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SHIFTING THE PARADIGM ON YOUTH PROBATION

By Emily Mooney and Jesse Kelley

INTRODUCTION

Each year, hundreds of thousands of youth are referred to the justice system and placed on probation, which makes probation the most common sanction for young people.¹ Yet despite its prevalence as a response to youth misbehavior, in its current form, probation is often an ineffective long-term intervention. For example, approximately 63 percent of Texas youth adjudicated delinquent and sentenced to probation in 2013 were rearrested within three years and 28 percent were re-adjudicated or convicted of a new offense within that same period.² Similarly, in one study of Nebraska’s youth probation system, in the period between 2010 and 2015, one in four youth who successfully completed

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probation was adjudicated for a new offense within the following year.³

These trends are explained, in part, by the juvenile justice system’s failure to completely embrace the principles of adolescent development.⁴ Developmental research suggests that it is normal for young adults to make poor decisions during this period in life. Experimentation and risk-taking are often symptoms of a struggle to regulate one’s own emotions, anticipate the consequences of future actions or an attempt to impress one’s peers.⁵ In most cases, research also shows that adolescents will grow out of these habits on their own as they age.⁶

Thus, in many cases, youth currently placed on probation may do just as well or benefit more from local community-based interventions, such as diversion, or from dismissal from the justice system altogether. In contrast, formal justice interventions, such as probation or incarceration, may actually serve to increase the likelihood of future crime. For example, a 2013 report by the National Research Council notes: “[U]nduly harsh interventions and negative interactions between

3. As articulated by the Nebraska Supreme Court, the state’s definition of recidivism does not include adjudications for traffic violations, except in the case of misdemeanors. See Richard Weiner, “Recidivism Rates for Nebraska Juvenile Probationers: 2010 to 2015,” University of Nebraska-Lincoln, Feb. 5, 2018, pp. 3-4. <https://supremecourt.nebraska.gov/sites/default/files/NE-Juv-Recidivism-Rpt-Feb-2018.pdf>.

4. Although elementary and middle schoolers can be found in the juvenile justice system, the majority of youth placed on probation are adolescents aged 15 years or older. This data was compiled from Sickmund et al., “Easy Access to Juvenile Court Statistics: 1985-2016,” National Center for Juvenile Justice, accessed February 2019. <https://www.ojdp.gov/ojstatbb/ezajcs/asp/display.asp>.

5. Richard Bonnie et al., “Reforming Juvenile Justice: A Developmental Approach,” National Research Council, 2013, pp. 5 and 91-95. http://www.nijj.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf#page=22.

6. Ibid.

1. See, e.g., “Juveniles on Probation: Probation as a Court Disposition,” Office of Juvenile Justice and Delinquency Prevention, Aug. 22, 2018. <https://www.ojdp.gov/ojstatbb/probation/qa07102.asp?qaDate=2016>.

2. “Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates,” Legislative Budget Board, January 2017, p. 30. https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf.

youth and justice system officials can undermine respect for the law and legal authority and reinforce a deviant identity and social disaffection.”⁷

In other cases, youth are appropriately served by youth probation but nonsensical probation practices, such as long lists of conditions⁸ or the use of incarceration as a response to technical violations, set them up for failure. Given the fact that youth are constantly developing, probation plans and services should be individualized and dynamic rather than stagnant. Further, incarcerating youth for actions that pose no substantial threat to public safety is a waste of time and resources, and jeopardizes the likelihood of future success.⁹

There have been some positive developments. Over the last decade, the total number of youth on probation has substantially declined. In 2008, approximately 540,000 youth cases led to the sanction of probation.¹⁰ By 2016, that number had decreased to approximately 282,000.¹¹ And, in states like Virginia, the average daily youth probation population has decreased by more than half.¹² While these trends, along with the decreasing number of youth behind bars overall, suggest positive movement away from “lock ‘em up” policies of old, there is more work to be done if we are to better serve our youth and their communities.

Accordingly, the time has come for a new vision for youth probation. To achieve such a vision, states and localities must return to the core aims of juvenile justice involvement: namely, improved public safety and youth rehabilitation. They must also reassess the current paradigm regarding what probation looks like and whom it should serve. Accordingly, the present study provides an overview of the current state of youth probation and articulates a new paradigm, wherein localities limit government intervention, promote the role of families and—by better reflecting the principles found in developmental research—improve public safety; and finally, it presents a practical guide for how jurisdictions can improve their youth probation systems today.

THE CURRENT STATE OF YOUTH PROBATION

Even amidst a period of reform, probation continues to be the justice system’s typical response to youth misbehavior. As of 2016, assessments of the composition of all youth formally ordered to probation show that youth adjudicated for property offenses represented the largest share (33 percent), followed by youth who were adjudicated for person offenses¹³ (29 percent), public order¹⁴ (26 percent) and drug offenses (12 percent).¹⁵

These numbers demonstrate that in some jurisdictions, youth are often placed on probation for offenses that pose little harm to public safety. For example, prior to recent reforms in Lucas County, Ohio, a system assessment found that two-thirds of youth on county probation had only been adjudicated for committing a misdemeanor.¹⁶ Often, simple reforms can quickly reverse these trends. For example, in Summit County, Ohio, many youth who would previously have received probation are now simply referred for treatment or assessment, have to perform some sort of community service or may have to pay restitution.¹⁷ As a result, the number of youth placed on probation due to a misdemeanor decreased by over 80 percent when comparing data from 2014 to 2017.¹⁸

In many instances, youth may find themselves on probation without a formal adjudication of delinquency—or even a finding of guilt before the court. This is because instead of petitioning the court for a formal hearing after a youth is referred to the system, authorities may decide to handle the matter informally through voluntary sanctions. Alternatively, when a petition is filed, the court may allow a young person to participate in informal probation and move to continue the case pending completion. In both cases, with parental agreement, the youth in question may be placed on “voluntary” or informal probation. Generally, those on informal probation agree to receive services and are supervised

7. *Ibid.*, p. 5.

8. According to a survey conducted by the National Juvenile Defender Center, youth placed on probation have to comply with as many thirty different conditions in some localities. Research by Washington State shows many youth fail even to remember the conditions, thus undermining their ability to comply. See “Promoting Positive Development: The Critical Need to Reform Youth Probation Orders,” National Juvenile Defender Center, 2016, p. 1. <https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf>.

9. See, e.g., Ian Lambie and Isabel Randell, “The impact of incarceration on juvenile offenders,” *Clinical Psychology Review* 33 (2013), pp. 448-59. https://www.academia.edu/29633592/The_impact_of_incarceration_on_juvenile_offenders.

10. See, e.g., “Juveniles on Probation: Probation as a Court Disposition,” Office of Juvenile Justice and Delinquency Prevention, Aug. 22, 2018. <https://www.ojjdp.gov/ojstatbb/probation/qa07102.asp?qaDate=2016>.

11. *Ibid.*

12. “Data Resource Guide,” Virginia Dept. of Juvenile Justice, 2018, p. 67. http://www.djj.virginia.gov/pdf/about-djj/DRG/FY18_DRG.pdf.

13. Person offenses involve harm or threatened harm to another person. For example, simple assault, which could include simply punching someone, is categorized as a person offense, as are reckless endangerment, harassment, robbery, rape and murder. See, e.g., “EZAJCS: Glossary,” Office of Juvenile Justice and Delinquency Prevention, Aug. 22, 2018. https://www.ojjdp.gov/ojstatbb/ezaics/asp/glossary.asp#referral_offense.

14. Public order offenses generally involve disturbances to the general public or judicial processes such as obstruction of justice, public intoxication, disorderly conduct, indecent exposure and weapons offenses. See, e.g., *Ibid.*

15. “Juveniles on Probation.” <https://www.ojjdp.gov/ojstatbb/probation/qa07103.asp?qaDate=2016>.

16. Sino Esthappen et al., “Juvenile Probation Transformation: Applying the Approach in Lucas County, OH, Pierce County, WA,” Urban Institute, January 2019, p. 5. https://www.urban.org/sites/default/files/publication/99608/juvenile_probation_transformation.pdf.

17. “Transforming Juvenile Probation: A Vision for Getting it Right,” Annie E. Casey Foundation, 2018, p. 42. <https://www.aecf.org/m/resource/doc/aecf-transformingjuvenileprobation-2018.pdf>.

18. *Ibid.*

by the probation department. Such supervision may include check-ins with a probation officer and the youth may have to abide by a curfew and participate in programming. If they successfully complete the term of probation, the case does not result in a formal adjudication or conviction. By contrast, youth placed on “formal” probation are mandated to complete the term of probation, which does end with an adjudication of delinquency on their record. Failure to complete formal probation successfully may result in a revocation of probation, meaning a youth may no longer be eligible and may be detained instead.¹⁹

In addition to problems associated with overuse and counterproductive outcomes, in practice, the length of time youth are on probation varies widely by jurisdiction, according to whether the probation is informal or formal and relative to the severity of the offense. Typically, informal probation spans a shorter period of time. For example, in San Mateo County, California, informal probation generally lasts up to six months whereas formal probation can last as long as it takes a judge to decide that all the conditions of probation have been met.²⁰ And understandably, the length of probation is traditionally greater for youth with felony offenses than for those with misdemeanor charges. For example, in Illinois, the latter face an average of 12 months on probation whereas the former may be on probation anywhere from two to five years.²¹ In some cases, juvenile probation officers (JPOs) may have the authority to determine the end of a period of probation and close the case. In other cases, the judge retains that authority.²²

In summary, in its current state, youth probation takes on a variety of forms but is grounded in a desire to improve public safety and youth rehabilitation. And, although the number of youth on probation has decreased significantly in recent years, many jurisdictions continue to overuse the sanction or to use it inconsistently with its aims and thus may reap additional benefits by embracing a new vision.

A NEW VISION FOR YOUTH PROBATION

In 2017, approximately 800,000 youth were arrested in the United States, the vast majority of whom (greater than 90

percent) were arrested for non-violent offenses.²³ This large number of arrests is due, in part, to changes in how youth are held accountable for misbehavior. Throughout the millennial generation, the percentage of schools with police officers has risen to 42 percent among schools who participated in a 2016 National Center for Education Statistics survey.²⁴ And in 2012 alone, 260,000 students were referred to law enforcement by their schools for judicial intervention.²⁵

In conjunction with the increase of officers in schools, actions that were once considered to be simply disruptive behaviors—like arguing in the hallway—have become grounds for arrest and introduction into the juvenile court system. And, concerned parents or teachers have looked to the juvenile justice system as the local service provider when children skip class, run away or simply struggle in school. As a result, youth are routinely introduced to the justice system when they may benefit more from a referral to community-based services. Accordingly, the following sections provide an overview of general changes to the system that would better serve both the young people in question and their communities.

Bolstering the First Line of Defense

Before involving the youth justice system, society should better empower parents, educators and community partners to serve as the first line of defense. Involving the justice system when youth commit simply immature but non-threatening actions such as being disrespectful²⁶ or kicking a trash can²⁷ violates our principle of limited government. And even obvious misbehaviors, such as physically fighting another young person, may be more appropriately and successfully dealt with in the community through restorative justice programs.

In all cases, responses by the juvenile justice system to non-violent or simply immature youth behavior should be greatly limited, and preferably eliminated entirely. If a young person’s academic achievement is suffering, parents and teachers are the most appropriate responders. And, in circumstances in which a youth is skipping class, community and

19. See “Formal, Post-Adjudication Juvenile Probation Services,” Office of Juvenile Justice and Delinquency Prevention, August 2017, p. 1. https://www.ojjdp.gov/mpg/litreviews/Probation_Services.pdf.

20. See, e.g., “Juvenile FAQs,” San Mateo County, accessed Feb. 28, 2019. <https://probation.smcgov.org/juvenile-faqs>.

21. “The Cost of Juvenile Probation: A Critical Look into Juvenile Supervision Fees,” National Juvenile Defender Center, 2017, p. 2. <https://njdc.info/wp-content/uploads/2017/10/The-Cost-of-Juvenile-Probation-Issue-Brief.pdf>.

22. “Formal, Post-Adjudication Juvenile Probation Supervision,” p. 2. https://www.ojjdp.gov/mpg/litreviews/Probation_Services.pdf.

23. “Statistical Briefing Book: Juvenile Arrests,” Office of Juvenile Justice and Delinquency Prevention, Oct. 22, 2018. <https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2017&text=yes>.

24. *School Resource Officers: Issues for Congress*, Congressional Research Service, July 5, 2018, p. 2. https://www.everycrsreport.com/files/20180705_R45251db5492370a04c7e3b39f27ce52416d229a0ac17d.pdf.

25. Gary Fields and John R. Emshwiller, “For More Teens, Arrests by Police Replace School Discipline,” *The Wall Street Journal*, Oct. 20, 2014. <https://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602>.

26. Deborah Thompson Eisenberg and Barbara Sugarman Gorchal, “Maryland’s school discipline crisis fault of adults, not kids,” *The Baltimore Sun*, Feb. 27, 2019. <https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0227-school-discipline-20190227-story.html>.

27. Susan Ferris, “Update: How kicking a trash can became criminal for a 6th grader,” *Public Radio International*, Sept. 3, 2015. <https://www.pri.org/stories/2015-04-10/how-kicking-trash-can-became-criminal-6th-grader>.

social services agencies are better suited to help provide the resources necessary to get them back on the right track.

Moreover, to stem the tide of youth arrests, schools should collaborate with community organizations to provide greater behavioral health services and instruct teachers how to recognize the associated underlying problems and provide referrals to the appropriate services.²⁸ They may also implement programs like Families and Schools Together (FAST) or Positive Family Support (PFS), which join parents, school professionals and counselors and promise to improve child behavior. Families participating in FAST, for example, attend weekly meetings at a school within a community of other referred families where they participate in parent-child play therapy, work in groups, and do other activities to promote positive behavior and academic outcomes.²⁹ Similarly, PFS teaches parents family management skills and, depending on the level of need, may allow them to participate in family therapy alongside their children.³⁰ Such programs ensure that youth and their families receive the necessary services rather than involving them punitively in the justice system.

Jurisdictions should also reassess and, if needed, revise school disciplinary policies to provide guidance on appropriate responses to youth misbehavior. For example, as part of its interagency School-Based Diversion Initiative, Connecticut created a graduated response model in which referrals to law enforcement are used only as a last resort.³¹ Local Connecticut school districts also crafted a memorandum of agreement (MOA) with their emergency medical providers and respective police departments to restrict the scope of law enforcement involvement and promote a smoother pathway toward diversion.³² Since implementation, participating schools have seen a reduction in court referrals, with the Child Health and Development Institute of Connecticut, Inc. reporting that, since 2010, schools that participated in the initiative have seen their court referrals drop by an aver-

age of 45 percent during their first year of implementation.³³ Accordingly, other districts may benefit by implementing a similar model.

By empowering families and community partners to better address youth misbehavior, localities are able to more effectively address its roots without exposing additional young people to the harms associated with the justice system. Such an approach also respects the principle of limited government by reserving government intervention for situations wherein it is truly warranted.

A Legal System Equipped for Effective Diversion

Law enforcement officers serve as the gatekeepers of the justice system and the protectors of the public. As such, it is important that localities equip them with a diverse range of tools that allow them to best focus their time and resources on those who present a true threat to public safety. And often, when dealing with young people, the most powerful tool officers have is pre-arrest diversion.

Indeed, jurisdictions across the United States are beginning to develop robust diversion protocols. For example, in New Jersey, youth may be diverted from formal arrest by instead being issued with a “curbside warning,” or an immediate verbal warning or reprimand by a police officer who witnesses a young person’s involvement in dangerous behavior.³⁴ If not objected to by any victims, a youth may also receive a “stationhouse adjustment,” whereby an officer could choose to, in lieu of filing a juvenile delinquency complaint, offer a set of restorative conditions, like writing a letter of apology or performing community service.³⁵ Similar in practice to informal youth probation, if the individual fails to meet these conditions, the officer may decide to file a formal delinquency complaint.

Evidence already suggests that this model is working, as most New Jersey youth able to receive a stationhouse adjustment successfully complete their requirements. Nevertheless, there is more to be done, as some of the conditions youth are required to fulfill are overly broad, unachievable or unrelated to the offense.³⁶ For example, a recent ACLU report notes that some young people were barred from driving despite the fact that they had not been diverted for a driving-related

28. Jessica Lahey, “The Failing First Line of Defense,” *The Atlantic*, Oct. 18, 2016. <https://www.theatlantic.com/education/archive/2016/10/the-failing-first-line-of-defense/504485>.

29. See, e.g., Office of Justice Programs, “Program Profile: Families and Schools Together (FAST),” National Institute of Justice, June 10, 2011. <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=185>; and “How FAST Works,” Families and Schools Together, Inc., 2019. <https://www.familiesandschools.org/how-fast-works>.

30. See, e.g., Office of Justice Programs, “Program Profile: Positive Family Support (PFS),” National Institute of Justice, Jan. 3, 2013. <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=289>; and “Evidence-Based Programs: Positive Family Support,” Arizona State University, accessed March 21, 2019. <https://reachinstitute.asu.edu/programs/positivefamilysupport>.

31. Jeana Bracey et al., “The SBDI Toolkit: A Community Resource for Reducing School-Based Arrests,” Child Health and Development Institute of Connecticut,” 2013, p. 29-34. <https://www.chdi.org/index.php/publications/resources/sbdi-toolkit-community-resource-reducing-school-based-arrests>.

32. *Ibid.*

33. “Effort to Reduce School-Based Arrests Benefits Nearly 15,000 Additional Students This Year in Connecticut,” Child Health and Development Institute of Connecticut, Inc., Dec. 16, 2016. <https://www.chdi.org/news/press-releases/sbdi-expands-new-schools-across-state>.

34. Portia Allen-Kyle, “Missed Opportunities: Youth Diversionary Programs in New Jersey,” ACLU New Jersey, January 2018, pp. 3-4 and 11. https://www.aclu-nj.org/files/7615/1621/6649/Youth_Diversionary_Programs_Report.pdf.

35. *Ibid.*

36. *Ibid.*, p. 11.

offense.³⁷ Others were required to “show respect,” which is far too arbitrary to be instructive as a condition of probation.³⁸ Thus, while jurisdictions should invest in more diversion programs, they should also ensure that these programs are well-implemented and that requirements directly address the youth’s offense and effectively promote transformation.

In the event that an officer believes she should not release the youth or offer a diversion option or should she be legally barred from doing so, a complaint must be submitted, and this, in effect, triggers the involvement of a juvenile probation officer (JPO). Once a JPO is involved, the resources accessible to the delinquent youth are increased, but such access does not come without a price, as the young person’s exposure to long-term collateral consequences also increases. However, in some localities, opportunities for pre-trial diversion are still present. In any event, even when a youth’s case is petitioned to court, probation should not be considered a catch-all response.

For example, in Pierce County, Washington, youth engaged in a domestic conflict may be diverted to the Family First program, where they are sent to a shelter and receive services, and the probation officer links the family to parent advocates.³⁹ In Lucas County, Ohio, the juvenile court created a Misdemeanor Services Unit to which youth adjudicated for misdemeanors as well as those charged with a first-time non-violent felony may be referred.⁴⁰ Similar to other programs, unit staff screen for each child’s needs and risks and then refer them to the appropriate community services; however, if they choose not to follow-up on their referrals, there are no criminal sanctions.⁴¹ Not using sanctions for non-attendance is challenging for MSU case officers; they must learn how to motivate and empower attendance by leveraging family supports and other tools in their toolkit.⁴² At the same time, given the long-accepted paradigm regarding how youth should be held accountable, MSU and other court staff must work to educate both parents and the broader community about why such an approach is more beneficial in the long run.⁴³ Luckily, they can point to some emerging promising outcomes: As of early 2018, most youth served by this program have been

successful and not come back to court.⁴⁴ They can also explain the risk-needs-responsivity principle, upon which diversion programs are built.⁴⁵ According to it, youth should be served according to their level of need and risk. Therefore, when youth are awarded more intensive treatment or services than required by their level of risk, public safety outcomes suffer. Similarly, when youth see the intensity of their needs unmet or when jurisdictions fail to account for a youth’s likely response to a justice intervention, they often falter.

Placing young people who present little-to-no risk to society on probation clearly violates the risk-needs-responsivity principle and may result in worse recidivism rates. Indeed, in a Florida study, youth assessed to be low risk who were assigned to general or intensive probation had higher one-year re-arrest rates than those who simply received diversion services.⁴⁶ Thus, diverting low- and moderate-risk youth, whenever appropriate, should be the preferred option.⁴⁷ Moreover, according to a 2013 benefit-cost analysis of youth diversion by the Washington State Institute for Public Policy, the benefits of diversion programs greatly outweigh the costs.⁴⁸

In addition to the aforementioned benefits, diverting youth out of the juvenile justice system also benefits police officers. Youth who have prior positive interactions and lasting good relationships with police are more likely to report problems in their communities later on. This helps law enforcement to better achieve the main function of their job.⁴⁹ And, police benefit when youth who are better served in the community have minimal justice involvement and, as a result, are less likely to recidivate compared to their peers who are placed on probation or sent to detention.⁵⁰ Another obvious benefit is that law enforcement officers can focus the bulk of their efforts on more serious crime rather than operating in loco parentis. For these reasons, diversion programs are an effective way to benefit all members of the community.

37. *Ibid.*, p. 11.

38. *Ibid.*, p. 4.

39. Esthappan et al., p. 28. https://www.urban.org/sites/default/files/publication/99608/juvenile_probation_transformation.pdf.

40. “2017 Annual Report,” Lucas County Juvenile Court, 2017, pp. 24-25. <https://www.co.lucas.oh.us/DocumentCenter/View/70268/Lucas-County-Annual-Report---2017>.

41. Esthappan et al., p. 20. https://www.urban.org/sites/default/files/publication/99608/juvenile_probation_transformation.pdf.

42. *Ibid.*

43. *Ibid.*

44. *Ibid.*

45. See, e.g., Gina Vincent, “Using Risk Assessment and Risk-Needs-Responsivity Principle in Juvenile Justice,” Systems and Psychological Advances Research Center, April 2016, pp. 1-2. <http://www.nysap.us/Using%20Risk%20Assessment%20and%20Risk-Needs-Responsivity%20Principles%20in%20Juvenile%20Justice.pdf>.

46. Elizabeth Seigle et al., “Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System,” CSG Justice Center, 2014, p. 9. <http://csjusticecenter.org/wp-content/uploads/2014/07/Core-Principles-for-Reducing-Recidivism-and-Improving-Other-Outcomes-for-Youth-in-the-Juvenile-Justice-System.pdf#page=16>.

47. Holly Wilson and Robert Hoge, “The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review,” *Criminal Justice and Behavior* 40:5 (2013), pp. 507 and 511. http://users.soc.umn.edu/~uggen/Wilson_CJB_13.pdf.

48. “Benefit-Cost Results,” Washington State Institute for Public Policy, December 2018. <http://www.wsipp.wa.gov/BenefitCost>.

49. “Interactions between Youth and Law Enforcement,” Office of Juvenile Justice and Delinquency Prevention, January 2018, p. 11. <https://www.ojjdp.gov/mpg/litreviews/Interactions-Youth-Law-Enforcement.pdf>.

50. *Ibid.*, pp. 17-18.

Re-orienting Probation's Role in the Juvenile Justice System

Probation should be imposed only when a youth poses a significant risk to public safety and has needs that can only be served by probation rather than diversion programs or incarceration. As is true for other justice interventions, it is important that youth on probation see the intensity of their needs met and that jurisdictions account for the likely response to an intervention. Absence of any necessary support may undermine positive outcomes.⁵¹

Many states and localities have tried to identify and properly address these needs by implementing risk and needs assessment tools within the probation and greater juvenile justice context.⁵² These tools can either use imputed risk factors to produce a numerical risk estimate (e.g., as done by the Youth Level of Service/Case Management Inventory or YLS/CMI) or they can create a structured process wherein a professional uses the tool to consider the risk for a series of factors and makes a final risk estimate (e.g. by use of the Structured Assessment of Violence Risk in Youth or SAVRY).⁵³ Thus, these tools can help localities to re-orient the role of probation by identifying the population best suited for it. Indeed, research suggests that use of these tools may lead to less-severe sanctions, including fewer instances of probation supervision or placements in the first place, and reductions in youth recidivism.⁵⁴

However, this re-orientation of who and how a person should be served by probation is often compromised when jurisdictions today fail to properly implement use of risk and needs tools or to ensure that youth receive services in their case plan according to their identified needs.⁵⁵ In some cases, JPOs or other justice officials do not see the tool as valid or

reliable and, therefore, depart from its recommendations. In other cases, they may not know how or when to use the tool or worse, why it is important.⁵⁶ Finally, even when properly understood, JPOs may not be able to present the tool's recommendation to a judge prior to disposition to influence case processing and thus the resulting disposition or case plan may fail to reflect needs or risk.⁵⁷ It is critical to note that risk assessments are imperfect mechanisms that can lead to racially biased results. However, if calculated and used correctly, they can be a useful tool. In any event, when use of these tools is not properly implemented, localities undermine the potential benefits and put youth at risk of receiving under-intensive or over-intensive services or of being needlessly sent to detention.

As a practical matter, the resources provided to state and local agencies are not limitless. Accordingly, when localities under-use diversion and over-use probation for low-risk youth, JPOs may be overburdened with more cases than can reasonably be handled. When this occurs, they are not able to give moderate- or high-risk youth the individualized care they need. Thus, for some, the root causes of problem behavior may remain unmet, putting them at risk for deeper involvement in the system and jeopardizing public safety.

By removing most youth who commit low-risk offenses from the system and designating probation as the appropriate response to youth presenting moderate- or high-risk and more-intensive needs, localities can better match the ordered services to each individual's needs and can better utilize the positive influence of families and other community supports. This is to not to say that all young people previously recommended for detention should be placed on probation; rather, these changes would allow court representatives to recommend probation in cases where it is the most appropriate option.

PRACTICAL NECESSITIES OF PROBATION

The ultimate goal of youth probation is to ensure that a young person receives rehabilitative services such that, upon completion, they live a productive, crime-free life. Given this end-goal, probation systems must balance the dual priorities of promoting youth rehabilitation and ensuring accountability for crime. Today, jurisdictions can better fulfill these purposes by focusing on more-individualized services that promote strength development, shorter probation periods and that reform the system's response to violations.

Individualized Services

"One size fits all" policies almost never work. This is because

51. See, e.g., Vincent, pp. 1-2. <http://www.nysap.us/Using%20Risk%20Assessment%20and%20Risk-Needs-Responsivity%20Principles%20in%20Juvenile%20Justice.pdf>.

52. See, e.g., Gina Vincent et al., "Studying Drivers of Risk and Needs Assessment Instrument Implementation in Juvenile Justice," Office of Juvenile Justice and Delinquency Prevention, December 2018, pp. 1-2. <https://www.ojjdp.gov/pubs/251809.pdf>; Evan Holloway et al., "Juvenile Probation Officers' Evaluation of Traumatic Event Exposures and Traumatic Stress Symptoms as Responsivity Factors in Risk Assessment and Case Planning," *Law and Human Behavior* (April 2018), pp. 4-5. https://www.researchgate.net/profile/Evan_Holloway/publication/324227116_Juvenile_Probation_Officers%27_Evaluation_of_Traumatic_Event_Exposures_and_Traumatic_Stress_Symptoms_as_Responsivity_Factors_in_Risk_Assessment_and_Case_Planning/links/5ac679274585151e80a375ee/Juvenile-Probation-Officers-Evaluation-of-Traumatic-Event-Exposures-and-Traumatic-Stress-Symptoms-as-Responsivity-Factors-in-Risk-Assessment-and-Case-Planning.pdf.

53. See, e.g., Ed Hilterman et al., "Predictive Validity of Risk Assessments in Juvenile Offenders: Comparing the SAVRY, PCL:YV, and YLS/CMI With Unstructured Clinical Assessments," *Assessment* 21:3 (2014), p. 325. https://s3.amazonaws.com/academia.edu/documents/43146769/Predictive_Validity_of_Risk_Assessments_20160227-4597-8yu94r.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=155145595-5&Signature=75kJSxK9MjxBaQvziMrBRtALnA%3D&response-content-disposition=inline%3B%20filename%3DPredictive_Validity_of_Risk_Assessments.pdf; and Greg Ridgeway and Robert Listonbee, "Prediction and Risk/Needs Assessment," *National Institute of Justice*, May 2014, pp. 1-2. <https://www.ncjrs.gov/pdffiles1/nij/243976.pdf>.

54. Vincent et al., p. 4. <https://www.ojjdp.gov/pubs/251809.pdf>.

55. *Ibid.*, pp. 4-21.

56. *Ibid.*

57. *Ibid.*, p. 10.

they fail to consider context and other constraints. As humans, we are all unique and have different past experiences that inform our current values and behavior. When paired with the fact of youths' continuous development, it is clear that the youth justice system needs an array of even more dynamic services and interventions.

In the past, standardized conditions of probation were seen as a key aspect of youth probation. However, in practice, these often sacrificed the promotion of positive growth in favor of ensuring compliance and thus undermined the overall rehabilitative goal.⁵⁸ Furthermore, research has shown that when youth are presented with a long list of boilerplate conditions, they may not understand or remember all of them, which undermines their ability to comply.⁵⁹ Given this reality, in recent decades, youth probation departments have shifted from more-uniform probation requirements, occasionally including as many as 30 conditions, to individualized case plans based on positive youth development models (PYD).⁶⁰ Instead of simply telling young people what they can or cannot do, PYD models emphasize youth successes and ultimately provide informal and formal systems of support to help them reach adulthood successfully.⁶¹ Using individualized case plans to advance positive developmental principles can help JPOs build on youths' strengths while also navigating their needs.

As an example, Washington, D.C.'s Department of Youth Rehabilitative Services (DYRS) has an individualized case plan model. The DYRS convenes Youth Family Team Meetings (YFTM) to help develop case plans for each individual's needs. A YFTM often brings DYRS staff, the child's family, any mentors or teachers and other positive adult influences together to develop an individualized plan for success. These include a specific services along with personalized, incremental goals.⁶²

Again, using Pierce County, Washington, as an example, their individualized case planning incorporates an "incen-

tive package that promotes PYD, and includes options such as YMCA memberships, internships, and early termination from probation."⁶³ Termed "Opportunity-Based Probation (OBP)," this model aims "to integrate principles of adolescent development and effective behavior management into probation supervision." It seeks to achieve its goals by involving family and using positive reinforcement for youth progress toward their case plan goals.⁶⁴ Initial results of the program suggest that such a focus on positive development increases public safety. According to practitioner interviews conducted by the Urban Institute, youth participating in OBP had low re-offense rates and were particularly motivated by the opportunity to earn a shorter period of probation.⁶⁵

Individualized care plans are certainly time consuming to develop and for JPOs with high caseloads, doing so can seem daunting. However, if implemented in conjunction with diversion reforms, JPOs will have more time to complete such case planning because there will be fewer youth on probation. In any event, to ensure effective treatment and rehabilitation of youth, it is important that JPOs use individual case plans and that they accurately reflect a youth's risk and needs.

It must be noted that because of their room for discretion, if used incorrectly, individualized case plans could also exacerbate racial inequities within the juvenile justice system. Yet, returning to more standardized, ineffective conditions of probation is not the answer. Rather, localities should ensure that JPOs and other relevant judicial representatives have sufficient training on how to identify young people's needs and work with them and their families to craft an effective case plan. Localities and agencies must also monitor how these case plans are being implemented and whether or not they are producing racial disparities when it comes to technical violations or revocations of probation. Finally, JPOs should ensure that the court-ordered, and thus required, aspects of the youth's case plan are clear. It is important that young people and their defense attorneys have proper notice of what is required of them so that in situations in which a youth does violate a condition of their probation, the consequences are expected and fair.

In summary, individualized case plans present youth an opportunity to develop their strengths, identify and begin to address their needs and ultimately stay crime-free. Moreover, case plans that involve family and build upon and

58. Ibid.

59. Rosa Peralta et al., "Washington Judicial Colloquies Project: A Guide for Improving Communication and Understanding in Juvenile Court," Team Child, October 2012, p. 9. <https://njdc.info/wp-content/uploads/2013/11/wa-judicial-colloquies-project-a-guide-to-improving-comm.-and-understanding-in-juv-ct.pdf>.

60. See, e.g., "Promoting Positive Development: The Critical Need to Reform Youth Probation Orders," National Juvenile Defender Center, 2016, pp. 1-6. <https://njdc.info/wp-content/uploads/2016/12/Promoting-Positive-Development-Issue-Brief.pdf>.

61. Robert G. Schwartz, "A 21st Century Developmentally Appropriate Juvenile Probation Approach," *Juvenile and Family Court Journal* 69:1 (March 2018), p. 44. <https://onlinelibrary.wiley.com/doi/full/10.1111/jfcj.12108>.

62. It is important to note that DYRS services detained youth awaiting adjudication as well as those placed in their custody following adjudication. Samantha Harvell et al., "Bridging Research and Practice in Juvenile Probation" Urban Institute, October 2018, p. 26. <https://www.urban.org/research/publication/bridging-research-and-practice-juvenile-probation/view/full-report>. For more information on the YFTM model, see "The Youth Family Team Meeting Process," Southern Poverty Law Center, 2013, pp. 3-26. https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/youth_family_team_meeting_process_0.pdf.

63. Schwartz, p. 52. <https://onlinelibrary.wiley.com/doi/full/10.1111/jfcj.12108>.

64. "Opportunity-Based Probation," Pierce County Juvenile Court, accessed March 5, 2019. <https://www.co.pierce.wa.us/DocumentCenter/View/66072/Opportunity-Based-Probation>.

65. Esthappan et al., p. 30. https://www.urban.org/sites/default/files/publication/99608/juvenile_probation_transformation.pdf.

encourage positive strength development best accomplish the dual goals of accountability and rehabilitation.

Active Family Involvement

When justice system involvement is appropriate given the seriousness or nature of the alleged offense, it is paramount that a youth's family and community be included and supported during any intervention. After all, social support is a key ingredient in any individual's transformation. This is particularly true for young people. Indeed, research suggests that when probation officers work positively and respectfully with families, youth compliance with their probation plan improves and fewer technical violations are committed.⁶⁶

Family ties can be promoted by youth probation systems in a variety of ways. Families are supported when someone is there simply to explain what is going on in their child's case or to help family members understand what a term of probation entails. For example, in Lucas County, families of justice-involved youth are served by the Family Navigators program. The program is run by a local non-profit and staffers help support and guide family members through the court and probation processes.⁶⁷ Families can also be supported through services that attempt to promote healthier family dynamics, parenting skills or simply to engage families as positive allies in youth development. For example, in Multnomah County, Oregon, Juvenile Court Counselors (JCCs) work to support both high-risk youth and their families as part of their Functional Family Probation model.⁶⁸

Put simply, when families are included directly in a youth's case plan, through services such as Family Functional Therapy (FFT) or Multisystemic Therapy (MST) in which the families' needs are also treated, fewer youth recidivate.⁶⁹ Given these facts and the important role of the family in society generally, parents and relatives should be empowered to aid youth transformation rather than moved to the periphery or excluded altogether.

Shorter Periods of Probation

Every jurisdiction and case are different. The ideal length of time for juveniles to be placed on probation is not yet agreed upon by experts, but evidence suggests that shorter proba-

tion terms can be used as a reward for good behavior without any adverse effects on public safety.⁷⁰ Presently, many states, including Colorado, Florida and Virginia, place youth on probation, on average, for about a year; however, in individual cases and in other states, probation terms may extend for several years.⁷¹ Unnecessarily long periods of probation put youth at greater risk of having their probation revoked for technical violations such as missing an appointment with their probation officer or staying out past curfew. They may also come with additional fines and fees that put added financial stress on families that are already struggling.

Therefore, if probation is appropriate, youth should have the opportunity through good behavior to earn a shorter period, and the court-determined probationary period must be regularly reviewed whether by automatic judicial review or JPO request. Specifically, if during a regular assessment by the JPO, it is determined that the youth has reached the maximum benefit from the term of probation, then the court should immediately review and end the probationary term as appropriate.

Periods of probation should be extended only in exceedingly rare circumstances—specifically, if a young person becomes a threat to themselves, others or the public while already serving a term of probation. Using extended periods of probation as a punishment for inability to pay fines and fees undermines any potential successes accompanied by the original term.⁷² Depending on the state, youth who simply fail to pay their supervision fees may have their probation term lengthened for an indeterminate amount of time until their fees are paid or, alternatively, have their probation revoked and be sent to a detention facility.⁷³ Worst of all, many states can seek a civil judgment against the young person—or their parents—for failure to pay, which can lead to collateral consequences for the affected parties, like garnished wages.⁷⁴ These practices not only waste state resources by needlessly extending periods of supervision or ordering detention for

66. Sarah Vidal and Jennifer Woolard, "Parents' perceptions of juvenile probation: Relationship and interaction with juvenile probation officers, parent strategies, and youth compliance on probation," *Children and Youth Services Review* 66 (July 2016), pp. 1-8. <https://www.sciencedirect.com/science/article/pii/S0190740916301311>.

67. Esthappan et al., p. 22. https://www.urban.org/sites/default/files/publication/99608/juvenile_probation_transformation.pdf.

68. "Functional Family Probation," Multnomah County Department of Community Justice, 2018. <https://multco.us/dcj/functional-family-probation-ffp>.

69. "Formal, Post-Adjudication Juvenile Probation Services," pp. 4-8. https://www.ojjdp.gov/mpg/litreviews/Probation_Services.pdf.

70. "Transforming Juvenile Probation: A Vision for Getting it Right," Annie E. Casey Foundation, May 7, 2018. <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

71. See, e.g., "Data Resource Guide," Virginia Department of Juvenile Justice, December 2016. www.djj.virginia.gov/pdf/about-djj/DRG/FY16_DRG.pdf; Florida Dept. of Juvenile Justice, "Probation Services," *Comprehensive Accountability Report*, 2016-2017. [www.djj.state.fl.us/docs/car-reports/\(2016-17-car\)-probation-\(4-6-18\).pdf?sfvrsn=2](http://www.djj.state.fl.us/docs/car-reports/(2016-17-car)-probation-(4-6-18).pdf?sfvrsn=2); "Annual statistical report: Fiscal year 2017," Colorado Judicial Branch, 2017. www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2017/FY2017ANNUALREPORT.pdf.

72. Deborah W. Smith et al., "2017 Trends in State Court. Fines, Fees, and Bail Practices: Challenges and Opportunities," National Center for State Courts, 2017, p. 57. <https://www.ncsc.org/-/media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx>.

73. See, e.g., *Ibid*; and "The Cost of Juvenile Probation: A Critical Look into Juvenile Supervision Fees," National Juvenile Defender Center, 2017, pp. 1-6. <https://njdc.info/wp-content/uploads/2017/10/The-Cost-of-Juvenile-Probation-Issue-Brief.pdf>.

74. *Ibid*.

reasons unrelated to public safety, they also directly undermine youth rehabilitation.

Graduated Responses to Violations

If and when youth struggle to comply with their probation requirements, JPOs should have more flexibility to give lesser sanctions according to the situation. As part of their response, JPOs should identify the underlying problems that are accelerating these poor behaviors and adjust individualized plans to reflect changed needs. Under this model, it is important that JPOs receive instruction as to what behaviors warrant a response and the associated clarification that incarceration should be reserved only for situations wherein a youth's actions threaten substantial harm to the community rather than as a response to technical violations.

However, the sad fact remains that thousands of youth are detained each day for technical probation violations, which are actions criminalized merely because of a judge's order like school attendance or an imposed curfew. Strict conditions of probation often lead to non-compliance, but with the limit on violations for technical offenses and the increased use of individualized case plans, noncompliance can be viewed as a teaching opportunity rather than an opportunity for additional punishment.⁷⁵

In addition to limiting the use of detention for technical violations, graduated responses to youth noncompliance could be a meaningful shift. Using a graduated response system can “emphasize short-term, positive outcomes for probation-compliant behaviors, be designed in such a way that enables youth to experience success almost immediately, and can perfect compliance with probation requirements, goals, and expectations.”⁷⁶

Again, Pierce County presents a positive model. If youth fail to meet expectations or violate a rule of probation, the probation department holds them accountable by taking away certain privileges or engaging them in a conversation regarding their problematic behavior.⁷⁷ A graduated response should not mean that youth who continue to make poor but non-threatening decisions—such as missing curfew—are faced with increasingly disproportional responses, such as incar-

ceration. In Pierce County, youth are only taken back to court if their behavior presents a threat to public safety.⁷⁸

Detention is the ultimate consequence for judges to employ if a juvenile's behavior is considered to be a significant threat, for example, if the young person commits a violent crime while on probation. In these cases, detention might be the most effective and prudent option to rehabilitate risky behavior. Yet even within confinement, the positive lessons learned in a new model of youth probation should be adopted. Positive behavior should be accentuated and individualized services and case management should be implemented. And, given that youth are more successful when positive relationships are developed, detention facilities must be scaled smaller and should remain closer to the youth's community in order to encourage the active participation of family and other supportive adults.⁷⁹

CONCLUSION

Given the core aims of improved public safety and youth rehabilitation, it is paramount that local and state juvenile justice systems work to reassess and revise the current paradigm regarding youth probation. Changes to policy and practice promise to correct situations in which the justice system has overstepped its proper bounds and has encroached into the realm of authority more appropriately reserved for parents and other community members. In other cases, revisions to long-held constructs about which youth should be served in the community and how they should be served may result in greater opportunities for positive youth transformation and thus, public safety. And the implementation of principles gained from developmental research into practice promise to improve the effectiveness of probation. Ultimately, policy makers, practitioners, and society at large should rethink both the purpose, and practices of probation and its overall place within the juvenile justice system.

ABOUT THE AUTHOR

Emily Mooney conducts research and writes on topics regarding policing, corrections, reentry and the juvenile justice system. She also produces original content regarding the impact of the criminal justice apparatus on families. Previously, she provided research support for Prison Fellowship's juvenile justice advocacy efforts.

Jesse Kelley is responsible for overseeing R Street's criminal justice efforts across the United States at both the federal and state level. Earlier in her career, she worked as a criminal defense attorney in Alabama, where she represented mostly indigent clients.

75. Patricia M. Torbet, “Building Pennsylvania's Comprehensive Aftercare Model: Probation Case Management Essentials for Youth in Placement,” Center for Juvenile Justice, March 2008, p. 29. <https://www.pccd.pa.gov/Juvenile-Justice/Documents/Probation%20Case%20Management%20Essentials.pdf>.

76. Naomi E.S. Goldstein et al., “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* 88:4 (Summer 2016), pp. 803-36. <http://www.templelawreview.org/article/youre-on-the-right-track-using-graduated-response-systems-to-address-immaturity-of-judgment-and-enhance-youths-capacities-to-successfully-complete-probation>.

77. “Transforming Juvenile Probation: A Vision for Getting it Right,” p. 32. <https://www.aecf.org/m/resource/doc/aecf-transformingjuvenileprobation-2018.pdf>.

78. Ibid.

79. Nila Bala, “Left Behind Kids,” *R Street Policy Study* No. 136, March 2018. <https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/136-1.pdf>.