

PROBATION

KEY TAKEAWAYS

Youth probation in Maryland needs major re-design and overhaul. The current system is plagued by lagging indefinite periods of supervision, a one-size-fits-all approach that prioritizes surveillance and technical compliance over treatment and incentives, poorly-trained case managers, and a dearth of evidence-based, targeted, and successful programs for youth.

There is a growing consensus among experts that current models for juvenile probation are developmentally inappropriate and ineffective. When juvenile probation is structured like adult probation, the focus is on surveillance, compliance, and sanctions rather than providing young people with opportunities, incentives, and tools to learn positive behavior and grow from their mistakes. Probation supervision that is focused on technical compliance rather than tangible, holistic goals, places youth at greater risk of being violated, detained and committed, thereby deepening their involvement with the criminal justice system and deepening the existing racial inequity that exists inside that system.

Research has shown that probation interventions are often unnecessary, interrupting normal adolescent development, especially because “most youth grow out of lawbreaking without any intervention from the justice system.¹

WHAT WORKS

- Probation agencies that directly provide or contract with evidence-based and promising practices treatment providers in the community.²
- Case management driven by incentives that encourage positive behavior and promote meaningful personal growth.
- Personalized case management plans that contain clearly articulated accountability goals and sanctions communicated in developmentally appropriate language and manner at the outset of probation.
- A limited number of individualized conditions that are specific to the needs of the young person, their age, language ability, disability, and financial status.
- Consideration of adolescent brain development in implementing probation conditions by trained case managers. For example, the conditions and incentives that work for a 13-year-old are not the same that are appropriate for a 17-year-old.

- Giving youths tools for resisting noncompliance when confronted by socially or emotionally charged situations.
- Providing engaging, prosocial activities as alternatives to prohibited behaviors that draws on a young person's strengths and talents.
- Limiting the length of probation and using shorter lengths as incentives.
- Engaging family members in realistic goal setting and supporting families in accessing services.
- Going beyond reporting Relative Risk Index (RRI) as a measurement of Disproportionate Minority Contact (DMC) and taking a strategic approach to equity and inclusion, such as geographic mapping of youth arrest and services available in those regions, examining differential arrest and referral rate of various offenses, measuring the relative effectiveness of service providers in working with youth of different races and ethnicities.

WHAT MARYLAND HAS

Probation is the most common disposition for young people in the juvenile justice system.³ On any given day, there are 2,000 young people on DJS probation supervision.⁴ The predominant model of probation in Maryland follows a one-size-fits-all approach: youth are by and large placed on indefinite probation, with cut-and-paste court-ordered conditions like “attend school daily” and “obey rules of the home,” and no limit on how long they can remain on probation. There are no clearly delineated legal limits on detention for youth who have technical probation violations (failing to follow a condition of probation.) Between FY12-17 in Maryland, over a quarter of youth committed for the first time were committed for violating probation and not a new offense.⁵ Many of those violations were for status offenses - things that are barred due only to the youth’s age, not because the underlying conduct is criminal – like failure to attend school.

Evidence-based programming for youth is both underutilized and limited in scope. DJS devotes only 10.2 percent of its budget for community-based services, but offer very limited number of evidence-informed services.⁶ Critically, the three evidence-based counseling programs that DJS provides on probation – Multisystemic Therapy, Family Functional Therapy and Multidimensional Treatment Foster Care – are inconsistently available across our state.

Individual community-based mental health treatment for high-needs youth on probation is also severely limited. In FY18 DJS only referred 729 kids to community-based evidence-based programs even though there is an average daily population (ADP) on probation of 1,964 and 395 young people on aftercare (post-placement) status. Baltimore City has



had no access to FFT or MST for more than five years. DJS has no formal system for capacity building of community organizations, no certification process for programs that it refers young people to, and never developed a certification or evaluation system for evidence-based or promising practices programs.

In 2015, DJS developed an “Accountability Incentives Management” program that is a non-robust “graduated response system” that is rarely and inconsistently used, inadequately defined, and not subject to oversight.⁷ The AIM system, which outlines graduated sanctions for minor, moderate, and serious infractions based on whether a youth is on low, moderate or intensive supervision. Notably, violations of probation are only supposed to be filed if a youth is on high/intensive supervision and there is a moderate or serious infraction, but data proves this is not enforced. This is, in part, because the AIM system does not define minor, moderate, or serious infraction, leaving it up to the discretion (and prejudices) of individual case managers.⁸

DJS’ own research shows that five years into AIM, youth rarely receive any incentives outside of verbal praise. DJS reported that only 55% of children received any incentive or sanction response under the AIM program and 90% of those responses were sanctions or punishments.⁹ The most common incentive was verbal praise. Less than 3% of youth given an incentive were offered an incentive related to reducing their supervision or shortening their probation term. Although DJS publishes a chart of “incentivized behaviors” for youth on probation, the chart consists largely of expected behaviors that do not vary significantly across the length of supervision period. The chart specifies a limited, non-exhaustive list of incentives such as offering verbal praise, school supplies, hygiene products, and meal coupons but notably, none of these incentives are mandated.

Part of the failure of AIM is related to case managers, who are tasked with making recommendations to the court and supervising youth, not having adequate education or background in social work or other human services professions.

DJS also spends very little of its budget on community-based services: only 10.2 percent of DJS’s operating expenditures are devoted to community-based services, compared to the 47.7 percent that is dedicated to state-operated facilities.¹⁰ A huge portion of those funds do not go to qualify programming, but are spent on electronic monitoring and surveillance without any clear articulation as to electronic monitoring’s purpose or demonstration of its efficacy.¹¹

Maryland must reform probation supervision to be focused on positive youth development, front end investment, providing young people with opportunities and concluding court supervision in a timely manner.

RECOMMENDATIONS

1. The purpose of youth probation must be legislatively defined. Probation should be defined as the shortest possible period of supervision required to promote positive youth behavior change. Probation should be reserved for those young people who require supervision and services tied directly to their delinquent offenses and not to a general “need for services.”
2. All prevention and intervention services delivered to children in the areas of juvenile justice should be required to be primarily evidence-based and research-based, and such services should be provided in a manner that is culturally competent. Maryland must pass a bill like [Washington's E2SHB 2536](#), passed in 2012, that developed strategies to create unified and coordinated case plans for youth across systems, used monitoring and quality control procedures to measure fidelity with research-based treatment programs, and used state data to create a management process at the state and local level for monitoring those programs. Washington now has a constantly evolving [inventory of services for children](#) that can be measured and weighed not just for program efficacy, but for each service’s cost-benefit.
3. DJS should be required to develop clear policy for streamlining case planning and service delivery so that programming is immediate and directly tied to finite goals like strengthening youth’s connection to positive adults, positive peers, and community supports.
4. Young people should no longer be punished by having their probationary period extended because of system shortcomings or failures. The probation statute should require things of the system, not just the child. The probation statute should require DJS to provide:
 - a. Quality services;
 - b. Provide services in timely, developmentally appropriate, and accessible manner.

The statute should define quality services as those that are evidence-based, research-based, or promising practices. The statute should create a presumption that probation terms cannot be extended if DJS fails to either offer quality services or provide them in a timely, developmentally appropriate, and accessible manner. For example, a case manager submits a referral one month into a six-month probation to a program that conducts intake over the phone. If the child does not have a phone of their own and active phone service, the provision of that service is neither timely nor accessible for that child.

5. DJS must be required to use data and independently validated analytic tools to guide all system decisions. A system for ongoing study and validation must be developed. Tools that have racial, gender-based, or geographic disparities should be adjusted and DJS should be encouraged to develop analytic tools for specific groups and geographic regions that would otherwise be disproportionately harmed by the use of a statewide tool.
6. DJS must be required to develop policy that holds all supervisors, case managers, and service providers accountable for improving youth outcomes.
7. The disposition statute should bar probation for those youths who score as low risk on an independently validated tool or who have been found facts sustained of low-level offenses. DJS should develop a program, like the Misdemeanor Assessment Center in Lucas County, OH, that refers low-risk young people to community-based services that will meet the needs of youth and families without the need for ongoing court involvement.
8. Probation terms should be limited in duration and extension should require a clear demonstration of need.¹²
 - A. If the child was adjudicated for an offense that would be a misdemeanor if committed by an adult, the maximum period of probation or supervision shall not exceed six (6) months, except that the court may extend the order of probation an additional three (3) months if a substance abuse or mental health treatment program specified by the Court includes a program that requires longer than three (3) months to complete;
 - B. If the child was adjudicated for an offense that would be a felony if committed by an adult, except those specified in section (C), the maximum period of probation or supervision shall not exceed twelve (12) months; or
 - C. If the child was adjudicated for an offense that would be a felony eligible for punishment by a life sentence if committed by an adult, the maximum period of probation or supervision shall not exceed two (2) years.
9. Probation orders can no longer be cut and paste. The statute should be amended to require probation orders:
 - (A) shall be individualized and address a child's specific risk or need;
 - (B) shall be based on information provided to the court, including the results of a validated risk and needs assessment;

(C) if the court orders substance abuse treatment or an educational series, shall be based on a validated risk and needs assessment conducted under Subsection ____;

(D) a court may not issue a standard order that contains control-oriented conditions like GPS or Community Detention;¹³

(E) All court ordered requirements must be provided to youth and their families in developmentally appropriate language delivered both orally and in writing. For young people who struggle with literacy, the conditions must also be provided in a format that they can reference in the future whether that be pictorial, video, or recorded audio.

10. The statute must prohibit detention and out of home placement for technical violations of probation. The court may not commit a minor to the Department Juvenile Services for:

- (A) contempt of court;
- (B) a violation of probation that does not involve the youth being adjudicated for a subsequent delinquent act;
- (C) failure to pay a fine, fee, restitution, or other financial obligation;
- (D) unfinished compensatory or community service hours;
- (E) school attendance or school-related discipline;
- (F) a status offense.

11. DJS should be required to develop policy that limits the ability of case managers to request violations of probation except in the case of major infractions.

12. DJS must be required to develop data-based and empirically supported treatment plans that identify a limited number of discrete, attainable goals that provide youth an opportunity to improve behavior, progress, and be recognized for success early and often while on probation. DJS must be required to develop supervision and support protocols that deliver services while accommodating a child's disability, mental illness, and cognitive limitations.

13. DJS should be required to provide probation conditions to be written in clear, accessible, age/grade-level appropriate language. A large number of children under DJS supervision struggle with literacy and comprehension. DJS should be required to develop alternatives to text like videos, audio, and pictorial guides to probation.

14. Courts and DJS should not be barred from using community detention, electronic monitoring, or GPS as a sanction or punishment. This limitation should be codified in a new detention standard. Community Detention (aka house arrest) should be reserved for use on youth who adjudicated for serious sexual offenses, who are deemed to pose a serious risk, and for whom there are proximity issues to the harmed party. If the harmed party is no longer in threat or concern, the Community Detention can be reduced to GPS. Community Detention should not be used for more than 90 days in total and detention reviews should be required every 14 days. GPS should be reserved for youth who have committed felonies and pose a significant risk to public safety. A youth should not be placed on GPS for longer than 60 days.
15. The statute should prohibit the extension of probation for outstanding restitution. Payment plans should be developed separate and apart from formal court supervision.

LITERATURE REVIEW

[Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice](#), [Center for Juvenile Justice Reform](#), December 2010.

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Disproportionate Minority Contact (DMC), OJJDP Literature Review: A Product of the Model Programs Guide, November 2014.

¹ Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting It Right* (2018), www.aecf.org/resources/transforming-juvenile-probation/.

² *Id.* See also, National Research Council, *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press (2013.) <https://doi.org/10.17226/14685>.

³ Department of Juvenile Services, Data Resource Guide FY 2019, p. 12

⁴ *Id.*

⁵ *Id* at 100.

⁶ Department of Juvenile Services, Data Resource Guide FY 2018.

⁷ Jill L. Farrell, Sean Aaron Betsinger, Natalie Flath, John Irvine, *Assessing the Impact of a Graduated Response Approach for Youth in the Maryland Juvenile Justice System* (March 2020), <https://ojjdp.ojp.gov/library/publications/assessing-impact-graduated-response-approach-youth-maryland-juvenile-justice>.

⁸ DJS DRG, *infra* note 2, p. 243.

⁹ *Id.*

¹⁰ *Id.* at Financial Information Appendix.

¹¹ Research has demonstrated that control- and surveillance-oriented community corrections practices, have little, if any effect on reducing recidivism. Cullen, F. T., Blevins, K. R., Trager, J. S., & Gendreau, P. (2005). The rise and fall of boot camps: A case study in common-sense corrections, *Journal of Offender Rehabilitation*, 40(3-4), 53-70, Mears et. al. Evidence on the Effectiveness of Juvenile Court Sanctions, *Journal of Criminal Justice*, Volume 39, Issue 6, Nov-Dec 2011, 509-520.

¹² "A recent meta-analysis (Lipsey et al., 2010) indicates that both institutional and community-based program treatment effects are most powerful when an adolescent has spent at least, but about, the approximate average amount of time observed for that type of program—that is, shorter stays do not produce positive effects and longer stays do not increase the effect appreciably. An investigation with stringent controls for selection but small samples at each time point substantiates this position, finding no reductions in rearrest or self-reported offenses from longer institutional stays (greater than six months, the average institutional stay in the sample), and a possible detrimental effect from shorter (less than three months) stays for serious adolescent offenders (Loughran et al., 2009)." National Research Council, *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press (2013), 157. <https://doi.org/10.17226/14685>.

¹³ *Id.*