

Part 5

A LEGAL MAP OF YOUTH PROBATION IN CALIFORNIA

This tool is part of a series designed to map key legal requirements at various stages in California's juvenile delinquency system. The purpose of these maps is to enable community members and system stakeholders to navigate the juvenile justice legal landscape and move towards system transformation. For other maps in this series, please visit the Youth Law Center's website, ylc.org/navigate-juvenile-justice-law.

This map provides an overview of California law related to youth probation. Probation supervision is the most common juvenile court outcome in California, making up approximately 40% of case dispositions in 2018.¹ Yet, it has become increasingly clear that existing models of probation supervision are in conflict with current scientific knowledge about adolescent development.² Because the parameters of probation supervision are subject to wide discretion, the law leaves significant room for conforming probation supervision to today's best practices. This tool maps the legal requirements regarding youth probation in California. Below is a summary of the key legal guideposts related to youth probation, followed by a detailed explanation of each point of law.³

1 See Cal. Dep't. of Justice, JUVENILE JUSTICE IN CALIFORNIA, 2018, v, available at: <https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Juvenile%20Justice%20In%20CA%202018%2020190701.pdf>.

2 See Goldstein, N. E. S., Gale-Bentz, E., McPhee, J., NeMoyer, A., Walker, S., Bishop, S., Soler, M., Szanyi, J., & Schwartz, R. G. (2019). Applying the National Council of Juvenile and Family Court Judges' resolution to juvenile probation reform. *Translational Issues in Psychological Science*, 5(2), 170–181, available at: <https://doi.org/10.1037/tps0000192>.


3 Disclaimer: The information provided in this tool does not constitute legal advice. All content is for general informational purposes only.

THE LAW OF YOUTH PROBATION

KEY GUIDEPOSTS FOR REFORM:

- ✦ Probation supervision can be ordered by the court as part of the case disposition, after the court finds that the delinquency charges against the youth are true. There are other types of supervision done by the Probation Department that are not addressed in this tool.
- ✦ At disposition, the court must decide whether or not to make the youth a “ward of the court,” which determines how much custodial control the court takes over the youth.
- ✦ If the youth is not made a ward of the court, the probation supervision is limited to a 6-month term. A youth on non-wardship probation cannot be removed from his or her home or committed to a juvenile facility. But, the court can later make the youth a ward of the court if he or she fails to comply with the conditions of the probation.
- ✦ If the youth is made a ward of the court, the court can order wardship probation, either with or without the supervision of the Probation Department. Wardship probation with supervision by the Probation Department is the most common juvenile court disposition.
- ✦ For a youth on wardship probation, the court can make any and all reasonable orders for his or her conduct and can also direct orders to the youth’s parents/guardians.
- ✦ Widespread use of wardship probation in California conflicts with current research indicating that probation supervision can actually be harmful for youth who are at low risk for re-offending. While the law allows for expansive use of wardship probation, it also allows courts and Probation Departments to tailor probation more narrowly and to apply it to a much smaller population.
- ✦ There is no time limit for the length of wardship probation, unless a specific term is set by the court. When the court does not set a specific term, wardship probation can be indefinite. This means that the probation continues until the court makes an order terminating probation, with the only definitive ending being the age limit on the juvenile court’s jurisdiction (age 21 in most cases).



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- ✦ While the court is not required to set a specific time period for probation, it has the discretion to do so. Current research published by the Annie E. Casey Foundation supports setting an individualized probation term of no more than 6-9 months, with opportunities to shorten the term and with an absolute cap at 12 months.
 - ✦ When the court orders wardship probation, it generally has wide discretion in setting probation conditions. However, there is a small set of conditions that the court must impose by law.
 - ✦ When a youth violates a probation condition, the law allows, but does not require, the youth to be arrested and delivered to Probation's custody. Recent research shows that each year thousands of youth in California are confined in juvenile facilities for violating a probation condition, not committing a new offense.
 - ✦ A probation violation can have extreme consequences for a young person, including removal from home and placement in foster care or commitment to a juvenile facility.
 - ✦ Both the District Attorney's office and the Probation Department have the power to bring a young person to court based on an alleged probation violation. When a youth is charged with violating probation, and not a new law violation, he or she has fewer procedural protections in court.
 - ✦ Current research supports eliminating probation conditions and replacing the existing surveillance-punishment model of probation supervision with a strengths-based framework. A strengths-based probation framework fits with the science of adolescent brain development and is recommended by the National Council of Juvenile and Family Court Judges.

YOUTH PROBATION LAW



Probation supervision can be ordered by the court as part of the “disposition” of a case. Disposition occurs only after the court “adjudicates” the delinquency charges and finds them to be true.

When a youth has been charged with committing a “delinquent act,” the court must hold an evidentiary hearing to determine whether or not the charges are true.⁴ This hearing is known as the “adjudicatory” or “jurisdictional” hearing. In juvenile court, delinquency proceedings are civil, not criminal, and youth in juvenile court are *never convicted* of a crime.⁵ Instead, under California law, if the court finds that the charges are true, the youth is *adjudicated* to come within the court’s delinquency jurisdiction.⁶

If the charges are found to be true, the court will next hold a “dispositional” hearing, which is similar to a sentencing hearing and determines the outcome of the youth’s case.⁷ If the court decides that probation is appropriate, the court can order probation supervision as part of the case disposition.⁸ Note that there are other types of probation supervision that are not addressed here.⁹

In general, when probation is ordered as the case disposition, it is a form of community release subject to certain conditions ordered by the court.¹⁰ Unlike adult probation, juvenile probation is not voluntary and minors do not have the option to refuse probation. Rather, the court may impose probation in its discretion as a part of its dispositional order.¹¹

4 Welf. & Inst. Code § 701-702.

5 Welf. & Inst. Code § 603; *see also Rinaker v. Super. Ct.*, 74 Cal. Rptr. 2d 464, 468-69 (Ct. App. 1998).

6 *See* Welf. & Inst. Code §§ 602, 701-702; Cal. Rules of Court, rules 5.778(f) and 5.780(e).

7 Welf. & Inst. Code §§ 702, 706.

8 *See* Welf. & Inst. Code §§ 725, 727, 730.

9 Within the delinquency system, there may be other circumstances in which a youth might be under the supervision of the Probation Department. For example, the Probation Department will typically supervise detained youth who have been released on Home Supervision. Welf. & Inst. Code §§ 628.1, 840-842. For more information about Home Supervision, see the Youth Law Center’s publication, *JUVENILE JUSTICE TRANSFORMATION: NAVIGATING THE LEGAL LANDSCAPE, Part 2: A Legal Map of Youth Detention in California*, March 2020, *available at*: www.ylc.org/navigate-juvenile-justice-law.

In addition, a youth can be placed under the supervision of the Probation Department as part of a program of “informal probation.” Welf. & Inst. Code §§ 654-654.3. For more information about informal probation, see the Youth Law Center’s publication, *JUVENILE JUSTICE TRANSFORMATION: NAVIGATING THE LEGAL LANDSCAPE, Part 1: A Legal Map of Youth Diversion in California*, March 2020, *available at*: www.ylc.org/navigate-juvenile-justice-law.

10 *See In re Eddie M.*, 31 Cal. 4th 480, 487 (2003).

11 *See In re Sheena K.*, 40 Cal. 4th 875, 889 (2007).



At disposition, the court must decide whether or not to make the youth a “ward of the court.” When the court does not make a youth a ward of the court, non-wardship probation supervision is limited to six months.

When determining the disposition of a case, the court must decide whether or not to make the youth a “ward of the court.”¹² Making a youth a ward of the court gives the court the authority to impose limits on the “custodial control” the parents/guardian exercise over the youth.¹³ In other words, the court can limit the parents’ right to make decisions regarding their child, including where the child resides. Making a youth a “ward of the court” gives the court the authority to commit the youth to a juvenile justice facility,¹⁴ or to make an order for Probation to place the youth in a foster care placement.¹⁵

If the court does *not* make a youth a ward of the court, the court may order the youth to be under the supervision of the Probation Department for a period not to exceed six months.¹⁶ This type of probation is typically referred to as “non-wardship probation.” Youth on non-wardship probation will be ordered to comply with certain conditions of behavior, including the three required conditions described below in #5.¹⁷ If the delinquency charges relate to certain drug offenses, the court must also require that the youth complete an alcohol or drug education program, but this requirement only applies in counties where such programs are available and have been certified and approved by the board of supervisors.¹⁸

When the court orders non-wardship probation, the court does not have the power to deprive the parent of physical custody of the youth, and cannot order that the youth serve a commitment in juvenile hall as a condition of the non-wardship probation.¹⁹ However, if a youth fails to comply with the conditions of the non-wardship probation, the court may then adjudge him or her a ward of the court.²⁰ Note that non-wardship probation is not available for certain offenses.²¹

12 Welf. & Inst. Code § 725.

13 Welf. & Inst. Code § 726(a).

14 Welf. & Inst. Code § 730(a).

15 Welf. & Inst. Code § 727(a)(4).

16 Welf. & Inst. Code § 725(a).

17 *Id.*

18 *See id.*; Welf. & Inst. Code § 729.10.

19 *See In re Trevor W.*, 88 Cal. App. 4th 833, 839 (Ct. App. 2001), *as modified* (Apr. 27, 2001). Note that while the juvenile court may not remove a youth on non-wardship probation from his or her home through delinquency, it still has the power to make foster care or other “suitable placement” orders through its dependency jurisdiction. For this reason, when a youth who has been arrested is already in foster care, the delinquency court may decide to order non-wardship probation for the delinquency case, leaving the youth’s foster care case in the dependency system.

20 *Id.*

21 *Id.* Non-wardship probation is not available for the following offenses, as listed in Welfare and Institutions Code section 654.3:

- a) An offense listed in section 707(b).
- b) An offense for sale or possession for sale specified controlled substances.
- c) Specified school-related offenses:
 - Drug possession under Health and Safety Code section 11350 or 11377 (where the violation takes place at a school); or
 - A violation of Penal Code sections 245.5 (assault with a deadly weapon or by means likely to produce great bodily injury upon a school employee), 626.9 (possession of a gun in a school zone), or 626.10 (possession of specified weapons on school grounds).
- d) An offense under Penal Code section 186.22.
- e) An offense in which the restitution owed to the victim exceeds \$1,000.



If the court decides at disposition to make a youth a “ward of the court,” the court has broad authority to impose probation on the youth.

If the court orders a youth to be a “ward of the court,” the court may then make *any reasonable orders* for the care, supervision, custody, conduct, maintenance, and support of the youth, including medical treatment.²² This authority can be used by the court to limit the control exercised by the youth’s parent or guardian, including removal of the youth from the custody of the parent or guardian when the statutory factors for removal are present.²³

When the court makes a youth a ward, the court can order the youth to be on probation, typically referred to as “wardship probation.”²⁴ Wardship probation can be either *with or without* supervision by the Probation Department. A youth on wardship probation *without supervision* must comply with any and all reasonable conditions of behavior ordered by the court.²⁵ Wardship probation without supervision is available in all but a select number of specified cases.²⁶

Wardship probation *with supervision* by the Probation Department gives Probation the authority to supervise the youth and his or her compliance with the terms of their probation.²⁷



The widespread use of standardized wardship probation in California conflicts with current research indicating that probation supervision can actually be harmful, leading to higher rates of reoffending. The law gives the courts and Probation Departments the discretion to incorporate current research and apply wardship probation terms more narrowly and to a much smaller population of youth.

Wardship probation with supervision by the Probation Department is the most common wardship disposition in California. In 2018, 60% of all dispositions were for wardship, and probation supervision was the most common wardship disposition, making up 54% of wardship dispositions.²⁸ The widespread use of probation supervision is common across the country.²⁹

22 Welf. & Inst. Code § 727(a)(1).

23 Welf. & Inst. Code § 726. No youth who is a ward of the court may be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

- That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor;
- That the minor has been tried on probation while in custody and has failed to reform; or
- That the welfare of the minor requires that custody be taken from the minor’s parent or guardian.

24 Welf. & Inst. Code §§ 725(b), 727.

25 Welf. & Inst. Code § 727(a)(2).

26 Probation without supervision by a probation officer is not available for offenses listed under Welfare and Institutions Code sections 707(b) or 707(d)(2), Penal Code section 459, or Health and Safety Code section 11350(a). For offenses involving sale or possession for sale of a controlled substance, the court must determine and state the interests of justice served by probation without supervision. Welf. & Inst. Code § 727(a)(2).

27 Welf. & Inst. Code § 727(a)(3).

28 During 2018, 2,338 youth were placed on non-wardship probation, and 11,673 youth were placed on wardship probation. See Cal. Dep’t. of Justice, JUVENILE JUSTICE IN CALIFORNIA, 2018, v, *available at*: <https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Juvenile%20Justice%20In%20CA%202018%20190701.pdf>.

29 The Annie E. Casey Foundation (2018). “Transforming Juvenile Probation: A Vision for Getting It Right,” 5. Baltimore, Maryland, *available at*: <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

Current research indicates that, in many cases, probation supervision can actually be counter-productive, leading to higher rates of reoffending.³⁰ Research on youth development and the adolescent brain has led to several crucial findings about how to promote healthy development. Among these findings is that adolescents lack “psychosocial maturity,” such as the ability to “control impulses, consider the implications of their actions, delay gratification and resist peer pressure.”³¹ As a result, probation models that rely on surveillance and punishment do not deter re-offending because they impose requirements that are inappropriate to youth’s level of psychosocial maturity and are therefore not responsive to the developmental stage of adolescence.³²

In contrast, successful intervention models seek to promote “psychosocial maturation” through supportive interventions, like youth development opportunities and counseling, and utilize incentives rather than punishment.³³ These activities help foster the essential factors for healthy adolescent development, as identified by the National Research Council of the National Academies of Science: 1) the presence of a parent or parent-like adult who is involved with and concerned about the young person’s development; 2) a peer group that values positive behavior and academic success; and 3) opportunities and activities that foster independent decision-making and critical thinking.³⁴ A developmentally appropriate probation model utilizes supportive rather than punitive strategies to build these factors for each individual youth.

Based on scientific research, it is clear that conventional probation practices—including standardized probation conditions, prolonged or indefinite surveillance, and punitive responses to probation violations—are ineffective as an intervention for promoting healthy youth development.³⁵ As detailed in #s 5-8 below, California law permits many of the probation practices that research indicates are problematic: the court can order an indefinite period of probation, there are legally-mandated probation conditions, and youth can face severe consequences for probation violations, including arrest, detention, removal from home, and commitment to a locked facility. On the other hand, California law also permits significant discretion, allowing the courts and Probation Departments to choose to tailor probation supervision more narrowly and apply it to a much smaller population of youth.

30 *Id.* at 6-10.

31 *Id.* at 9.

32 *Id.* at 10.

33 *Id.*

34 NATIONAL RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH, 91-92 (Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, The National Academies Press 2013), *available at*: http://www.njcn.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf.

35 *Id.* at 13-17.



California law does not specify a length of wardship probation, and as a result the court has discretion as to how much time a youth will spend on wardship probation supervision. Current research supports limiting probation supervision to six to nine months and affording an opportunity for the probation to be terminated early.

There is no provision in California law limiting the length of wardship probation. As a result, the court has the authority to order an indefinite term of probation, subject to further order of the court.³⁶ If the court makes an indefinite order for wardship probation, the only definitive limit on the length of probation is the age limit of the juvenile court's jurisdiction, which is 21 in most cases (except those cases in which the youth is ordered to a commitment in the state Department of Juvenile Justice (DJJ)).³⁷

While the court is not required to specify the probation length, the court does have the discretion to set a specific date for probation termination. Current research supports tailoring probation length to the individual youth, with a typical period being no more than six to nine months.³⁸ The probation term should be shortened for youth who meet probation expectations and should not ever exceed one year.³⁹ Such an approach is consistent with research showing that youth respond better to incentives rather than punishment, and that shorter probation terms both save costs and produce better outcomes.⁴⁰

Whether or not the court sets a definite term, the court has the discretion to terminate probation at any time, and in making that decision must consider the youth's overall performance on probation.⁴¹ There is no requirement that a youth show perfect compliance in order to complete probation. Instead, the court can dismiss probation if it finds that the youth has "substantially complied" with the purpose of his or her probation, even when the youth has not perfectly complied with all technical requirements.⁴²

If a youth meets this standard of substantial compliance, he or she has attained "satisfactory completion" of probation, and in most cases the court will then order that the youth's case be dismissed and sealed.⁴³ Once a case is sealed, the case is deemed not to have occurred, and the youth has a legal right not to disclose it to employers, educational institutions, or other persons or entities.⁴⁴

36 Welf. & Inst. Code § 727(a)(1). See *In re Antoine D.*, 137 Cal. App. 4th 1314, 1322 (2006).

37 See Welf. & Inst. Code § 607(a). The jurisdiction of the juvenile court extends to age 25 for youth who are adjudicated for an offense listed in Welfare and Institutions Code section 707(b) and who are either committed to the state Department of Juvenile Justice or confined in a state hospital. See Welf. & Inst. Code § 607(b)-(d).

38 The Annie E. Casey Foundation (2018). "Transforming Juvenile Probation: A Vision for Getting It Right," 40. Baltimore, Maryland, available at: <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

39 *Id.*

40 *Id.* at 9-10, 40.

41 Welf. & Inst. Code §§ 775, 782, 786.

42 *In re A.V.*, 11 Cal. App. 5th 697, 709 (Cal. Ct. App. 2017).

43 *Id.*; Welf. & Inst. Code §786(a)-(c). Sealing under this section is not available if the youth was 14 or older and adjudicated for an offense listed in Welfare and Institutions Code section 707(b), unless the offense is first reduced to a misdemeanor or a lesser offense not listed in 707(b). Welf. & Inst. Code § 786(d).

44 Welf. & Inst. Code § 786(b).



When the court orders wardship probation supervision, it will order the youth and their parents/guardians to comply with certain conditions. The court generally has discretion regarding probation conditions. However, there are a small number of probation conditions that must be imposed by law.

As part of wardship probation supervision, the court will order that the youth comply with court-ordered probation conditions.⁴⁵ The court may also direct orders to the youth's parents/guardians as it deems necessary and proper, including that the parent/guardian participate in counseling or other treatment services.⁴⁶

In general, the court has wide discretion in setting probation conditions, under its authority to make "any and all reasonable orders" for the youth's conduct.⁴⁷ The Probation Department can make recommendations to the court regarding conditions, but it cannot unilaterally impose probation conditions on a youth.⁴⁸

Under the law, there are three specific probation conditions that the court must impose:

- a) Require the child to attend a school program approved by Probation without absence;
- b) Require the parent to participate with the child in a counseling or education program; and
- c) Require the child to be at the child's residence between 10:00 p.m. and 6:00 a.m. unless accompanied by a parent, legal guardian, or other adult having legal care or custody of the youth.⁴⁹

These three probation conditions will be imposed in all cases, unless the court finds that the condition would be inappropriate.⁵⁰ On top of these three conditions, some cases will have additional mandatory conditions, depending on the type of offense.⁵¹

Within its broad discretion, the court must tailor the conditions of probation to the individual youth.⁵² The court must consider not only the facts of the incident, but also the youth's full social history.⁵³ Any probation condition must be reasonable and serve the rehabilitative goals of probation, and a probation condition that limits a youth's constitutional rights must be closely tailored to the purpose of the condition.⁵⁴ A court's probation order cannot be arbitrary or capricious,⁵⁵ and the youth must have the capacity

45 Welf. & Inst. Code § 730(b).

46 Welf. & Inst. Code § 727(c)-(d).

47 Welf. & Inst. Code § 730(b). Note that the court's discretion in setting probation conditions is limited by the constitutional requirements that such conditions not be vague or overbroad. *See In re Sheena K.* 40 Cal. 4th 875, 889 (2007).

48 *See In re Pedro Q.*, 209 Cal. App. 3d 1368 (1989).

49 Welf. & Inst. Code § 729.2.

50 *Id.* For example, it might be inappropriate to require school attendance if the youth has already completed high school requirements and has a plan for full-time work. Or, it might be inappropriate to require curfew compliance if the youth is engaged in a pro-social activity that ends late at night and has to take the bus home because their parent/guardian works the late shift and is unable to pick up the youth.

51 *See, e.g.*, Welf. & Inst. Code §§ 729, 729.1, 729.6, 729.8, 729.9, 729.10, 730(d), 742.16.

52 *See In re R.V.*, 171 Cal. App. 4th 239, 249 (Ct. App. 2009).

53 *In re Frankie J.*, 198 Cal. App. 3d 1149, 1153 (Ct. App. 1988)

54 *In re Ricardo P.*, 7 Cal. 5th 1113, 1118 (2019), *as modified* (Aug. 28, 2019).

55 *In re James C.*, 165 Cal. App. 4th 1198, 1203 (Ct. App. 2008).

to actually comply with any court-ordered condition.⁵⁶ The conditions of probation must also comport with the federal Americans with Disabilities Act (ADA), which prohibits discrimination against people with disabilities in accessing government services.⁵⁷ Under federal and state law, reasonable modifications must be made to probation requirements in order for youth with disabilities to gain the same benefits of probation.⁵⁸

Pursuant to these requirements, it would be improper for the court to routinely impose a long list of standard conditions of probation, without considering the individualized circumstances of the young person.



California law allows—but does not require—youth who have violated a condition of probation to be held in detention. Current data show that detention is used frequently in California for youth who violate their probation conditions.

When a youth violates a court-ordered probation condition, the law permits law enforcement and the Probation Department to bring that youth into custody.

Law enforcement has authority (but is not required) to take temporary custody of a youth who is a ward of the court, if there is “reasonable cause” to believe that the youth has violated a condition of probation.⁵⁹ Once a youth is in temporary custody, law enforcement has several options on how to respond, including the option to deliver the youth to the custody of the Probation Department.⁶⁰

The Probation Department may have the discretion to bring that youth into detention, if the legal requirements are otherwise present. Under California law, the Probation Department must immediately release any youth delivered to its custody, unless it determines that continuance in the home is contrary to the youth’s welfare and one of the legal bases for detention is present.⁶¹ Violating a court-ordered condition of probation is one of the legal bases for detention.⁶² Thus, if the Probation Department determines that a youth has violated a probation condition and that it would be contrary to his or her welfare to return home, Probation can exercise its discretion to detain the youth. However, Probation is not required to detain youth in this category, and instead could exercise its discretion for release. Additionally, if Probation decides to detain, it has options other than secure detention, including Home Supervision and non-secure detention.⁶³ If a Probation Department has a policy of always detaining youth on the basis of an alleged probation violation, such a policy would not be proper, as the law requires Probation to make detention decisions on an individualized, case-by-case basis.⁶⁴ For a full discussion

56 *In re Robert M.*, 163 Cal. App. 3d 812, 817 (Ct. App. 1985).

57 42 U.S.C. § 12132

58 See 28 C.F.R. § 35.130; Cal. Gov’t Code § 11135.

59 Welf. & Inst. Code § 625(a).

60 Welf. & Inst. Code § 626.

61 Welf. & Inst. Code § 628(a)(1).

62 Welf. & Inst. Code § 628(a)(1)(C).

63 See Welf. & Inst. Code §§ 628.1, 636.2.

64 See Welf. & Inst. Code § 628; *In re William M.*, 3 Cal. 3d 16, 19 (1970).

of these laws, see the Youth Law Center’s publication, *Juvenile Justice Transformation: Navigating the Legal Landscape, Part 2: A Legal Map of Youth Detention in California*.⁶⁵

If the Probation Department exercises its discretion to detain a youth in custody for a probation violation, he or she will be brought to court for a detention hearing. The law presumes that the court will release the youth, unless certain statutory factors for detention are present.⁶⁶ One of the factors for court-ordered detention is a violation of a probation condition.⁶⁷ If a youth is otherwise eligible for detention, the court is permitted, but not required, to order the youth to be detained.⁶⁸ However, again, the court is not required to detain youth in this category, and also has options other than secure detention, including Home Supervision and non-secure detention.⁶⁹ For a full discussion of these laws, see the Youth Law Center’s publication, *Juvenile Justice Transformation: Navigating the Legal Landscape, Part 3: A Legal Map of Youth Detention Hearings in California*.⁷⁰

Although the law does not require that a youth who violates a probation condition be detained, such youth are frequently booked into juvenile halls across the state. In 2019, one report on detention practices across the state found that 1 in 5 youth in juvenile facilities were booked for probation violations, averaging about 550 youth each month.⁷¹



Probation violations can have significant consequences. Both the District Attorney’s office and the Probation Department have authority to file a petition in court alleging that a youth has violated probation. Youth have fewer procedural protections in probation violation proceedings. A probation violation can result in a youth being removed from their home and placed in foster care or committed to a juvenile facility.

If a youth violates a probation order, both the District Attorney’s office and the Probation Department have the authority to file a court petition alleging that probation has been violated.⁷² Based upon the alleged violation, the District Attorney’s office or Probation can ask the court to remove the youth from their home and place the youth in a foster home or commit the youth to an institution.⁷³ Within 30 days after the probation violation petition is filed, the court must hold a hearing on the allegation of a probation violation.⁷⁴

65 Youth Law Center, *JUVENILE JUSTICE TRANSFORMATION: NAVIGATING THE LEGAL LANDSCAPE, Part 2: A Legal Map of Youth Detention in California*, March 2020, *available at*: www.ylc.org/navigate-juvenile-justice-law.

66 Welf. & Inst. Code § 635(a).

67 Welf. & Inst. Code §636(a).

68 Welf. & Inst. Code § 636(a).

69 Welf. & Inst. Code § 636(b), 636.2.

70 Youth Law Center, *JUVENILE JUSTICE TRANSFORMATION: NAVIGATING THE LEGAL LANDSCAPE, Part 3: A Legal Map of Youth Detention Hearings in California*, March 2020, *available at*: www.ylc.org/navigate-juvenile-justice-law.

71 Jill Tucker and Joaquin Palomino, *Vanishing Violence: Minor crimes, major time*, S.F. Chronicle, Nov. 21, 2019, *available at*: <https://projects.sfchronicle.com/2019/vanishing-violence-major-time/#>.

72 Welf. & Inst. Code § 777(a)(2).

73 Welf. & Inst. Code §777.

74 Welf. & Inst. Code §777(b).

The court process for a probation violation offers fewer procedural protections for the youth than when the youth is facing delinquency allegations. For example, the court will determine whether the probation violation has been proved by a “preponderance of the evidence,” which is a lower standard than “beyond a reasonable doubt.”⁷⁵ In addition, the court may consider hearsay evidence.⁷⁶

If the youth is being held in detention for the probation violation, there are additional requirements. The notice alleging the probation violation must be filed within 48 hours of the youth being taken into custody, excluding “nonjudicial days” (i.e. weekends and holidays).⁷⁷ The court must hold a detention hearing “as soon as possible,” but no later than the next day after the petition is filed.⁷⁸ When a youth is detained, the court must hold a hearing on the allegation of a probation violation within 15 “judicial days” (i.e. business days).⁷⁹



The National Council of Family and Juvenile Court Judges recommends that probation conditions be eliminated, and that probation supervision operate using a strengths-based, rather than punitive, framework.

As described in #5 above, current research and best practices support implementing probation supervision using a strengths-based framework, replacing the traditional surveillance and punishment-based model.

In 2017, the National Council of Juvenile and Family Court Judges (NCJFCJ) passed a resolution calling for probation systems to conform to modern knowledge about adolescent development and brain science.⁸⁰ The NCJFCJ resolution, entitled “Resolution Regarding Juvenile Probation and Adolescent Development,” recommends that courts *cease imposing “conditions of probation,”* and instead support probation departments working together with families and youth to develop individualized case plans that set expectations and goals.⁸¹ The resolution also emphasizes the use of incentives, rather than sanctions, and encourages jurisdictions to develop alternatives so that detention or incarceration is never used as a sanction for youth who have not been able to attain their goals.⁸² This approach conforms with the findings of National Research Council regarding the factors needed for healthy adolescent development.⁸³

Consistent with the law and principles detailed above, jurisdictions in California could implement the reforms outlined by the NCJFCJ to bring juvenile probation into alignment with existing research and best practices. In 2019, the American Psychological Association

75 See Welf. & Inst. Code 777(c).

76 Welf. & Inst. Code § 777(c). Hearsay evidence is evidence of a statement made outside of court by someone who does not testify as a witness, and which is offered to prove the truth of the matter asserted in the statement. See Evid. Code § 1200(a).

77 Welf. & Inst. Code § 631(a).

78 Welf. & Inst. Code § 632(a); Cal. Rules of Court rule 5.752(f).

79 Welf. & Inst. Code § 657(a)(1).

80 National Council of Juvenile and Family Court Judges, “Resolution Regarding Juvenile Probation and Adolescent Development,” Washington D.C. (July 15, 2017), available at: <https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-juvenile-probation-and-adolescent-development.pdf>.

81 *Id.*

82 *Id.*

83 See Section #5, *supra*.

published an article, “Applying the National Council of Juvenile and Family Court Judges’ Resolution to Juvenile Probation Reform,” outlining how the NCJFCJ resolution could be applied in policy and practice.⁸⁴ Also, as referenced above, in 2018 the Annie E. Casey Foundation (AECF) published a report putting forth a comprehensive proposal for transforming juvenile probation to focus not on conditions and sanctions, but on positive youth development.⁸⁵ The approach to probation supervision outlined in AECF report enabled one jurisdiction to significantly reduce the number of youth removed from their homes as a result of probation violations.⁸⁶

Because of the significant discretion embedded within California’s laws related to probation supervision, both the courts and Probation Departments are empowered to implement the best practices that are recommended by experts and shown by research to be successful in supporting youth in a healthy transition to adulthood.

84 See Goldstein, N. E. S., Gale-Bentz, E., McPhee, J., NeMoyer, A., Walker, S., Bishop, S., Soler, M., Szanyi, J., & Schwartz, R. G. (2019). Applying the National Council of Juvenile and Family Court Judges’ resolution to juvenile probation reform. *Translational Issues in Psychological Science*, 5(2), 170–181, *available at*: <https://doi.org/10.1037/tps0000192>.

85 The Annie E. Casey Foundation (2018). “Transforming Juvenile Probation: A Vision for Getting It Right,” 31-43, *available at*: <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

86 *Id.* at 38.



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