



# Juvenile Probation Scan Workgroup Executive Summary

BY MICHAEL HARTMAN

Juvenile probation is the most commonly used sanction for youth involved in the justice system, according to the [Office of Juvenile Justice and Delinquency Prevention's](#) (OJJDP) 2018 data. The likelihood of a young person being placed on formal probation is more than 60%. Additionally, the surveillance-oriented probation policies found in many states, lead to out-of-home placement. An interactive tool from The Pew Charitable Trusts illustrates that probation violations and revocations are major drivers of detention and placement. In some states, as many as 40% of young people in detention are there for violating probation rules, not for actually breaking the law.

## Work Group Members

- Senator Whitney Westerfield (R-Ky)
- Senator Gerald Malloy (D-S.C.)
- Senator Greg Taylor (D-Ind.)
- Senator Diane Larson (R-N.D.)
- Pat Guinan, Senior Principal Policy Analyst, Legislative Counsel Bureau, Nevada
- Monique Appeaning, Legislative Fiscal Office, Louisiana

While these statistics paint a vivid picture of the amount of young people involved in probation, little was known about how state law governed and influenced juvenile probation policy. With the support of the [Annie E. Casey Foundation](#), NCSL has created a comprehensive online statutory compilation of juvenile probation laws designed to expand the field's understanding of what state-wide probation policies exist and how they might affect local practice. To do this NCSL staff:

- Reviewed statutes in all 50 states, the District of Columbia, and the territories to identify any statutory language related to juvenile probation.
- Assessed the statutory language and organized state law by topic.
- Conducted research in state administrative code and state agency mission statements.
- Provided explanation and comparative analysis of the many aspects of juvenile probation in state law.

The final product that resulted is the [Juvenile Probation Scan](#). To supplement the Juvenile Probation Scan, NCSL's criminal justice program assembled a bipartisan work group of four legislators and two legislative staff with specialized knowledge of the juvenile justice system. Through the course of two months, the work group provided input on the organization of the Scan and identified important concepts in state law that can improve both probation system performance and the lives of young people, while also acting as an effective tool for young people who pose a significant risk of reoffending.

It is the intent of the work group that the information presented here and, in the Scan, will provide policymakers with the guidance they need to examine and address juvenile probation policy at the state level. This briefing paper serves as a spotlight summary of key findings from state statutory research and presents the main takeaways from the work group.



## Key Findings: Statutory Research

Before discussing the key finding of the statutory research, it is important to note that many states have delegated rulemaking authority for juvenile probation to other government agencies. Therefore, statutes related to juvenile probation are far from comprehensive. In many cases, states choose to allow the judiciary of the state or localities to create the policy around their juvenile probation systems. Other states prefer to give authority to an executive agency—either on the state or local level—who already has close ties with the juvenile justice system. Although NCSL's statutory research indicated that not all juvenile probation policy appears in statute, four key findings did emerge in the statutory research.

### ■ DIVERSION AND PROBATION:

**States are using multiple approaches to provide more targeted assistance to juveniles.**

A growing trend among states is the use of alternative justice programs for increasing numbers of juvenile cases, as opposed to traditional Probation. Many of these statutory procedures are designed to provide young people with opportunities to avoid entering the juvenile justice system, or if they must enter the system, to avoid formal sentencing. Some examples include diversion, informal adjustment, consent decrees, and deferred adjudication. The states which are making this transition often divide Probation and Alternative Justice participation between the following: (1) alternative justice for the majority of youth because most youth grow out of delinquent behavior without any intervention, and (2) Probation for

only those youth who pose a significant risk for serious offending without more guidance and support. For many states, alternative justice differs from Probation in several fundamental ways. Unlike youth on probation:

- Youth who go through alternative justice are typically never assigned to probation and often are not supervised by a probation officer. Instead, youth are diverted from the juvenile court system without adjudication.
- Alternative justice youth are not placed in confinement for violating any of the rules set out for them. Instead, youth may be adjudicated with the original charge or given increasing sanctions and an opportunity to continue compliance.
- Youth who go through alternative justice typically only meet with their supervising authority as required by their specific diversion program or not at all, as opposed to mandatory routine meetings with a probation officer for juveniles adjudicated to probation.

Alternative justice statutes such as diversion and informal adjustment can look very different across the states, however, there are two primary forms—pre-adjudication and post-adjudication. In statute, 35 states have some form of pre-adjudication alternative justice or diversion program. Additionally, 11 states have post-adjudication alternative justice or diversion programs in statute.

Some examples of alternative justice statutes include the following:

- **South Carolina's** pre-adjudication law requires courts to make a preliminary inquiry to determine whether the interest of the public or of the child requires a petition to be filed or informal adjustment as is practicable. In addition, South Carolina has a youth mentor program through the attorney general's office which functions as a community pretrial diversion program.
- **Oregon's** pre-adjudication law allows for youth courts, mediation programs, crime prevention or chemical substance abuse education programs, or other program established for the purpose of providing consequences and reformation and preventing future delinquent acts.



Additionally, Oregon allows for formal accountability agreements which is one of Oregon's forms of alternative justice. A formal accountability agreement may require participation in counseling, community service, drug or alcohol education or treatment, vocational training, or any other beneficial activity or the youth.

- **Maine's** post-adjudication law provides for a deferred disposition following a juvenile admission to an eligible crime. In Maine, a deferred disposition can be to a date certain or determinable. The requirements imposed can include anything the court considers to be reasonable and appropriate to meet the purposes of the Maine Juvenile Code. Maine's Juvenile Code has six enumerated purposes that include preference to in home care and guidance, the juvenile's welfare, interests of society, and strengthening family ties.

#### ■ PROBATION TERM LIMITS:

**States are combating inconsistencies in their supervision term lengths and criteria.**

One criticism of juvenile probation is that it has been applied in unequal fashion from jurisdiction to

jurisdiction—even within a state. These inconsistencies sometimes depend on a multitude of factors that may or may not be within the control of the juvenile on probation. To provide equal treatment of juveniles across the state, some states have chosen to create probation term limits. Kristi Bunkers, Director of juvenile services at the South Dakota Department of Corrections said in a recent [interview](#), “...we established limits on the length of probation, which addressed the inconsistencies we had in our supervision terms across the state.”

Recently, **Tennessee’s** 2018 legislation created a maximum probation period of six months and prohibits the court from placing a child in an out-of-home facility for probation violations. Similarly, some states like **Kentucky**, **Arizona**, and **New York** have simple models to create uniform term limits. Kentucky and Arizona limit probation to one year if certain criteria are met. New York limits probation to one year, but allows for an extension of one more year. New York’s maximum is two years. Other states have more complex models for deciding term limits. **South Dakota** has maximum limits that change depending on the model of probation. In South Dakota, probation is limited to six months, unless modified whereas intensive probation is limited to 18 months. Similarly, **Kansas** has a more complex model for probation term limits. In Kansas, the length of probation is based on risk assessment and offense type, ranging from a maximum of six months to a maximum of 12 months. Texas has its own model for probation called the progressive sanctions model. However, Texas also has specific provisions for probation following certain crimes, such as sexual offenses, handgun offenses and graffiti offenses.

#### ■ THE EVOLVING LANDSCAPE OF PROBATION:

##### **States are adopting new models of probation.**

Data has shown the traditional surveillance model of juvenile probation, similar to the adult system, is not effective. In the traditional model, young people are allowed to remain in the community under certain conditions, such as curfew, drug tests or community service, with strict supervision and punishment for noncompliance. The National Institute of Justice recently released [research](#) on intensive juvenile supervision programs and concluded that such programs have no effect for reducing recidivism. In 2017, the National Council of Juvenile and Family Court Judges issued a [resolution](#) recommending “courts cease imposing ‘conditions of probation’ and instead support probation departments developing, with families and youth, individualized case plans that set expectations and goals.” In response to the data and stakeholder positions, states are looking at adopting new models of probation, like graduated incentives. Generally, this model is a structured system of incentives and sanctions for probation officers and courts to use to respond to youth behavior and designed to motivate youth to succeed on probation.

**Nebraska** uses a graduated response model, which provides empirically based strategies for responding effectively to behaviors. Within the [framework](#), incremental, proportionate, and predictable responses are delivered so youths’ positive behaviors are encouraged, and reinforced, and negative behaviors are discouraged and met with actions that provide structure, expectations, and skill building opportunities. Nebraska’s Administrative Office of the Courts and Probation held a [webinar](#) on its graduated response program which stated, “a graduated response system in juvenile probation encourages positive behavior change to help youth successfully complete probation and become productive, law-abiding members of the community, while also preventing the unnecessary use of detention and residential placement.”

States like **Texas** have adopted a progressive sanctions model. Texas’ model provides for up to seven sanction levels with increasing severity, based on the young person’s conduct and their offense. For example, at sanction level one, the court may require counseling for the child regarding the conduct. A youth may end up at sanction level 7 if they commit certain categories of felonies.

#### ■ THE ROLE OF JUVENILE PROBATION OFFICERS:

##### **Adopting standards in statute.**

What was absent from statute were requirements or qualifications for juvenile probation officers. Many states appear to handle this through administration or hiring practices at the local or state level without the intervention of statute. However, a few states dictate certain requirements for the selec-

tion, training and authority of juvenile probation officers. For example:

- **South Carolina** requires juvenile probation officers to possess a college degree involving special training in the field of social science or its equivalent and a personality and character as would render the officer suitable for the functions of juvenile probation officer. South Carolina further establishes that juvenile probation officers, while carrying out their duties, have the status of peace officer.
- On the other hand, **New Mexico** law specifies that juvenile probation and parole officers do not have the powers of a law enforcement officer. New Mexico law states that probation officers only have the authority to take juveniles into custody who are under their supervision and there is reasonable cause to believe that the child has violated the conditions of the child's probation.
- **Louisiana** law provides enumerated authority to juvenile probation officers. The law provides the power and authority to make arrests, serve notices, orders, subpoenas, and writs, and to execute all orders and perform any other duties incident to their office.



## Takeaways from the Probation Scan Work Group

After reviewing the statutory research provided in the probation scan, the work group was given an opportunity to come together to discuss and analyze the information. The key findings of the Probation Scan Work Group were:

### ■ Improving probation and diversion programs presents an opportunity for improving outcomes for a large population of juveniles.

According to the Annie E. Casey Foundation's Report [Transforming Juvenile Probation: A Vision For Getting It Right](#), 383,000 youths were placed on formal or informal probation supervision in 2014. Given the large number of youths who are placed on probation in any given year, improving probation can have a drastic impact on a large population very quickly.

One area of improvement that resonated with the work group was alternative justice solutions, such as diversion, and the role it can play in improving outcomes. With recent research suggesting intensive supervision programs may not be effective, the work group was interested in other models of probation that may lead to more effective outcomes. Specifically, policies based on data and research about youth development.

### ■ Local and targeted reform can become the building block for state policy adjustments.

Much of the success found in transforming juvenile probation has occurred at the local level. The Urban Institute's Justice Policy Center released a detailed [case study](#) of local probation transformation in Lucas County, Ohio and Pierce County, Wash. that documented the process of implementing probation innovative reform at the county level.

**Lucas County, Ohio** focused its reform on diversion, attempting to divert all misdemeanor youth from probation dispositions. In the diversion program, young people are not ordered to services and there are no sanctions for non-attendance. Staff are trained to employ motivational interviewing with youth and encouraged to engage families as partners. According to the report, "Family engagement is viewed as central to probation practice..., and accounts from field officers, managers, and the family member we interviewed at-



tested to efforts to involve families...”. They report most cases are closed around 120 days from disposition. The success of this program has led to only 10% of participants being returned to court for new offenses.

**Pierce County, Wash.** focused its reform on case management practices. They have developed the Opportunity Based Probation (OBP) practice, which focuses on incentives for compliance and includes a family engagement component. OBP attempts to stray from the traditional, compliance-oriented approach to probation, to an approach oriented toward incentives, relationships and positive youth development to create lasting change in juvenile behavior and well-being. According to the report, “Securing prosecutorial cooperation to release youth from probation early is viewed as critical to the program’s success”.

The Probation Scan work group noted elements of local reform including robust diversion programs, family engagement and working with stakeholders like prosecutors could be broadened into statewide policy reform.

#### ■ Probation reform can help reduce racial and ethnic disparities.

According to the Annie E. Casey Foundation, in 2014, 55% of all probation dispositions involved youth of color—far higher than their share of the total youth population (44%). Additionally, 68% of young people held in residential custody in 2015 for a technical violation—which usually involves breaking probation rules—were youth of color. Since probation is the most common disposition in juvenile cases and technical violations, like probation violations often lead to out-of-home placement—the work group noted it could play a large role in reducing the overrepresentation of Black, Latino and other youth of color in the justice system.

The Center for Children’s Law and Policy published its “Racial and Ethnic Disparities Reduction Practice Manual” for public officials, agency administrators, community leaders and other stakeholders who want to create a more equitable and effective juvenile justice system. The report underscores the importance of data collection and argues it is a necessary component of reducing racial and ethnic disparities. Senators Westerfield and Malloy, members of the Probation Scan work group, have both introduced [data collection legislation](#) in their respective states and Louisiana (another work group member state) enacted data collection legislation in 2016.

*Support for this project was provided by The Annie E. Casey Foundation.*

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