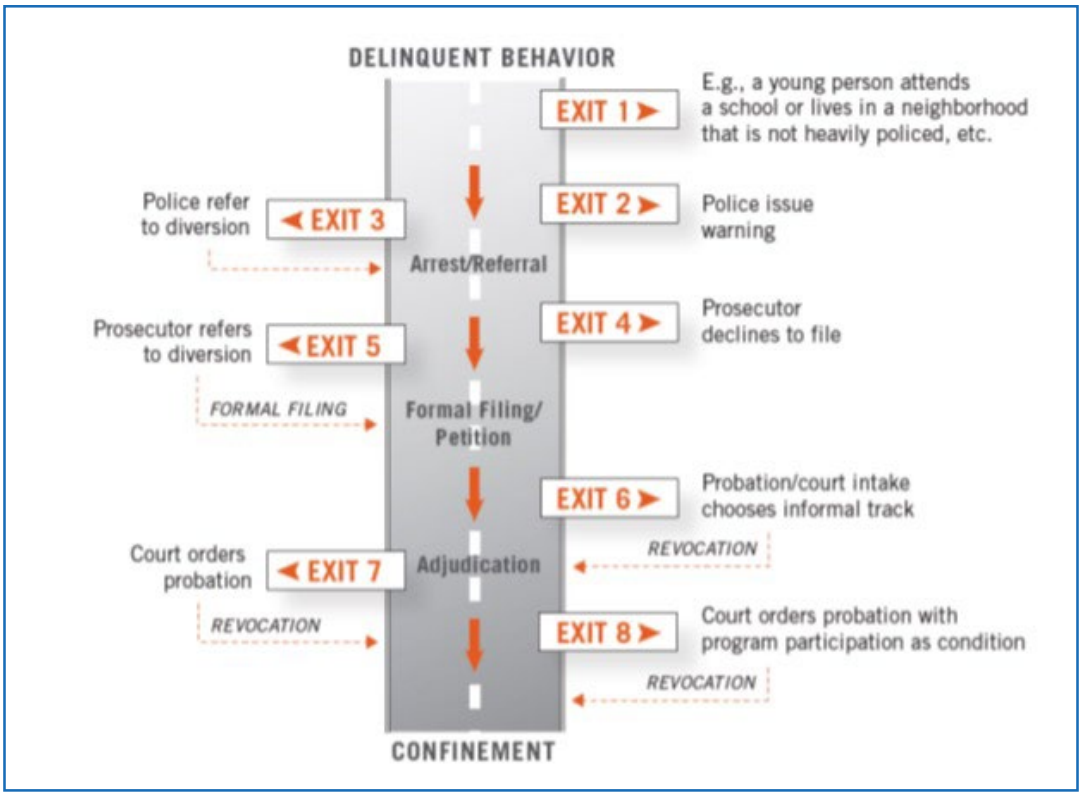
Promoting Race Equity in Targeting Probation to Youth with More Serious Offense Histories

Research on juvenile justice case processing and outcomes consistently finds that youth of color are far more likely to be placed in facilities than their white peers with comparable records and backgrounds.[102] Therefore, expanding access to probation for youth involved in more serious offending can be an important strategy for promoting racial and ethnic equity. Indeed, in a 2020 publication documenting results from the Annie E. Casey Foundation's Deep End Initiative, the Urban Institute reported that participating jurisdictions all substantially reduced out-of-home placements (with reductions of 39 to 76 percent) and sites reduced placement rates for youth of color far more than the national average. Many sites narrowed disparities, with placement rates falling more quickly for black youth than white youth.[103]

However, the Annie E. Casey Foundation has noted that this success was only possible because participating sites dedicated themselves explicitly to understanding and combatting disparities through a process of "race-conscious system mapping." Any stakeholder can initiate

102 E. Spinney, M. Cohen, W. Feyerherm, R. Stephenson, M. Yeide and T. Shreve, "Disproportionate minority contact in the U.S. juvenile justice system: a review of the DMC literature, 2001–2014, Part I," *Journal of Crime and Justice*, vol. 41, no. 5, 2018, available online at https://www.tandfonline.com/doi/abs/10.1080/0735648X.2018.1516155 (abstract only); and D.M. Bishop and M.J. Lieber, "Racial and Ethnic Differences in Delinquency and Justice System Responses," The Oxford Handbook of Juvenile Crime and Juvenile Justice (Edited by Donna M. Bishop and Barry C. Feld), Oxford University Press, 2011, available online at https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195385106.001.0001/oxfordhb-9780195385106-e-20 (abstract only).

103 T .Honeycutt, J.M. Zweig, M.H. Angus, S. Esthappan, J. Lacoe, L. Sakala and D. Young, *Keeping Youth Out of the Deep End of the Juvenile Justice System: A Developmental Evaluation of the Annie E. Casey Foundation's Deep-End Reform* (Washington, DC: Urban Institute, 2020), available online at https://www.urban.org/research/publication/keeping-youth-out-deep-end-juvenile-justice-system/view/full_report.



that process, which begins by identifying the decision points where practitioners and other adults have the ability to steer young people away from the formal justice system and back into communities, with a focus on creating equitable opportunities for all youth:

> *Imagine the justice system as a highway that begins with delinquent behavior and leads directly to confinement.*
>
> *In reality, no system is that simple. As with any highway, there are multiple exit ramps along the way, each of which could create a path away from confinement and toward community-based opportunities for positive behavior change, personal growth, and connection. Data from systems all over the country demonstrate that white youth have more access to exit ramps than youth of color. So as the remaining "traffic" flows to the end of the road, increasingly it is youth of color who are making the trip.*[104]

Drawing on the lessons of the Deep End project, a 2020 column in the Juvenile Justice Information Exchange cautioned: "To make a significant dent in racial and ethnic disparities, we need to employ strategies that focus explicitly on race. Our systems cannot sit back and expect that so-called race-neutral reforms will erase the troubling inequity that has become the signature characteristic" of our nation's juvenile justice systems.[105]

104 The Annie E. Casey Foundation, *Leading with Race to Reimagine Youth Justice* (2020), available at https://www.aecf.org/resources/leading-with-race-to-reimagine-youth-justice.

105 D. Lipow, " 3 Strategies to Reduce Confinement for Kids of Color Show Promising Results," Juvenile Justice Information Exchange, May 12,

Using Data to Target Probation to Youth with More Serious Offense Histories

To bolster efforts aimed at better targeting of the probation population, jurisdictions should collect and analyze data from their **administrative databases** on:

- The number of youth sent to residential placements—including local facilities, residential treatment centers, inpatient drug and alcohol treatment, and group homes—as their initial disposition in court; and the case characteristics of these youth in terms of current offense, prior offenses, risk score, race/ethnicity, gender, and other background characteristics;
- The number of youth sent to residential placements for violating their conditions of probation (rather than a new offense), and the case characteristics of these youth;
- The number and characteristics of youth involved in serious or repeated offending and/or scoring as high risk for rearrest who are nonetheless permitted to remain at home rather than being placed in facilities; and
- Long-term results for youth who get placed on probation despite moderate- to high-risk scores or involvement in serious offending vs. youth with similar risk scores, offense histories, and backgrounds who are placed in facilities.

All of these data should be disaggregated to identify any disparities by race, ethnicity, gender, disability and/or LGBTQ/SOGIE status.

Through periodic **case file reviews**, court and probation administrators can determine:

- Factors that informed recommendations by probation or court intake staff to send youth to residential placement as the initial disposition following adjudication, rather than placing the youth on probation and/or other intensive home-based interventions;
- Issues that factored into decisions to revoke probation and send a youth to placement for problematic behavior/violation of probation (not involving a new offense); and
- How often family-team conferences or case staffings were convened to review the cases of youth being considered for placement and how successful these meetings were in helping to craft alternative plans and dispositions that averted the need for placement.

Here, too, jurisdictions should disaggregate all data to identify any disparities. To help structure case file reviews, consider using a list of guiding questions or a data collection template.

Through **periodic surveys (and perhaps focus groups) with family members and youth themselves**, probation agencies and courts, working through community partners, should ask youth and family members about the following:

- For probation youth who score as high or moderately high risk of rearrest, and for those

2020, available online at https://jjie.org/2020/05/12/reducing-confinement-for-kids-of-color-three-strategies-with-promising-results/.

adjudicated for a serious current offense or multiple prior offenses, who and what helped them succeed on probation? What connections did they develop? What skills did they learn? What challenges did they encounter?

- For youth with similar risk and offense profiles who were removed from their homes, what was their experience in placement? What connections did they develop? What skills did they learn? What challenges did they encounter?

The involvement of trusted community partners here is essential because young people and families will be reluctant to provide candid feedback directly to system actors.[106] To the extent possible, community partners undertaking surveys and focus groups should describe the demographics of the young people and families when they share the feedback with the court and the probation department. Judges should encourage community partners to flag notable differences by race, ethnicity, gender, disability, and LGBTQ/SOGIE status.

Challenges to Relying on Probation Instead of Placement for Youth with More Serious Offense Histories

Efforts to better target the probation population by allowing more youth with serious offenses to remain at home on probation may face several obstacles. These include:

- Overcoming resistance to changing longstanding practices that make placement a routine option for youth with higher risk scores and/or more serious offenses. Those practices may rest on mental models that can be hard to disrupt, such as punitive and retributive conceptions of accountability, distrust of families, or preferences for clinical interventions at the expense of creative and culturally-grounded responses that can foster lasting positive changes in young people's lives.
- Lack of investment in intensive intervention programs—or investment in only one option, rather than two or several—that can be used effectively with probation in lieu of placement for youth at the higher end of the risk continuum.
- Lack of a dedicated funding stream to support intensive alternatives to confinement and/or funding streams that fail to incentivize the use of community-based programs by making local jurisdictions pay the full costs of those programs whereas the costs of placement options are covered by other funding streams.
- Statutes that undermine young people's access to Credible Messengers by treating legal history as a disqualifier in employment and contracting.

106 Justice for Families, a national advocacy organization led by family members has produced detailed guidance on how to conduct focus groups, including advice for governmental and community partners. Justice for Families, *Focus on Youth and Families: A Guide for Conducting Focus Groups with Youth and Families Impacted by the Juvenile Justice System*, available at https://www.aecf.org/m/privy/Deep-End-Resource-Guide-5d-Guide-for-Conducting-Focus-Groups.pdf.

Expand the Use of Diversion/Informal Processing

Why Implement This Practice?

The research case for diverting many more youth from formal court processing, and for empowering community partners to work with those youth (rather than the courts, probation, or prosecutors), is also compelling. Available evidence indicates that youth diverted from arrest or juvenile court processing achieve far better outcomes than youth formally processed in court. For instance:

- Two recent meta-analyses—statistically sophisticated reviews of available relevant research—have found that youth diverted from court have less future contact with the justice system than comparable youth whose cases are formally processed in court.[107]
- A rigorous recent study funded by the John D. and Catherine T. MacArthur Foundation found that youth whose cases were diverted from court after being arrested for moderately serious offenses had far lower rates of rearrest and subsequent incarceration than similar youth whose cases were processed in the justice system. After controlling for offenses and a wide range of background characteristics, the study also found that youth diverted from court were less likely than youth formally processed in court to engage in violence, associate with delinquent peers, and graduate from high school.[108]
- In Ohio, evaluations of the Targeted RECLAIM and Behavioral Health/Juvenile Justice programs, both of which provide intensive research-driven home-based treatment in lieu of correctional placements, have found that these alternatives lead to lower rearrest rates than confinement and dramatically lower rates of subsequent confinement.[109]
- In Florida, youth offered "civil citations" rather than facing arrests for low- or moderate-level offenses are rearrested at half the rate of youth who are referred to juvenile court for these offenses.[110]

107 H. A. Wilson and R.D. Hoge, "The effect of youth diversion programs on recidivism: A meta-analytic review," Criminal Justice and Behavior, vol.40, no.5, 2013, available at https://journals.sagepub.com/doi/10.1177/0093854812451089 (abstract only); and A. Petrosino, C. Turpin-Petrosino and S. Guckenburg, *Formal system processing of juveniles: Effects on delinquency*. Campbell Systematic Reviews, January 2010, available online at https://core.ac.uk/download/pdf/56773913.pdf.

108 E. Cauffman, J. Beardslee, A. Fine, P.J. Frick and L. Steinberg, "Crossroads in juvenile justice: The impact of initial processing decision on youth 5 years after first arrest," *Development and Psychopathology*, vol. 33, no.2, 2021, available online at https://faculty.lsu.edu/pfricklab/pdfs/juvenilejustice-pdfs/dpcauffmanetalmaincrossroadsweb.pdf.

109 R.M. Labrecque, M. Schweitzer and K.L. Mattick, "A quasi-experimental evaluation of a juvenile justice reinvestment initiative, *Journal of Crime and Justice*," vol.41, no.1, 2016, available online at https://www.tandfonline.com/doi/abs/10.1080/0735648X.2016.1194222?journalCode=rjcj20 (abstract only); and F. Butcher, J. Kretschmar, L. Yang, D. Rinderle, and M. Turnamian, *An Evaluation of Ohio's Behavioral Health/Juvenile Justice (BHJJ) Initiative*, Case Western University Mandel School of Applied Social Sciences, August 2020, available at https://case.edu/socialwork/begun/sites/case.edu.begun/files/2020-11/Statewide%20and%20County%20BHJJ%20Evaluation%20Reports%202019.pdf.

110 M. Nadel, W. Bales and G. Pesta, *An Assessment of the Effectiveness of Civil Citation as an Alternative to Arrest among Youth Apprehended by Law Enforcement* (Washington, DC: U.S. Department of Justice, December 2019), available at https://www.ojp.gov/pdffiles1/nij/grants/254453.pdf.

Despite this evidence supporting diversion from formal court, the use of diversion has actually been declining in recent years. Nationwide, just 43 percent of youth referred to juvenile courts in 2018 were diverted from court, down from 47 percent in 2010.[111] By contrast, many advanced nations in Europe, the United Kingdom, and Oceania divert 70 to 80 percent or more of youth referred for delinquent conduct.[112] Often diversion involves youth in restorative justice circles that ensure accountability by having youth engage with victims and undertake activities to repair the harm caused by their offenses. In addition, several nations have enacted new laws in recent years to sharply reduce juvenile arrests for less serious offenses.[113]

In addition to this powerful research evidence indicating that diversion improves outcomes for youth and enhances public safety in the long run, there are also strong practical dollars-and-cents reasons to divert a far greater share of youth apprehended for delinquent behavior. The new model of probation supervision described in the Toolkit—including individualized family-engaged case planning, use of incentives and rewards, and robust community partnerships and positive youth development opportunities—will require a greater investment of time, energy, and resources in each youth placed on probation. Ideally, PO caseloads should be limited to 15 youth or less. Therefore, given fiscal realities and budget scarcity, juvenile courts and probation agencies cannot expect to implement this more promising approach to probation unless the total number of youth on probation caseloads declines significantly.

Increasing the use of diversion—and ensuring the vast majority of youth, if not all, deemed eligible for diversion complete the process without being referred back to court—represents an invaluable win-win opportunity for juvenile justice systems: improve outcomes for youth at the lower end of the risk continuum by diverting cases to informal processing and simultaneously improve the odds of success for the smaller number of youth who do get placed on probation by reducing POs' caseloads and allowing them to focus more intently on each young person they work with.

111 Sickmund, M., Sladky, A., and Kang, W. (2020). "Easy Access to Juvenile Court Statistics: 1985-2018" Online. Available: https://www.ojjdp.gov/ojstatbb/ezajcs/.

112 Sources for diversion rate include Belgium: Dunkel, F. (2014)." Kriminologijos Studijos, 1, 31–76. Retrieved October 29, 2018, from ; https://www.journals.vu.lt/kriminologijos-studijos/article/view/3676/2635; Denmark: T. Lappi-Seppälä, (2011). Nordic youth justice. *Crime and Justice*, 40(1), 199–264, available online at https://www.journals.uchicago.edu/doi/pdf/10.1086/661113 (abstract only); Finland: T. Lappi-Seppälä, (2011). *Nordic youth justice. Crime and Justice*, 40(1), 199–264, available online at https://www.journals.uchicago.edu/doi/pdf/10.1086/661113 (abstract only); Germany: Dunkel, F. (2018). Youth Justice in Germany, Oxford Handbooks Online (2016), available online at https://rsf.uni-greifswald.de/storages/uni-greifswald/fakultaet/rsf/lehrstuehle/ls-duenkel/Veroeffentlichungen/Duenkel_-_Youth_Justice_in_Germany_-_Oxford_Handbooks_Online.pdf; Norway: Lappi-Seppälä, T. (2011). Nordic youth justice. Crime and Justice, 40(1), 199–264, available online at https://www.journals.uchicago.edu/doi/pdf/10.1086/661113 (abstract only).

113 Goemann, M. (2018). New Zealand's youth justice transformation: Lessons for the United States. Washington, DC: The National Juvenile Justice Network. Retrieved October 29, 2018, from www.njjn.org/uploads/digital-library/New Zealand's Youth Justice Transformation -- Lessons for the United States Final 4.25.18.pdf; and A. Sutherland, E. Disley, J. Cattell and S. Bauchowitz, *An Analysis of Trends in First Time Entrants to the Youth Justice System* (London: UK Ministry of Justice, 2017), available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653182/trends-in-fte-to-the-youth-justice-system.pdf.

Key Elements of Reducing Probation Caseloads by Expanding and Improving the Use of Diversion/Informal Processing

To sharply reduce the number of youth with less serious behaviors who get placed on probation caseloads and substantially expand the number of youth whose cases are diverted from formal processing and never enter the court system, jurisdictions can:

- Make diversion the presumptive outcome for all youth referred to court on misdemeanors and also for youth referred for first-time felonies that do not involve serious violent offenses.
- Abandon practices that currently result in many eligible youth being rejected or ejected from diversion, such as requirements that youth "accept responsibility" for their offense, that family members be easily reachable, or automatic termination from diversion for any arrest (no matter how minor the offense).
- Allow community partner agencies unaffiliated with the courts to supervise the cases of youth placed on diversion, rather than assigning diverted youth to a probation officer and requiring them to follow rules similar to those imposed on youth on formal probation.
- Limit the time period of a diversion agreement to three months or less.
- Support development of an array of diversion options tailored to the circumstances of the young person. Options should include simple warnings for first-time and/or minor transgressions; Restorative Justice Circles in cases where youth have caused harm to a victim; mentors; positive youth development programs, skill-building and self-efficacy workshops; mental health and/or substance abuse treatments; and family therapy.
- Consider following the recommendation of the Annie E. Casey Foundation to apply a "no-fail diversion" approach, in which formal case processing cannot be restarted as a consequence if youth do not follow through on diversion agreements (so long as they are not arrested for a new offense). Make the successful completion rate among youth referred to diversion a key performance measure for the court.
- Work with law enforcement to develop or expand prearrest diversion options—warnings, stationhouse adjustments, citations—that allow youth to avoid any criminal record for minor transgressions.

Promoting Race Equity through Expanding the Use of Diversion/Informal Processing

Perhaps the clearest and most consistent finding of research on racial and ethnic disparities in juvenile justice is that youth of color, especially black youth, are far less likely than their white peers to have their cases diverted from juvenile court.[114]

The evidence of disparate treatment at the diversion stage is overwhelming. Study after study shows not only that youth of color are offered diversion far less often than their white peers, but also that the resulting involvement in the juvenile justice system substantially increases the likelihood that youth of color will be rearrested and that they will ultimately penetrate to the so-called deep end of the system[115]—meaning placement into a correctional institution or other residential facility. Moreover, studies find that youth of color who are initially afforded the opportunity for diversion are more likely than their white peers to be referred back to court—either because they are deemed ineligible under the rules of existing diversion programs or because they do not complete the programs successfully.[116]

Expanding access to diversion, and carefully tracking data on the use of diversion by race and ethnicity to ensure that youth of color are benefitting proportionately from expanded use of diversion, hold significant promise for reducing system disparities.

Using Data to Expand and Improve the Use of Diversion/Informal Processing

To bolster efforts aimed at reducing probation populations through expanded use of diversion, jurisdictions should collect and analyze data from their **administrative databases** to better understand both what youth were diverted from (e.g., arrest, formal prosecution, adjudication, disposition) and what were they diverted to (e.g., counsel and close, informal probation supervision, community-based diversion, etc.). Specific areas of inquiry should include:

- The number of youth diverted—in absolute numbers and as a share of total cases and total cases eligible under current guidelines. Look carefully at the characteristics that differentiate youth who are diverted vs. those who are formally processed, especially in

114 Peck, J. H., and Jennings, W. G., "A Critical Examination of 'Being Black' in the Juvenile Justice System," *Law and Human Behavior*, vol.40, no.3, 2016, available online at https://psycnet.apa.org/record/2016-05060-001 (abstract only); R.D. Ericson and D.A. Eckberg, "Racial Disparity in Juvenile Diversion: The Impact of Focal Concerns and Organizational Coupling, *Race and Justice*, *vol. 6, no.1, 2016*, and available online at https://journals.sagepub.com/doi/abs/10.1177/2153368715594848 (abstract only); and M.J. Leiber and J.H. Peck, "Probation Violations and Juvenile Justice Decision Making: Implications for Blacks and Hispanics," *Youth Violence and Juvenile Justice, vol.11, no.1, 2013*, available online at https://journals.sagepub.com/doi/abs/10.1177/1541204012447960 (abstract only).

115 D.M. Bishop and M.J. Lieber, "Racial and Ethnic Differences in Delinquency and Justice System Responses," *The Oxford Handbook of Juvenile Crime and Juvenile Justice* (Edited by Donna M. Bishop and Barry C. Feld), Oxford University Press, 2011, available online at https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195385106.001.0001/oxfordhb-9780195385106-e-20 (abstract only).

116 K. de Beus and N. Rodriguez, "Restorative justice practice: An examination of program completion and recidivism," *Journal of Criminal Justice, vol. 35, 2007,* available onlineat https://www.sciencedirect.com/science/article/abs/pii/S0047235207000414 (abstract only); R.C. Loeb, M. Waung and M. Sheeran, "Individual and Familial Variables for Predicting Successful Completion of a Juvenile Justice Diversion Program, *Journal of Offender Rehabilitation*, vol. 54, 2015, available online at https://www.tandfonline.com/doi/full/10.1080/10509674.2015.1023482 (abstract only); and N.W. Chernoff and B. Watson, An Investigation of Philadelphia's Youth Aid Panel: A Community-Based Diversion Program for First-Time Youthful Offenders (Philadelphia, PA: Public/Private Ventures, 2000), available online at https://files.eric.ed.gov/fulltext/ED448261.pdf.

terms of current offense, prior legal history, risk score, race/ethnicity, gender, disability and other background characteristics. Consider at least three levels of diversion: prearrest, pre-filing and preadjudication. Because the decision-makers and relevant factors vary at each of these three decision points, it is important to disaggregate in order to gather the information needed to plan;

- Success rates of youth whose cases are diverted from court;
- Where diversion is programmatic or consists of any form of supervision, how long does it last, and do average stays vary by characteristics like race, ethnicity, gender, or offense?;
- The number of youth who are initially diverted but then returned to court;
- The number and characteristics of diverted youth who are assigned to a probation officer and placed on informal probation rather than referred to a community organization to oversee diversion; and
- Long-term results (arrests, adjudication, placement in the juvenile justice system and preferably the adult justice system as well) for youth who get diverted from court vs. those formally processed and placed on probation.

Through **periodic case file reviews**, court and probation administrators can determine:

- What problems or circumstances are the most common in cases where youth are returned to formal processing after a diversion attempt?
- The most common reasons cited for "unsuccessful" diversions are: inability to make contact with the family, failure to accept responsibility, non-compliance and new arrests. Which of those factors are most common? Are they more common for youth of color? Are they more common in some programs compared to others? What steps are being taken to reexamine practice in light of those data?

Through **periodic surveys (and perhaps focus groups) with family members and youth themselves**, probation agencies and courts, working through community partners, should ask youth and family members about the following:

- What does informal probation look like from the perspective of young people and families? Does the PO engage them and collaborate on developing an individualized plan? Did they feel like the PO was working to ensure the youth's success?
- For diverted youth assigned to a community partner agency, how helpful and supportive was the CBO (community-based organizations), what (if any) problems they encountered, and what recommendations do they have to strengthen the process and make it more helpful in promoting youth success?

To the extent possible, community partners undertaking surveys and focus groups should describe the demographics of the young people and families with whom they consult. Judges should encourage community partners to flag notable differences by race, ethnicity, gender, disability and LGBTQ/SOGIE status.

Challenges to Significantly Expanding and Improving the Use of Diversion/ Informal Processing

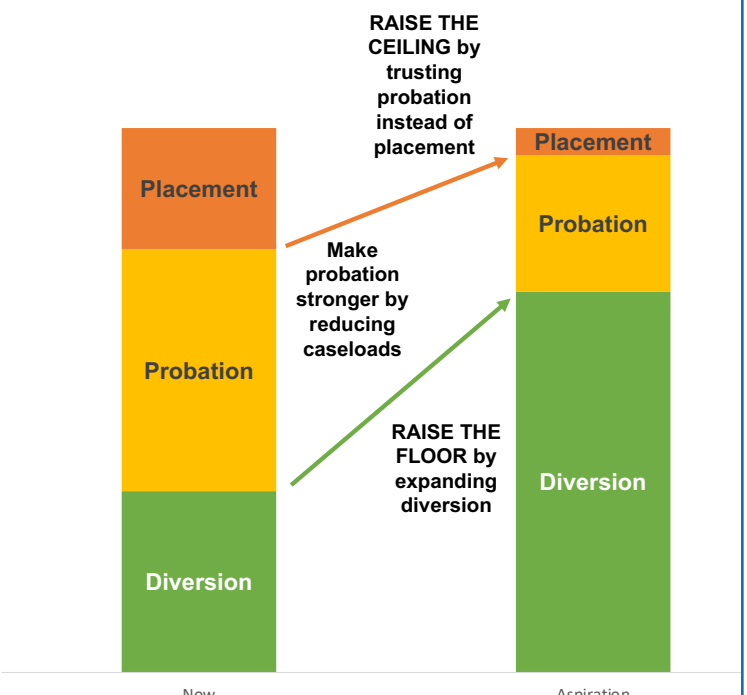
Efforts to better target the probation population by expanding diversion may face several obstacles. These include:

- Overcoming resistance to diverting a greater share of youth (despite evidence that diversion yields better outcomes than formal processing);
- Unfounded perceptions that youth cannot be "held accountable" if they are diverted, when in fact many diversion programs employ restorative justice processes, in which young people sit face-to-face with victims and take action to repair the harm caused by their delinquent behaviors;
- Overcoming resistance to stop using the threat of refiling cases in court as a tool to push youth on diversion to follow rules and complete responsibilities in their diversion agreements;
- Lack of partnerships with community organizations to oversee the cases of diverted youth, and lack of protocols and a system to guide diversion overseen by non-court partner organizations; and
- Lack of a dedicated funding stream to support the work of community organizations in overseeing diversion.

Judges Can Raise the Ceiling and Raise the Floor

Judges can work **on-the-bench** and **off-the-bench** to help safely refocus probation resources in a developmentally appropriate way. That refocusing includes work to:

- **"Raise the Ceiling"** by trusting probation instead of placement for young people with serious offenses and complex risk/needs, and
- **"Raise the Floor"** by expanding diversion.



How Can Judges Support Efforts to Target Probation to Youth Involved in More Serious Offending While Expanding the Use of Diversion?

➔ On the Bench?

To "raise the ceiling" by extending probation opportunities more frequently to youth involved in serious offenses, judges can take a variety of helpful steps in their handling of individual cases:

- Abandon any formulaic rules that require placement of youth adjudicated for specific offenses or with risk scores above any given threshold. Rather, insist that probation and other justice system partners explore every opportunity, in light of each young person's unique circumstances, to provide sufficient support services and safeguards to allow the young person to remain home safely on probation.
- Insist that the probation agency convene a family-team meeting or case staffing to explore all possible alternatives, including emergency intervention strategies, before recommending a youth for placement.
- Engage with probation and intake staff, as well as defense counsel, to learn about the alternatives that have been explored for any youth recommended for placement. Ask why those alternatives have been rejected and why any others have not been explored.
- If a dispositional matrix or probation recommendation grid exists, use the least restrictive option suggested for the appropriate risk/offense category. If probation recommends a more restrictive option, ask questions to understand why and to make sure you agree.

To "raise the floor" by increasing opportunities for diversion in their work from the bench, judges can:

- Dismiss the cases of youth who have been formally processed in court for minor offenses.
- Engage with young people, family members, probation officers, prosecutors and defense attorneys to ask why the case is in court instead of diversion. Just asking these questions sends a powerful message about the court's expectation that diversion should be the presumptive response in most cases.
- When the court learns that prior diversion attempts were "unsuccessful," engage with the young person, family, supportive adults, and practitioners to explore what went wrong and seek feedback as to how diversion programs and practice could be revised to promote positive youth development and long-term success.
- Per the "no-fail diversion" tenet, decline to adjudicate youth who were initially placed in diversion but whose cases have subsequently been refiled due to non-compliance with diversion agreements. Under this approach, youth can be terminated from diversion as an unsuccessful completion, which may be considered in handling any subsequent case. But youth should never be returned to court for the original offense for failing to heed diversion rules.

➔ Off the Bench?

To "raise the ceiling" by extending probation opportunities more frequently to youth involved in serious offenses, judges can use their influence and authority to promote a variety of needed policy and practice changes:

- Advocate for the creation or expansion of community-based interventions, supports, services and opportunities, ideally designed by or in partnership with community organizations that are widely respected by residents of affected neighborhoods and have deep understanding of and connection to local culture and customs. Effective interventions include programs that rely on credible messengers; other third-party mentoring and advocacy programs; Multisystemic Therapy, Functional Family Therapy and other evidence-based family therapy models; wraparound care, and intensive life skills and workforce development programs.
- Promote the adoption of rules requiring probation and other system partners to convene a family-team meeting and/or case staffing to review options and alternatives for any young person being considered for residential placement.
- Support the development of a dispositional matrix or probation recommendation grid to organize dispositional options according to risk and offense severity, promote policies favoring the least restrictive option available, and demand regular reporting to quickly surface racial and ethnic disparities.
- Encourage and support new funding mechanisms that incentivize the use of probation and intensive home-based programming over placement by allowing the dollars that would have paid for placement to fund intensive community programming.
- Decline to place youth brought to court for review hearings into residential facilities as a consequence for violating the terms of the probation orders.
- Convene stakeholders to map how young people are steered through the system, with a careful eye toward structural or systemic factors that may tend to steer youth of color toward formal processing and white youth toward less restrictive options.[117]
- Advocate to change state laws that restrict judicial discretion by mandating incarceration for young people adjudicated for certain offenses.

To "raise the floor" by promoting the expanded and improved use of diversion, judges can take steps to change policy and practice, to create and strengthen programmatic options, and to build community and law enforcement partnerships.

117 The Annie E. Casey Foundation, *Leading with Race to Reimagine Youth Justice at 29* (2020) (listing online tools and resources), available at https://www.aecf.org/resources/leading-with-race-to-reimagine-youth-justice.

In order to influence policy and practice, judges can:

- Encourage intake staff to take full advantage of their discretion to reserve formal processing for youth with serious arrest histories.
- Encourage the development of new and more expansive guidelines to determine eligibility for diversion, so that all youth arrested for misdemeanors are diverted, as well as all youth arrested for first offenses with the exception of extreme cases involving serious and premeditated violence. Diversion should also be considered for second, third, and subsequent arrests on a case-by-case basis, with diversion the presumptive outcome for all cases so long as the young person does not pose a high risk of committing offenses that threaten the safety and well-being of others.
- Work with other court stakeholders to simplify eligibility criteria in ways that minimize the number of youth excluded from diversion and to formalize a no-fail diversion policy that prohibits the return of diverted youth to court as a consequence for breaking rules or failing to complete the terms of their diversion agreements.

In order to influence programmatic options, judges can:

- Take a leadership role in:
  - Crafting new protocols that shift responsibility for managing the cases of diverted youth to community organizations unaffiliated with the court; and
  - Developing a menu of diversion responses calibrated to the circumstances of the case and the needs of the young person—with options ranging from a simple warning and restorative justice conferences to mentor and advocate programs to family counseling and cognitive behavioral therapy.
- Examine diversion "failure" rates by race, with failure defined as the share of youth initially referred to diversion who are either returned to court after being rejected from entering a diversion program or returned to court for non-compliance. Treat each "failure" as a system failure and an opportunity to improve programming.
- In order to build partnerships, judges can:
  - Work continually to build and strengthen relationships with community-based organizations that work directly with young people or their families, prioritizing the neighborhoods with the highest arrest rates.
  - Partner with law enforcement to develop or expand prearrest diversion opportunities such as warnings, stationhouse adjustments, and civil citations.

IMPLEMENTING THE VISION AND THE PRACTICES: Judicial Leadership and Collaboration

The Role of the Judge in Transforming Juvenile Probation: A Toolkit for Leadership seeks to help judges implement the vision, policy, and practices that the NCJFCJ and its membership set forth in its 2017 Resolution on adolescent development and probation: namely, that probation practices be informed by and reflect adolescent development research and that probation practices seek to promote racial and gender equity as well as positive outcomes in behavior change, healthy growth, and opportunity for all youth placed on probation. The Resolution calls on judges to undertake new practices that research indicates are effective and beneficial. It also calls on judges to desist from using practices that research has shown to be ineffective at best and harmful at worst.

After the 2017 Resolution was issued, the NCJFCJ asked judges what they would need to implement the Resolution. This Toolkit was designed in response to that feedback. It details what probation transformation means and looks like, and it spells out the specific actions, decisions, and influence that judges can employ in planning, undertaking, implementing, and sustaining probation reform. The Toolkit highlights what judges have identified as their most important informational needs related to probation transformation: developing a compelling vision of transformed practice; understanding the available research on both effective and ineffective probation practices; learning how best to collect and use data to inform change; and knowing what training should be provided to ensure that probation and court staff are prepared to adopt new practices successfully.

- The Toolkit includes guidance on five probation transformation practice areas that all juvenile court judges—*regardless of the structural relationship between probation and the judiciary*—can influence. The Toolkit section on each of these practice areas provides findings from relevant research studies showing what has been found to be ineffective or harmful as well as what is effective and beneficial to youth. The findings help judges understand why change is needed and the practices to use instead. Judges can use findings from these studies in their communication with others to build consensus on the need and urgency for change.
- The Toolkit provides information to promote an understanding of how current probation practices can contribute to inequities and racial bias and lead to worse outcomes and/or

harsher treatment for youths of color. It describes reform steps in each probation practice that can help to avoid these harms and promote greater equity and better outcomes for youth of color.

- For each practice area, the Toolkit gives judges and system administrators guidance on collecting and using data from their own jurisdiction to provide an objective and measurable picture of each specific probation practice area. Guidance is also given on using data to inform change and to monitor impact and track progress toward achieving reform goals.
- At the end of each practice area, the Toolkit provides a list of detailed suggestions on how judges can support efforts to promote progress, including steps they can take "on the bench" in their work with individual cases and also "off the bench" in their interactions with juvenile justice system supervisors and leaders, members of the bar, policymakers, political leaders, members of the public, and families to help bring about desired change. Indeed, experience shows that judges' off-the-bench role is especially important in efforts to improve juvenile probation practices.

A Call to Lead

Juvenile justice differs from many other areas of the law. Compared to courts that handle other types of cases, the juvenile court's mission is much more ambitious, while resources and services necessary to achieve justice are often scarce. In the vast majority of states, statutory law sets the purpose of the juvenile court as promoting the best interest of the child, positive youth development, and/or balanced and restorative justice. These purposes include ensuring opportunities for youth to accept responsibility for the harms they cause and to develop their potential to be productive citizens.[118]

At this time, the juvenile justice field offers judges better information and tools than ever before to help them achieve the statutory purposes of the juvenile court. Extensive, reliable, and research-based knowledge about when it is effective to intervene with youth who commit delinquent acts and what interventions, levels of supervision, and services are most effective is available to judges Yet, in many jurisdictions, this knowledge is not yet being put to use.

Judges would be remiss in their statutory and ethical duties if they fail to advocate for using this knowledge to implement systems change. Practices that conflict with available evidence on adolescent behavior and brain development must be changed. Policies that result in and sustain inequities for youth of color are particularly unacceptable. As a matter of justice, judges must play an active role in seeing that ineffective and inequitable practices are eliminated.

118 Juvenile Justice Geography, Policy, Practice and Statistics. Online. Available: http://www.jjgps.org/juvenile-court#purpose-clauses?year=2016. Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

All judges have authority to order practice changes in how juvenile cases heard in their courtrooms are handled. In many jurisdictions, judges also have direct authority over probation, and can oversee the adoption of many new probation practices. But even in jurisdictions where they do not oversee probation, judges enjoy a unique authority in their role as leaders. They are the face of the judicial branch. They represent a commitment to processes, decisions, outcomes, and practices that further justice for and in their communities. They are also trusted to possess knowledge of and insight on problems in their court system and to serve as catalysts for ensuring that their court system implements effective responses to juvenile offending.[119]

For all of these reasons, the NCJFCJ has long called upon juvenile and family court judges to use their power and influence to promote recommended practices for juvenile court system improvement—in short, to be leaders in juvenile justice system reform.

The NCJFCJ's new *Enhanced Juvenile Justice Guidelines*—based on the most current research on adolescent development, procedural justice, and evidence-based treatment—highlights the need for judicial leadership to promote significant system change. Specifically, the *Guidelines* state:

> *System improvement is not easy and it is not fast. It is a long-term commitment that involves multi-year and multi-system processes.* ***Strong judicial leadership is absolutely essential*** *for a juvenile court to undertake the challenges of implementing the (Enhanced) Juvenile Justice Guidelines*[120]

The NCJFCJ has urged judges to provide "transformational leadership"[121] to drive meaningful and necessary systems improvement. This leadership is necessary to ensure that the court in each community offers a truly just and effective system for all youth and families.[122]

In keeping with these earlier pronouncements, the NCJFCJ urges juvenile and family court judges to embrace their role as transformational leaders in efforts to update and improve probation. In its 2017 Resolution specifically on probation, the NCJFCJ highlights this leadership role and "encourages judicial leadership to guide policy and practice changes that incorporate the research findings on adolescent brain development."[123] The Resolution calls

119 Sumner, J. (2020) How Judges Can Lead Juvenile Justice Reform, Available at https://info.mstservices.com/blog/judges-lead-juvenile-justice-reform; Chiamulera, C. and Gueller, M. (2020). *Redefining Judicial Leadership: Stories of Transformative Practice*. Reno, NV: National Council of Juvenile and Family Court Judges; Gatowski, S.I., Dobbin, S.A. and Rubin, S. (2012). *Achieving Excellence in Judicial Leadership: Leading Change for Better Outcomes for Children and Families*. National Council of Juvenile and Family Court Judges and National Resource Center on Legal and Judicial Issues.

120 National Council of Juvenile and Family Court Judges. (2018) *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases* Reno, NV: National Council of Juvenile and Family Court Judges, Chapter XII, p 3, available online at https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

121 Ibid.

122 Ibid.

123 National Council of Juvenile and Family Court Judges (July 15, 2017) "Resolution Regarding Juvenile Probation and Adolescent Development," available online at https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-juvenile-probation-and-adolescent-development.pdf.

for judges to support system practices like "robust education and training of juvenile probation staff on adolescent brain development…and its relationship to juvenile probation case planning, conditions of probation, supervision, monitoring and enforcement, and data collection." The Resolution urges judges to have their court and probation department design a probation system that incorporates the practices covered in this Toolkit.[124]

The NCJFCJ recognizes that the role of a leader of systems change and improvement may not feel comfortable for some judges who view their work as being about trying cases, not transforming systems or communities. The NCJFCJ urges all juvenile court judges to see that the role they have is not the role of a "traditional" judge. Rather, theirs is a role that "combines judicial administrative, collaborative and advocacy components."[125] And importantly, many of these roles are performed outside of the courtroom.[126]

In other words, providing off-the-bench leadership to promote probation transformation and other needed system changes should not be considered an optional activity for juvenile and family court judges. Rather, as a matter of judicial ethics, judges have a duty to advocate for whatever is needed to ensure that justice is served in their community. This includes advocating for needed resources, services, and practices.[127]

The Practice of Leadership

The specific ways that any juvenile court judge provides leadership may vary based on their personality, personal factors, life experience, professional experience, and longevity on the bench. Some judges may find that an effective way to serve in the judicial leader role is to use low-key, behind-the-scenes activities and avenues for influence.[128] Other judges become comfortable in being visible and outspoken in their activities and the avenues they use as leaders for change. When judges are visible in the community and they are associated with leading and supporting reform efforts, reforms will be more readily seen by other leaders and community stakeholders as legitimate and needed.

However individual judges choose to pursue and practice leadership, the NCJFCJ asks that judges first, and foremost, "encourage and facilitate…a…vision…(of a) system that is

124 Ibid.

125 National Council of Juvenile and Family Court Judges. (2018) *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases* Reno, NV: National Council of Juvenile and Family Court Judges, Chapter XII, p 4, available online at https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

126 Ibid; See also Dobbin, S.A., Gatowski, S.I., Maxwell, D.M. (2004) *Building a Better Collaborative: Facilitating Change in the Court and Child Welfare Systems,Technical Assistance Bulletin*, 8 (2). National Council of Juvenile and Family Court Judges: Reno, NV. Chapter 4.

127 American Bar Association (2020). Revised ABA Model Code of Judicial Conduct Canons, Canon 3, Rule 3.1. on Extrajudicial Activities. Available at Rule 3.1: Extrajudicial Activities in General (americanbar.org); Howze, K. (2021). *Can I Can't I? Extra-Judicial Activity and Judicial Leadership*, NCJFCJ review of state judicial ethics codes and opinions issued by judicial ethics committees and commissions. Available at https://www.ncjfcj.org/publications/can-i-or-cant-i-extra-judicial-activity-and-judicial-leadership/

128 Pangburn, D., Leading from behind: How and why it works, available at https://www.fingerprintforsuccess.com/blog/why-leading-from-behind-works.

significantly more desirable than the current system…and one that requires a fundamental shift in philosophy and organizational practice."[129] In being visionary themselves while also helping others to envision and commit to a more desirable, just, and effective juvenile justice system, judges will need to make a personal commitment to the work. They must show a willingness to accept risks, a willingness to assume responsibility for systems change, and a willingness to be accountable for change. Judges must place a high priority on collecting and using data to track opportunities and outcomes—and specifically data on equity in opportunities and outcomes for all youth. This is required as part of holding themselves and their court system accountable for transforming probation practices. Judges will also need to develop skills as strategists, educators, motivators, and communicators to galvanize and sustain commitment from others to engage in systems change, especially changes that ensure equity in opportunities and outcomes for all youth.[130]

The Toolkit has been designed to help judges develop and use skills associated with their roles of being a consumer of research and data, an educator, and a change agent.

A Call to Collaborate

Judges clearly have a pivotal role to play as leaders of systems change. Just as clearly, they cannot pursue practice change, including all the recommendations set forth in this Toolkit, without active involvement and assistance from a wide range of court system partner agencies, youth-serving organizations, service providers, mental health practitioners, and community members. A commitment to lead transformational systems change must be accompanied by an equal commitment to collaborate.

The commitment to collaborate requires action and time to identify and engage all relevant individuals and groups in the process of envisioning, planning, carrying out, and assessing system change. Most importantly, the commitment to collaborate requires a willingness of judges to serve as conveners who take the initiative to bring people together. Being a convener and a champion of collaboration is a hallmark of NCJFCJ's voice on behalf of judges and its guidance to judges when it comes to their role in systems improvement.[131]

129 National Council of Juvenile and Family Court Judges. (2018) *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases* Reno, NV: National Council of Juvenile and Family Court Judges, Chapter XII, p 3, available online at https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

130 Harvell, S., Derrick-Mills, T., Hull, C., and Matei, A. (2019) Changing Practice in Juvenile Probation: Leadership at All Levels, available at https://www.urban.org/sites/default/files/2019/11/06/leadership_at_all_levels_-_bridging_research_and_practice.pdf.

131 National Council of Juvenile and Family Court Judges. (2018) *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases* Reno, NV: National Council of Juvenile and Family Court Judges, Chapter XII, p 4, available online at https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.; Dobbin, S., Gatowski, S., and Maxwell, D. (2004) *Building a Better Collaborative: Facilitating Change in the Court and Child Welfare Systems*, Technical Assistance Bulletin, 8 (2). National Council of Juvenile and Family Court Judges: Reno, NV. Chapter 5 and 6.

Their status in their community as a respected authority figure with the power of the law behind them gives judges a special voice that others listen and respond to—perhaps the only voice in the community with the wherewithal to ensure participation of all key stakeholders—including high-level administrators with their own spheres of influence and power. More so than any other official in a community, "when a judge calls a meeting, people come."

> *Leadership off the bench should not be confused with the responsibility of reform work. A judge can serve as a convener with trusted insight and guidance, but the work has to be a joint effort…And when a judge makes the time investment into systems change, it is natural to assume the work is important.*[132]



The Practice of Collaboration

For each of the five probation transformation practice areas, the Toolkit offers guidance to judges for "off the bench" activities that include using collaborative groups and processes to achieve system change. This guidance reflects what judges noted in their survey responses as key supports for probation transformation: collaboration is essential to success. Collaboration needs to occur early and often, and it needs to be ongoing.

Collaborative entities responsible for envisioning and carrying out systems change should include agency and department heads from all public systems with a key role in the lives of court-involved youth—law enforcement, education, prosecutor's office, public defender, social

132 Sumner, J. (2020). How Judges Can Lead Juvenile Justice Reform. Available at https://info.mstservices.com/blog/judges-lead-juvenile-justice-reform.

services, probation, and behavioral health. These administrators exercise authority and have access to resources that are needed to give the vision of systems change credence as well as legs—the potential to be accepted and successful. Equally important, collaborative entities must also include the voices and expertise of middle-level and front-line practitioners of the involved systems. Middle-level and front-line practitioners need to be included to inform how change is planned and put into place.[133] Collaborative entities should include members of the larger community who are leaders or spokespersons of organizations or centers as well as interested citizens in the community. The desires, hopes, and supports that these individuals bring to collaborative activities and processes will help ensure that juvenile court systems change is meaningful, visible, relevant, and impactful for youth and community wellbeing.[134]

Finally, families and youth directly affected by the juvenile court system must have a strong voice in collaborative bodies and processes that design and implement practice change. Grassroots organizations can be especially instrumental in identifying, facilitating, and engaging families in system change in ways that are meaningful and comfortable for the families. The active and meaningful involvement of affected families—and youth themselves—helps to ensure that systems change efforts benefit, rather than harm, youth and the communities in which they live.

Conclusion

Developing and effectively implementing a new vision for probation—achieving probation transformation—will not be easy, and it will not be quick. Rather, the work will require an array of far-reaching changes adopted over a long period through ongoing collaborative action coupled with an enduring commitment to continuous improvement. These efforts will need to begin with the difficult work of consensus building, followed by determined action coupled with rigorous data collection and analysis to monitor results and modify practices in light of new information.

133 National Council of Juvenile and Family Court Judges. (2018) *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases* Reno, NV: National Council of Juvenile and Family Court Judges, Chapter XII, pp 4-5, available online at https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

134 Taylor, M.; Livengood, Z.; and Sickmund, M. (2020). *Desktop Guide to Good Juvenile Probation Practice*. Pittsburgh, PA: National Center for Juvenile Justice. Online. Available: https://www.goodjuvenileprobationpractice.org; Harvell, S., Derrick-Mills, T., Hull, C., and Matei, A. (2019) Changing Practice in Juvenile Probation: Engaging Partners Early and Often. Urban Institute, available at https://www.urban.org/sites/default/files/2019/11/06/engaging_partners_early_and_often_-_bridging_research_and_practice.pdf;Goldstein, N. E. S., Gale-Bentz, E., McPhee, J., NeMoyer, A., Walker, S., Bishop, S., Soler, M., Szanyi, J., and Schwartz, R. G. (2019). Applying the National Council of Juvenile and Family Court Judges' Resolution to Juvenile Probation Reform. Translational Issues in Psychological Science, 5(2), 170–181. Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6863450/; Feely, K. (1999) Pathways to Juvenile Detention Reform Collaboration and leadership for Juvenile Detention Reform. The Annie E. Casey Foundation, available at https://www.aecf.org/resources/collaboration-and-leadership/.

Given what we now know about adolescent behavior and brain development and the undeniable evidence showing that traditional approaches to juvenile probation conflict with what works, the path is clear—embrace the work of probation transformation. The NCJFCJ urges judges to take this path. The evidence is overpowering that many current probation practices are not only outdated but are harmful to youth and undermine the ability of the juvenile court to achieve its mission.

More than any other official, the juvenile court judge has the power and influence to advance the probation transformation agenda described in this Toolkit. The NCJFCJ has every hope that judges throughout our nation will find the Toolkit useful in efforts to bring to life a more effective and research-based approach to probation, the workhorse of America's juvenile justice systems.



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