



*Research in Brief to Transform Juvenile Probation*

# ELIMINATE CONFINEMENT AS A RESPONSE TO PROBATION RULE VIOLATIONS

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This brief presents the research case for eliminating the use of correctional confinement or detention in response to technical violations of juvenile probation.

The guidance is consistent with the Annie E. Casey Foundation's *Transforming Juvenile Probation: A Vision for Getting It Right*.<sup>1</sup>

## CLICK ON EACH RESEARCH FINDING FOR DETAILS, OR JUST SCROLL DOWN

1

There is no evidence that confining youth for rule violations enhances public safety.

2

Confinement causes serious harm to youth.

3

Counter to best practice, confinement for rule violations is commonplace, even for youth with limited offending histories and low likelihood of rearrest.

4

Heavy use of confinement for technical violations exacerbates racial and ethnic disparities.

5

Relying heavily on confinement for rule violations contradicts the lessons of adolescent brain science and undermines efforts to change youth behavior.

6

A consensus is emerging for minimizing confinement in response to technical violations.

There is no evidence that confining youth for rule violations enhances public safety.

Though many juvenile justice professionals assume that punishing youth for violating probation rules will reduce subsequent offending and enhance public safety, this notion is not supported by any empirical evidence. To date, the research community has neither confirmed nor examined a relationship between rule breaking by young people and their propensity to commit new offenses.

- Despite an extensive search in 2019, the Casey Foundation has been unable to identify any published research examining whether — after controlling for young people’s offending histories and relevant background characteristics — breaking rules or failing to comply with probation orders is a predictor of future offending.
- Likewise, with adults on probation, there is no evidence that technical violations predict future offending. In fact, one recent study found that, with limited exceptions, “[technical violations] are not proxies of new crime for male populations on community supervision.”<sup>2</sup>

## 2 Confinement causes serious harm to youth and does not reduce future offending.

Periods of residential confinement can seriously harm young people's future health and success.

- Research shows that in the long term, youth who spend time in custody compared to their peers who have never been confined are:
  - less likely to complete high school;<sup>3</sup>
  - less likely to find employment;<sup>4</sup> and
  - more likely to suffer mental health problems.<sup>5</sup>
- Available research finds that placing youth in custody does not limit self-reported offending or reduce the likelihood of rearrest — and that it may actually increase those risks for youth with limited involvement in delinquency.
  - A carefully controlled multiyear study involving 35,000 young people in the Chicago area found that being confined as a juvenile led to a 22% increase in the future odds of being incarcerated as an adult.<sup>6</sup>
  - A recent study of Florida youth found that, even after controlling for prior offending histories and background characteristics, young people who were detained for noncompliant behavior (specifically, for failing to appear in court) were 50% more likely to be referred back to court for new offenses. In addition, detention for failing to appear quadrupled the likelihood that youth would be both detained again in the future and referred back to court for technical violations.<sup>7</sup>

# 3

Counter to best practice, confinement for rule violations is commonplace, even for youth with limited offending histories and low risk of rearrest.

A substantial share of commitments and detention placements in U.S. juvenile justice systems result not from new offenses committed by youth but from rule violations in which youth on probation do not comply with the terms of court orders and conditions of probation.

- Nationally, the most recent Census of Juveniles in Residential Placement indicated that 15% of youth in custody in 2017 were held for technical violations, and another 4% were confined for violating court orders stemming from a status offense.<sup>8</sup>
- In many jurisdictions, probation violations are a leading cause for commitments to residential custody. For example, in Maricopa County (Phoenix), Arizona, 47% of commitments in 2016 stemmed from probation violations;<sup>9</sup> in South Carolina, at least 35% of all commitments to residential custody in the 2016–17 fiscal year stemmed from probation violations;<sup>10</sup> in Pennsylvania, 54% of residential commitments in 2018 resulted from dispositional reviews for youth living in the community but already under court supervision, rather than from allegations related to a new offense;<sup>11</sup> and in each of the first six Juvenile Detention Alternatives Initiative® deep-end pilot sites, at least 30% of placements came directly from probation — at one site, 53% of commitments were due to probation violations.<sup>12</sup>
- In addition, many jurisdictions punish probation violations with short-term confinement in local detention centers. For instance, a study of probation practices in two demographically diverse jurisdictions (in Washington state and Louisiana) found that detention was the most common response to probation rule violations in both.

Many or most residential commitments for technical violations of probation involve youth who score as low or moderate risk or have never been adjudicated for a serious offense.

- In South Carolina, 25% of all commitments to state custody in the 2016–17 fiscal year stemmed from probation violations for youth adjudicated on misdemeanors or status offenses.<sup>13</sup>
- Academic studies have found that many decisions to commit youth to residential custody based on probation violations involve minor rule violations or youth who score as low risk to reoffend. For instance, a 2013 study in Iowa found that “missing curfew and failing drug urinalyses rather than delinquency comprised a significant percentage of the court violations,” and that most violations that did stem from new delinquent conduct “involved nonserious activities.”<sup>14</sup>

## 4 Heavy use of confinement for technical violations exacerbates racial and ethnic disparities.

Youth of color are far more likely than their white peers to be confined for violating probation rules.

- In 2017, youth of color represented 64% of young people held in residential custody for technical violations — far higher than their share of the nation’s total youth population (46%) or their share of all juvenile probation dispositions nationwide (55%).<sup>15</sup>
- While research examining the relationship between race and ethnicity with probation violations is limited, several studies show significant disparities.
  - A recent review of juvenile probation case files in Maricopa County, Arizona — home to Phoenix — determined that Black youth were four times more likely than their white peers to be found noncompliant by their probation officers.<sup>16</sup>
  - In Anchorage, Alaska, a study of disproportionate minority contact found that 72% of youth cited for probation violations were nonwhite, significantly higher than the share of nonwhite youth referred to juvenile court for new offenses (59%) and far higher than nonwhite young people’s share of the total youth population (34%).<sup>17</sup>

Girls and LGBTQ youth are far more likely than heterosexual boys to be confined for both technical violations and violations of court orders stemming from a status offense.

- The most recent federal Census of Juveniles in Residential Placement found that girls in custody were nearly two times more likely than boys (24% vs. 14%) to be confined for technical violations, and three times more likely to be confined for violating court orders stemming from a status offense (9% vs. 3%).<sup>18</sup>
- Available research indicates that LGBTQ youth are nearly twice as likely as straight youth to be detained for technical violations of probation, warrants or status offenses.<sup>19</sup>

# 5

Relying heavily on confinement for rule violations contradicts the lessons of adolescent brain science and undermines efforts to change youth behavior.

The frequent imposition of probation violations is an inevitable outcome of the traditional, compliance-focused probation model — an approach at odds with our emerging understanding of adolescent brain development and research on what works in reversing behavior problems and promoting success among youth.

- Youth on probation are typically required to adhere to long lists of standard rules and conditions that are often unrelated to their individual needs and circumstances. A 2016 National Juvenile Defender Center issue brief found that in some jurisdictions, youth “are required to manage over 30 conditions of probation — a near-impossible number of rules for children to understand, follow or even recall.”<sup>20</sup>
- Given the incomplete development of adolescent brains, imposing so many rules on adolescents makes little sense, especially when failure to comply can lead to confinement. As the Urban Institute explained in 2018, young people’s “executive functioning skills (such as anticipating consequences, planning, reasoning and problem-solving) are still generally developing into adulthood. Youth also can be more prone to distractions when executing complex tasks, ... are highly susceptible to peer pressure, engage in risk-taking behaviors and act without thinking.”<sup>21</sup>
- A 2016 law review article explained that “the vast majority of juvenile probation systems — like adult probation systems — emphasize probationers’ failures to comply with requirements.... [T]his approach fails to recognize the power of positive reinforcement in shaping behavior over time.” An increasing body of evidence shows that youth respond far more readily to rewards for achieving positive behavior than to the threat of sanctions for bad behavior.<sup>22</sup>



# 6

## A consensus is emerging for minimizing confinement in response to technical violations.

Juvenile justice experts and scholars support probation's use of rewards and incentives to promote positive behavior change and of proportionate sanctions and a problem-solving approach to address problematic behavior. Experts increasingly agree that youth should seldom, if ever, be confined for rule violations.

- According to the Casey Foundation's report *Transforming Juvenile Probation*, youth who have not committed serious offenses — and who do not pose a significant threat to public safety — should not be confined for probation violations or as a result of new offenses committed while under probation supervision.<sup>23</sup>
- Other leading juvenile justice reform experts and organizations have issued similar recommendations:
  - The National Council of Juvenile and Family Court Judges recommended that juvenile courts and probation agencies “develop alternatives to formal probation revocations for technical violations, to ensure that detention or incarceration is never used as a sanction for youth who fail to meet their expectations or goals” imposed on them as part of a probation order.<sup>24</sup>
  - The 2018 report *Transforming Juvenile Justice Systems*, released by Georgetown University's Center for Juvenile Justice Reform and the Council of State Governments Justice Center, urged juvenile courts to “eliminate the practice of filing technical violations of probation and parole.” The report noted that “there is little to no research indicating that detaining youth who commit technical violations is an effective sanction or deterrent. In fact, research shows that incarcerating youth, particularly those who don't have a high risk of reoffending, has a negative impact on their chances of future offending and educational achievement.”<sup>25</sup>
  - In 2018, the Urban Institute released the study *Bridging Research and Practice in Juvenile Probation*, asserting that “given the negative impacts of incarceration on youth outcomes, bridging research and practice would require strictly limiting the use of confinement for technical violations.”<sup>26</sup>

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