

PART 1

REVOLUTIONIZING PROBATION

FROM PUNISHMENT TO COMMUNITY-LED SAFETY



 THE
GAULT
CENTER
Defenders of Youth Rights

 YEAH
YOUTH EMPOWERMENT FOR ADVANCEMENT HANGOUT

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ABOUT THIS SERIES

This brief is Part I of a series highlighting the historical lineage of probation as a form of social control, exposing the harmful realities of probation as directly experienced by youth, and laying out key policy and legal strategies to transform probation locally and nationally. This series reflects the joint expertise and experience of the Gault Center and YEAH Philly to transform current probation practices to align with constitutional rights, racial justice, adolescent development, and evidence-based principles that ensure the flourishing of all youth and communities.

Part I of the series summarizes youth perspectives on juvenile probation based on 25 interviews with youth who experienced probation firsthand across the country and examines the historical roots of juvenile probation to inform the transformation of probation moving forward. Part II of this series will be released in summer 2026, highlighting concrete steps to transform local probation practices and policies and spotlighting examples of successful practices already underway.

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INTRODUCTION:

WHAT YOUNG PEOPLE ARE SAYING ABOUT PROBATION



WHAT YOUNG PEOPLE ARE SAYING

The overarching goal of probation is to keep youth in communities and out of prisons, while maintaining public safety. Yet, after nearly two centuries, probation has widened state control over youth and families, deepened inequities, stunted youth development, and worsened public safety.¹ This misalignment between the goal of probation and its actual impact warrants an examination of current youth experiences, how we got here, and a transformative approach to probation moving forward.

Young people who were interviewed about their experiences on probation commonly shared that they felt surveilled, controlled, and punished, rather than supported to succeed.

In reflecting on what it felt like to be on probation, one youth explained “everything you do is like you’re getting monitored, like you’re on a leash . . . they’re your new mom and dad at that point, and if you don’t do what they say, you’re going to go to jail.”² Another youth described the feeling of being on probation as, “it put me in a constant state of fear and like I was always being watched.”³

“ [I]t put me in a constant state of fear and like I was always being watched. ” Youth Leader

When youth experience probation as control and surveillance, they recognize that their adolescence, in addition to their freedom, is being taken from them. One youth reflected, “I was young when I got into the system, and they forced me to be an adult when I wanted to go to school, I wanted to have a career. I had to let all of that go and become an adult.”⁴ Another youth recalled, “[probation] made me become an adult faster than I should have.”⁵ And another youth stated, “I feel like I didn’t even have a childhood. I think they took it away from me.”⁶

¹ See generally VINCENT SHIRALDI, MASS SUPERVISION: PROBATION, PAROLE, AND THE ILLUSION OF SAFETY AND FREEDOM (2023).

² Interviews with young people who experienced probation conducted between 2021 and 2024 by the Gault Center (on file with author) [hereinafter Youth Interviews].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Knowing that the opportunities of adolescence are slipping away while under constant surveillance during a time when mistakes are an inevitable part of growth, young people talked about the psychological stress of being on probation.⁷ A youth recalled their experience as “being 14 and you have to basically manage the way that you . . . make mistakes, and especially when you’re that age, you’re going to constantly make mistakes.”⁸ Other youth described the impact probation had on their mental health, stating “anytime that I wasn’t sitting there constantly freaking out, going over every different scenario in my head of how I can mess up, I was depressed about the fact that I may just end up back in jail and that took its toll on me.”⁹ Another youth stated, “probation 100% gives you PTSD [post-traumatic stress disorder] . . . just thinking about having to . . . go to jail [for a probation violation] and that automatically somebody else is in control over your life based off of whether or not they’re in a good mood.” The same youth went on to explain how that resulted in “unhealthy thought processes,” “you overthink yourself into failure sometimes . . . because you just want to be too, too perfect . . . and there’s no such thing.”

Further, when a system behaves unfairly, young people directly experience the inequities firsthand. Stemming from a complex web of racialized policing, systemic barriers, and implicit racial biases, the juvenile legal system has always been marked by inequity.¹⁰ The overrepresentation and disparate treatment of youth



across race, ethnicity, sexual orientation, gender identity and expression, disability, and poverty are widely documented.¹¹ And probation plays a key role in

⁷ Cf. Chaz Arnett, *Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts*, 108 J. CRIM. L. AND CRIMINOLOGY 399, 408-09 (2018); Jyoti Nanda, *Set Up to Fail: Youth Probation Conditions as a Driver of Incarceration*, 26 LEWIS & CLARK L. REV. 677, 710-11 (2022).

⁸ Youth Interviews, *supra* note 2.

⁹ *Id.*

¹⁰ See, e.g., Robin Walker Sterling, *Fundamental Unfairness: In re Gault and the Road Not Taken*, 72 MD. L. REV. 607, 615-33 (2013); Barry Feld & Perry Moriearty, *Race, Rights, and the Representation of Children*, 69 AM. U. L. REV. 743, 787 (2020); SAMANTHA HARVELL ET AL., URBAN INST., *TRANSFORMING JUVENILE PROBATION: RESTRUCTURING PROBATION TERMS TO PROMOTE SUCCESS* 3 (2021); Tamar R. Birkhead, *The Racialization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. REV. 379, 398-412 (2017).

¹¹ See, e.g., Feld & Moriearty, *supra* note 10, at 786-91; see generally SARAH HOCKENBERRY & CHARLES PUZZANCHERA, NAT'L CTR. FOR JUV. JUST., *JUVENILE COURT STATISTICS 2021* (2024); KERITH J. CONRON & BIANCA D.M. WILSON, UCLA SCH. L. WILLIAMS INST., *LGBTQ YOUTH OF COLOR IMPACTED BY THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEM: A RESEARCH AGENDA* 52-53 (2019); NAT'L CTR. FOR LEARNING DISABILITIES, *UNLOCKING FUTURES: YOUTH WITH LEARNING DISABILITIES & THE JUVENILE JUSTICE SYSTEM* 7 (2023); Nancy Rodríguez, *Concentrated Disadvantage and the Incarceration of Youth: Examining How Context Affects Juvenile Justice*, 50 J. OF RSCH. IN CRIME AND DELINQ. 189, 194-195, 203-206 (2013).

maintaining and perpetuating these disparities.¹² One youth described their probation conditions as “not equal based on the world we are in.”¹³ Another youth expressed their awareness that their identity makes probation and the court view them as a “danger to society,” which in turn impacts the probation conditions they are ordered to follow.¹⁴ These inequities are more than data points. They are internalized by young people during an impressionable time of identity formation.

What young people think and how they experience probation matters, and their reality must drive how we move forward. One of the hallmarks of adolescence is that young people are particularly sensitive to how they are treated and whether they are being treated fairly, which then shapes their identity and informs their future behaviors.¹⁵ Positive experiences that reinforce a young person’s perception of fairness lead to healthy development, while negative experiences shaped by experiencing differential treatment impede development and increase risk of recidivism.¹⁶ One youth recalled, “Being so young, you don’t really have a complete grasp of who you are or of your identity itself. When you get in trouble with people who already look down upon you and want to make you feel like a criminal and want to beat you down and don’t really want to help you at all, it absolutely, for me anyway, changed how I felt about myself, yes it did.”¹⁷ When young people experience probation primarily as a mechanism of surveillance,

control, and punishment during a time of malleability and identity formation, it can have a devastating impact on youth development and our communities.¹⁸

What young people think and how they experience probation matters, and their reality must drive how we move forward.

The common themes across young people’s experiences—that probation surveils, probation controls, and probation punishes—reveal a chasm between probation’s goal to keep communities safe while supporting youth and the actual impact of how probation is being experienced by young people and their families and communities. This failed experiment lasting nearly two centuries comes at the expense of lost childhoods, wasted resources, and broken dreams of countless youth in our country and warrants, at the very least, an earnest re-evaluation of how we approach probation.

¹² See NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES, *THE ROLE OF THE JUDGE IN TRANSFORMING JUVENILE PROBATION: A TOOLKIT FOR LEADERSHIP* 53 (2021); THE ANNIE E. CASEY FOUND., *ELIMINATE CONFINEMENT AS A RESPONSE TO PROBATION RULE VIOLATIONS* 7 (2020); Leah Wang, *The U.S. Criminal Justice System Disproportionately Hurts Native People: The Data, Visualized*, PRISON POL’Y INITIATIVE (Oct. 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/>; see, e.g., DISABILITY RTS. CALIFORNIA & DISABILITY RTS. ADVOCATES, *YOUTH IN CRISIS: HOW KINGS COUNTY LOCKS UP YOUTH WITH DISABILITIES* 2, 8 (2023).

¹³ Youth Interviews, *supra* note 2.

¹⁴ *Id.*

¹⁵ See NAT’L RESEARCH COUNCIL, NAT’L ACADEMIES PRESS, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* 194 (2013).

¹⁶ See *id.* at 191-92. Laurence Steinberg & Elizabeth Cauffman, *A Developmental Perspective on Serious Juvenile Crime: When Should Juveniles Be Treated as Adults?*, 63 *FED. PROBATION* 52, 53 (1999); Naomi E.S. Goldstein et al., “You’re on the Right Track!” Using Graduated Response Systems to Address Immaturity of Judgement and Enhance Youths’ Capacities to Successfully Complete Probation, 88 *TEMP. L. REV.* 803, 830 (2016).

¹⁷ Youth Interviews, *supra* note 2.

¹⁸ See Nanda, *supra* note 7, at 710-11; Arnett, *supra* note 7, at 408-09.

A MORE COMPLETE HISTORY OF

JUVENILE PROBATION



HISTORY OF JUVENILE PROBATION

Probation surveils. Probation controls. Probation punishes.

Changing a system’s behavior requires an examination of the *why*.¹⁹ And the *why of probation* lies in its history. History reveals how the underlying structures propel and perpetuate a system’s behavior, and understanding it is an essential ingredient to change.²⁰

A LIMITED ORIGIN STORY, FEATURING REHABILITATION

The idea of probation in our country was sparked in 1841, when a member of the community in Boston made an agreement with the court to supervise an individual facing jail as an alternative to incarceration.²¹ By 1878, Massachusetts was the first state to formalize probation practices through legislation under a rhetoric of community-based rehabilitation, and many states followed suit thereafter.²²

Similarly, the foundation of the juvenile legal system began in 1825, when New York opened its first House of Refuge, a juvenile treatment facility to take care of children charged with crimes or experiencing neglect or abuse.²³ By 1899, Illinois opened the first juvenile court in the country to focus on rehabilitation rather than punishment, in recognition that children should be treated differently than adults, triggering other states to do the same.²⁴

The twin rhetoric of rehabilitation across probation and juvenile courts created a natural overlap between these two systems—so much so that the first published directory of probation officers revealed that most worked in juvenile courts by 1907.²⁵ And thus, the idea of rehabilitation connected these two systems, and their intersecting origins shape our common understanding of how juvenile probation came to be.



¹⁹ Cf. DONELLA H. MEADOWS, THINKING IN SYSTEMS: A PRIMER 89 (2008) (“When a systems thinker encounters a problem, the first thing he or she does is look for data, time graphs, the history of the system. That’s because long-term behavior provides clues to the underlying system structure. And structure is the key to understanding not just *what* is happening, but *why*.”).

²⁰ See *generally id.* at 108, 171 (“Change comes first from stepping outside the limited information that can be seen from any single place in the system and getting an overview. . . . Starting with the history of several variables plotted together begins to suggest not only what elements are in the system, but how they might be interconnected.”).

²¹ See Nanda, *supra* note 7, at 694.

²² See *id.*

²³ Sterling, *Fundamental Unfairness*, *supra* note 10, at 616-17.

²⁴ *Id.* at 610.

²⁵ Patricia Soung, *Is Juvenile Probation Obsolete? Reexamining and Reimagining Youth Probation Law, Policy, and Practice*, 112 J. CRIM. L. & CRIMINOLOGY 549, 561 (2022).

What's often missing in this narrative, however, is the social and legal context of what was happening in our country when these systems were being formed.

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This is important because decisions and actions flow from the narratives that define a system.²⁶ So a narrative of probation that is fixated on its rhetoric of rehabilitation and benevolence informs decisions and actions that are driven by an idea that probation is an act of grace.²⁷ And this framing of benevolence has given power to courts and probation to significantly curtail the rights of youth, while subjecting them to invasive mechanisms of social control—mostly in the shadows and based on the premise that the levied conditions are in exchange of incarceration and the result of the court's good will.²⁸

Framing probation as an act of grace, in actuality, has caused many of the system's behaviors that are

marked by surveillance, control, and harm leading to young people's current experiences on probation. Changing these harmful practices requires filling in the underlying narrative²⁹ with more complete information about the origins of juvenile probation.³⁰

A MORE COMPLETE ORIGIN STORY, FEATURING SOCIAL CONTROL

As the idea of juvenile probation was developing—first with the concept that children should be treated differently as introduced by the House of Refuge in 1825, followed by the practice of community-based supervision as experimented in 1841—Black children and adults were enslaved.³¹ In fact, this was during a time when the practice of racial subjugation was etched into our laws. As the foundation of juvenile probation was being built, cases like *Dred Scott v. Sandford*, affirming racial hierarchies in 1857, made up the law of our land.³²

At around the same time, concepts of adolescence started to emerge in the West.³³ With the rise of industrialization and urbanization, American society began to appreciate the developmental differences between children and adults, and the focus of adolescence shifted from labor to education, careers, and futures.³⁴ Through this paradigm, children were seen for their malleability and developmental potential, and as the period of adolescence began to hold more

²⁶ MEADOWS, *supra* note 19, at 14 (“Information holds systems together and plays a great role in determining how they operate.”).

²⁷ Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 *Geo. L. J.* 291, 328-334 (2016).

²⁸ *Id.*

²⁹ *Cf.* MEADOWS, *supra* note 19, at 108 (“It’s amazing how quickly and easily behavior changes can come, with even slight enlargement of bounded rationality, by providing better, more complete, timelier information.”).

³⁰ *See id.* at 108, 157 (2008) (“Change comes first from stepping outside the limited information that can be seen from a single place in the system and getting an overview. . . . Missing information flows is one of the most common causes of system malfunction. Adding or restoring information can be a powerful intervention.”).

³¹ *See* GEOFF K. WARD, *THE BLACK CHILD-SAVERS: RACIAL DEMOCRACY AND JUVENILE JUSTICE* 34 (2012).

³² *See, e.g., Dred Scott v. Sandford*, 60 U.S. 393 (1857) (holding that Black Americans were excluded from citizenship of the United States as well as its rights and privileges under the Constitution).

³³ *See* WARD, *supra* note 31, at 20-22.

³⁴ *Id.* at 20-22.

societal significance, institutions like family policing (aka child welfare) and delinquency were established to regulate and control behavior to ensure children grew up to become productive adults.³⁵

Importantly, the intersections across the emergence of adolescence, the formation of juvenile probation, and legalities of enslavement meant that Black children were subject to mechanisms of social control while facing systemic exclusion from efforts designed to promote and invest in their adolescent development.³⁶ In fact, our society’s awakening to the developmental distinctions between children and adults was largely ignored when applied to Black children, given the racial hierarchies that were normalized and backed by our highest court at the time.³⁷

Importantly, the intersections across the emergence of adolescence, the formation of juvenile probation, and legalities of enslavement meant that Black children were subject to mechanisms of social control while facing systemic exclusion from efforts designed to promote and invest in their adolescent development.

This practice was consistent with the rationalization of enslavement, which relied on a white-dominant ideology that Black children lacked developmental potential, were categorically incorrigible, and could never participate equally in society.³⁸ This ideology further justified the exclusion of Black children from developmental opportunities and limited their access to rights and freedom.³⁹

Even with the passage of the Reconstruction Amendments, this ideology persisted as our country maintained a legal jurisprudence of social inequity, racial subjugation, and structural exclusion.⁴⁰ Notably, in 1896, the U.S. Supreme Court institutionalized racial segregation on the premise that “separate but equal” satisfied the 14th Amendment in its decision in *Plessy v. Ferguson*.⁴¹ This decision came 18 years after the formal creation of probation in 1878 and just three years before the first juvenile court was created in 1899—and this rule of law was sustained for 58 years until 1954.⁴²

Meaning, the juvenile legal system, and by extension juvenile probation, from its very inception was operating as an institution designed to control and regulate behavior within a legal infrastructure that normalized, maintained, and propelled racial stratification. This was evidenced by the differential treatment of children who immigrated to the United States in the late 1800s from Southern and Eastern Europe and the treatment of Black children.

Progressive Era reformers, who created juvenile court institutions, relied on juvenile courts to advance an agenda of coerced assimilation for poor, white, immigrant children who they perceived to hold

³⁵ See *id.*

³⁶ See *id.* at 34-35, 41.

³⁷ See *id.* at 36-37; see *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1857) (rationalizing the exclusion of Black Americans from the rights and privileges of the U.S. Constitution on the premise that they are of “an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.”).

³⁸ See *WARD*, *supra* note 31, at 36-44.

³⁹ See *id.* at 42, 59.

⁴⁰ See *id.* at 81.

⁴¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding the constitutionality of the “separate but equal” segregation laws).

⁴² The “separate but equal” doctrine from *Plessy v. Ferguson* was upheld from 1896 to 1954, when it was overturned by *Brown v. Board of Education*, 347 U.S. 483 (1954).



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developmental potential, albeit as a lower caste.⁴³ At the same time, Black children were largely excluded from even accessing juvenile court institutions initially, because they continued to be prosecuted as adults.⁴⁴ Eventually, once Black youth began to gain access to juvenile courts, the institution began to operate essentially a two-track system of social control—white youth were often provided social-welfare services by

probation based on perceptions of their rehabilitative worthiness and potential, while Black youth and others who existed outside of white-dominant norms were often confined in institutions.⁴⁵

Further, vague criminal laws, paired with convict leasing mechanisms, were quickly enacted to preserve the status quo after the formal end of enslavement.⁴⁶

⁴³ BARRY C. FELD, *THE EVOLUTION OF THE JUVENILE COURT* 19-20, 24 (2017).

⁴⁴ See WARD, *supra* note 31, at 90-103; see also Eduardo R. Ferrer, *Razing & Rebuilding Delinquency Courts: Demolishing the Flawed Philosophical Foundation of Parens Patriae*, 54 *LOY. U. CHI. L. J.* 885, 940 (2023).

⁴⁵ See FELD, *supra* note 43, at 20, 60; Ferrer, *supra* note 44, at 940 (2023).

⁴⁶ See WARD, *supra* note 31, at 63-66; PENIEL E. JOSEPH, *THE THIRD RECONSTRUCTION: AMERICA'S STRUGGLE FOR RACIAL JUSTICE IN THE TWENTY-FIRST CENTURY* 139-140 (2022); see also Maria E. Torres et al., *Addressing Racial and Ethnic Disparities*, in *HANDBOOK OF FORENSIC SOCIAL WORK* 122-25 (David Axlyn McLead et al. eds., Oxford Univ. Press 2024).

These laws, also known as Black Codes, were broad enough to target, surveil, and capture Black children and adults into convict leasing schemes designed to restore forced labor practices through carceral systems, which continued into the 1930s.⁴⁷

At around the same time, juvenile and criminal legal systems were leveraged as an apparatus of racialized terror and violence under the guise of crime control. Black youth were subject to lynchings, whippings, and executions through the formal administration of our legal systems, and between 1931 and 1959, records indicate that nearly 100 Black youth were executed in the United States, making up 80% of the total number of youth who faced state-sanctioned executions during that time.⁴⁸

Essentially, a legal infrastructure designed to sustain racial hierarchies paired with the juvenile court's wide latitude of discretion fueled the harsh criminalization of Black youth, which then propelled a public narrative around crime that stoked racialized fears—creating a cycle of social control through the juvenile legal system.

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THE PERSISTENCE OF SOCIAL CONTROL IN THE CIVIL RIGHTS MOVEMENT

As the civil rights and Black freedom movement began to gain national prominence in the 1950s, and particularly as youth activism played a central role in the struggle, policing and juvenile court institutions were further used as tools to protect white dominance and control individuals who threatened that status quo.⁴⁹ As an example, white youth who engaged in acts of violence and vandalism in opposition of the civil rights movement were, by in large, protected from formal legal processing, while Black youth who engaged in civil rights protests and demonstrations were quickly sanctioned and criminalized.⁵⁰

Numerous accounts reveal the use of police and juvenile courts to suppress young Black activists from exercising their freedom to protest, as thousands of Black youth were arrested and sent to juvenile court for their involvement in the civil rights movement. Most notably, the Children's Crusade of 1963 resulted in the arrest of over one thousand youth in Birmingham on a single day.⁵¹

In the same year in Florida, a juvenile court judge sent a letter to Black civil rights leaders warning that youth will be arrested if they participate in demonstrations.⁵² This was followed by the arrest of 234 youth, most of whom were placed on probation under conditions that prohibited any further involvement in civil rights demonstrations.⁵³ Elsewhere in the country, Black youth activists faced a range of sanctions in juvenile

⁴⁷ See Dorothy Roberts, *Abolition Constitutionalism*, 133 HARVARD L. R. 1, 27-31 (2019); Sterling, *Fundamental Unfairness*, *supra* note 10, at 626-27; *Convict Leasing*, EQUAL JUST. INITIATIVE (Nov. 1, 2013), <https://eji.org/news/history-racial-injustice-convict-leasing/>.

⁴⁸ Roberts, *supra* note 47, at 40-41; WARD, *supra* note 31, at 186-87.

⁴⁹ See WARD, *supra* note 31, at 118, 203-208.

⁵⁰ See *id.*

⁵¹ *Black Children Begin Movement Protesting Segregation; Face Police Brutality*, EQUAL JUST. INITIATIVE (May 2, 1963), [⁵² WARD, *supra* note 31, at 203-08.](https://calendar.eji.org/racial-injustice/may/2#:~:text=On%20May%202%2C%201963%2C%20more,Martin%20Luther%20King%20Jr; WARD, supra note 31, at 206-07.</p></div><div data-bbox=)

⁵³ *Id.*

court, from incarceration, fines, and probation, all of which were levied to control youth from further engagement in civil rights activities and association with freedom leaders.⁵⁴

The selective criminalization of Black youth activists and the explicit directives from the court prohibiting participation in the civil rights movement reveal how juvenile courts worked in tandem with other systems of surveillance to broaden its web of social control. These behaviors signal how juvenile courts, and by extension juvenile probation, were leveraged to prioritize the preservation of racial hierarchies before the enforcement of law itself.⁵⁵

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AN EXPLICIT TURN TO MASS INCARCERATION AND SURVEILLANCE

As the civil rights movement made significant gains in the 1960s and a new foundation of legal equality was being built, racial divisions and tensions continued and a narrative connecting race and crime began to crystallize.⁵⁶ Capitalizing on racialized fears, the War on Drugs, declared in 1971, became a proxy to surveil, control, and criminalize Black communities.⁵⁷ Though race neutral on its face, this national campaign used racially coded terms to supercharge systems of policing and criminal punishment in the name of public safety and under the maintenance of racial innocence.⁵⁸

The War on Drugs intentionally targeted urban, impoverished, and racially concentrated neighborhoods, which uncoincidentally were created and sustained by public and private policies designed to maintain racial inequities.⁵⁹ These intersecting systems of racism ensured that policies that appear colorblind would continue to target and criminalize Black communities as our country entered an era of mass incarceration and surveillance.⁶⁰ Systems of confinement grew by 500% and systems of supervision by 300% since the 1970s—and this expansion unfolded exactly as designed.⁶¹

The federal government in the 1970s made a strategic decision to leverage the criminal and juvenile legal systems to “vilify” Black communities by associating

⁵⁴ *Id.*

⁵⁵ See WARD, *supra* note 31, at 203; see, e.g., *In re Burrus*, 169 S.E.2d 879 (N.C. 1969) (the companion case to *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), involving the arrest and prosecution of 45 Black children between the ages of 11 and 15 for their involvement in civil rights demonstrations).

⁵⁶ See SHIRALDI, *supra* note 1, at 38-39, 114-17; FELD, *supra* note 43, at 54-55.

⁵⁷ See SHIRALDI, *supra* note 1, at 38-39, 114-17.

⁵⁸ See *id.*

⁵⁹ See *id.* at 114-17; FELD, *supra* note 43, at 76-79 (describing how “racialized concentrated poverty” is attributed to “deliberate public policies to contain and isolate minorities and to white communities’ opposition to public housing in their neighborhoods”).

⁶⁰ THE SENTENCING PROJECT, *MASS INCARCERATION TRENDS* 1, 5-8 (2024).

⁶¹ *Id.* (“Over five million people in total are under supervision by the criminal legal system. Of these, nearly two million people, disproportionately Black, are living in prisons and jails instead of their communities. Compare this to the figures of the early 1970s when this count was 360,000.”); Torres et al., *supra* note 46, at 124-25.



them with drugs and danger and stoking fears to fuel an implicit narrative around the need to maintain racial subjugation.⁶² In fact, members of the White House at the time later revealed that the War on Drugs

was a lie to create a system that would control Black communities by using the criminalization of drugs as a proxy.⁶³ In this scheme, Black youth were particularly harmed not only by the heightened surveillance and severe punishment driven by racial bias that they experienced first hand but also by the rampant disruptions in their families and communities caused by mass incarceration and surveillance.⁶⁴ This tactic by the federal government, in essence, assaulted the development of Black youth by criminalizing normative adolescent behavior and severing familial and community relationships that are integral to positive growth during adolescence.⁶⁵

At around the same time, a call to reshape the juvenile legal system to become more explicitly punitive began to gain momentum as our country started to move away from a rehabilitative ethic and became transfixed on yet another racially charged campaign—this time, directly targeting Black youth.⁶⁶ In 1974, criminologist, Robert Martinson, published an unsupported claim that rehabilitative efforts were not effective in reducing recidivism.⁶⁷ In his report, Martinson specifically called out probation as a “farce,” and his assertions were quickly amplified to inflame racialized fears and create stronger demands for punishment and surveillance over rehabilitation.⁶⁸ Even though Martinson recanted his assertions in 1979, admitting he “was full of crap,” the public sentiment to abandon rehabilitative aims continued to cascade.⁶⁹

⁶² See SHIRALDI, *supra* note 1, at 38-43, 105-17.

⁶³ See *id.* at 116 (quoting former President Richard Nixon’s former assistant for domestic affairs stating, “We knew we couldn’t make it illegal to be either against war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”).

⁶⁴ See Jennifer H. Peck, *The War on Drugs in Juvenile Court? The Influence of Community Context on Juvenile Court Outcomes for White, Black, and Hispanic Youth*, 23 *YOUTH, VIOLENCE, AND JUVENILE JUSTICE* 3, 3-8, 20 (2024).

⁶⁵ See NAT’L RESEARCH COUNCIL, *REFORMING JUVENILE JUSTICE*, *supra* note 15, at 100-04; UCLA CTR. FOR THE DEVELOPING ADOLESCENT, *STEPS FOR YOUTH, KEY DEVELOPMENTAL NEEDS OF ADOLESCENCE* (2024).

⁶⁶ See FELD, *supra* note 43, at 99.

⁶⁷ See SHIRALDI, *supra* note 1, at 29-3 (explaining that Robert Martinson published this report “despite protests from researchers—including lead author Lipton—that the original report had *not* concluded that nothing works.”).

⁶⁸ See *id.* at 29-31.

⁶⁹ See *id.*

Notably, this report came to the attention of another criminologist, John Dilulio, who referred to the piece as “arguably the single most influential article ever published in that influential journal.”⁷⁰ Dilulio went on to release his own inflammatory report in 1995 that he too would later regret, warning the nation of what he called “superpredators”—a racially coded term that was widely understood as a reference to Black youth.⁷¹

From this racialized lens, youthfulness and immaturity became an aggravating factor when applied to youth who were perceived to threaten social order rooted in white power structures.⁷² The association of Black youth with crime and danger deepened by day as the media reinforced and sensationalized racist tropes to provoke fear, ultimately resulting in a public outcry for harsher mechanisms of control and punishment.⁷³ As a result, Dilulio’s predictions ignited a race to preemptively harden juvenile court policies, as states rushed to create easier mechanisms to prosecute children as adults, shackle children, and keep more children in locked facilities for longer periods of time.⁷⁴

The justification for these measures mirrored language used to exclude Black children from rehabilitative efforts during enslavement. Like then, Black children faced a narrative that they were incorrigible, unworthy of rehabilitation, and unmalleable, requiring adult

punishment at the expense of their developmental potential.⁷⁵ By the end of the 1990s, nearly every state passed laws that stripped away differential protections for youth, and many states converted their juvenile court purpose clause to reflect explicit goals of punishment and accountability.⁷⁶

[T]his era revealed the extent to which our country was willing to bloat systems of punishment and surveillance to control Black youth.

Even though Dilulio’s predictions never came to fruition, but rather gained traction during a time when youth crime rates were actually declining, this era revealed the extent to which our country was willing to bloat systems of punishment and surveillance to control Black youth.⁷⁷ In fact, the juvenile court system nearly doubled its control over Black youth during this time, going from 280,700 cases involving Black youth in 1985 to 549,100 cases in 1997, a volume that was sustained until around

⁷⁰ See *id.*

⁷¹ See FELD, *supra* note 43, at 273-74; Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. TIMES (Feb. 9, 2001), <https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>.

⁷² See FELD, *supra* note 43, at 273-74.

⁷³ See Robin Walker Sterling, “*Children are Different*”: *Implicit Bias, Rehabilitation, and the “New” Juvenile Jurisprudence*, 46 LOY. L.A. L. REV. 1019, 1054-57 (2013).

⁷⁴ See BIRCKHEAD, *supra* note 10, at 415-16; THE CAMPAIGN FOR THE FAIR SENT’G OF YOUTH, [THE ORIGINS OF THE SUPERPREDATOR: THE CHILD STUDY MOVEMENT TO TODAY](#) (2021).

⁷⁵ THE CAMPAIGN FOR THE FAIR SENT’G OF YOUTH, [THE ORIGINS OF THE SUPERPREDATOR](#), *supra* note 74; see WARD, *supra* note 31, at 36-44; Sterling, “*Children are Different*”, *supra* note 73, at 1058-60.

⁷⁶ See Sterling, “*Children are Different*”, *supra* note 73, at 1060; Carroll Bogert & Lynnell Hancock, *The Media Myth that Demonized Generation of Black Youth*, THE MARSHALL PROJECT (Nov. 20, 2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth>.

⁷⁷ See HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP’T. OF JUSTICE, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, [CHALLENGING THE MYTHS](#) (2000); *The Superpredator Myth, 25 Years Later*, EQUAL JUSTICE INITIATIVE (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later/>.

2008.⁷⁸ This was despite the fact that the rate of serious offenses by young people was already declining by 1995.⁷⁹

As prison populations ballooned, so did the scope of probation, creating a revolving and widening door of social control.⁸⁰ Mirroring mass incarceration, probation also embraced a dominant ethic of law enforcement and punishment, subjecting individuals to tougher mechanisms of surveillance, while driving incarceration practices through subjective assessments of technical violations.⁸¹ Instead of operating as an alternative to incarceration, probation essentially functioned as a continuum of carceral control and punishment.⁸²

Instead of operating as an alternative to incarceration, probation essentially functioned as a continuum of carceral control and punishment.

A VICIOUS CYCLE BETWEEN INEQUITABLE STRUCTURES AND IMPLICIT BIAS

In recent years, the juvenile legal system has shrunk considerably in size, as delinquency cases have fallen by 73% since 2005.⁸³ And yet, racial disparities persist and are even on the rise in some states, revealing a stable and widening practice of differential treatment over “othered” children.⁸⁴ Much of these behaviors are rooted in a cyclical pattern where inequitable structures breed societal and individual biases, which then further cement inequity within the very structures themselves, creating a reinforcing feedback loop that keeps producing harmful and unjust outcomes.⁸⁵

This loop is especially evident in probation practices, which are marked by the discretion and power of probation officers and judges, along with diminished legal protections for youth on probation, creating an ideal environment for unchecked biases to thrive and harm.⁸⁶ Across the country, a combination of the probation officer and judge holds varying degrees of power to create and mandate conditions, assess

⁷⁸ Off. of Juv. Just. and Delinq. Prevention, *Demographic Characteristics of Cases Handled by Juvenile Courts*, EASY ACCESS TO JUVENILE COURT STATISTICS (EZAJCS), <https://ojjdp.ojp.gov/statistical-briefing-book/data-analysis-tools/ezajcs/demographics> (last accessed December 10, 2025); see also THE SENTENCING PROJECT, *YOUTH JUSTICE: LESSONS FROM THE LAST 50 YEARS* (2023) (“There were about 4,000 people under 18 in adult prisons and jails as of 1985, a count that more than tripled by 1995—a massive increase in years that youth arrests grew 36%. More than six out of every ten incarcerated youths were confined in an overcrowded facility. . . . Then as now, many arrests reflected law enforcement’s and politicians’ choices to criminalize adolescence rather than adolescents’ criminal behaviors, particularly when the adolescents were Black or brown.”).

⁷⁹ SNYDER & SICKMUND, *CHALLENGING THE MYTHS*, *supra* note 77; see also THE SENTENCING PROJECT, *YOUTH JUSTICE: LESSONS FROM THE LAST 50 YEARS*, *supra* note 78 (“True, arrests for the most serious offenses grew 79% from 1985 to 1995. But those increases were matched or exceeded by increases in youth arrests for disorderly conduct (up 84%), curfew and loitering (up 84%), and drug offenses, (up 110%), timeless hallmarks of youth that are significantly (and thankfully!) more common than violent offenses. Then as now, many arrests reflected law enforcement’s and politicians’ choices to criminalize adolescence rather than adolescents’ criminal behaviors, particularly when the adolescents were Black or brown.”)

⁸⁰ See SHIRALDI, *supra* note 1, at 40-46.

⁸¹ See *id.* at 40-46; see, e.g., Doherty, *supra* note 27, at 302-322.

⁸² See Doherty, *supra* note 27, at 354.

⁸³ HOCKENBERRY & PUZZANCHERA, *JUVENILE COURT STATISTICS 2021*, *supra* note 11, at 6.

⁸⁴ See HOCKENBERRY & PUZZANCHERA, *JUVENILE COURT STATISTICS 2021*, *supra* note 11, at 21; THE SENTENCING PROJECT, *BLACK DISPARITIES IN YOUTH INCARCERATION: BLACK YOUTH ALMOST FIVE TIMES AS LIKELY TO BE INCARCERATED AS WHITE PEERS* (2023).

⁸⁵ See Soung, *supra* note 25, at 587-88; Cf. MEADOWS, *supra* note 19, at 25-34 (describing the mechanics of feedback loops to understand a system’s behavior).

⁸⁶ See SHIRALDI, *supra* note 1, at 60-71, 98; Doherty, *supra* note 27, at 328-44; Nanda, *supra* note 7, at 696-98.

compliance and violations, and impose consequences, ranging from incarceration to extended supervision.⁸⁷

What's more is that it is also within probation officers' and judges' authorities to expand their own power by ordering and recommending conditions that enhance their discretion and surveillance, such as vague conditions that police "bad behavior" and search and seizure conditions that diminish a young person's constitutional protections.⁸⁸ All the while, youth on probation are often left without counsel, as the vast majority of states terminate a young person's access to counsel at disposition.⁸⁹

[I]t is also within probation officers' and judges' authorities to expand their own power by ordering and recommending conditions that enhance their discretion and surveillance.

And it's within this context of essentially unfettered access to control and regulate a young person's everyday behaviors that the implicit racial biases of probation officers and judges also coexist.⁹⁰ Studies have shown that probation officers are more likely to

attribute behaviors of white youth to their environment, while attributing the behaviors of Black youth to perceived characteristic flaws, resulting in more severe outcomes for Black youth in court.⁹¹ Further, research has also shown that probation officers are more likely to view Black youth as adult-like, violent, culpable, and deserving of punishment than white youth.⁹² Importantly, these implicit racial biases can shape a judge's perception of a youth and drive a probation officer's enforcement of conditions, deepening the layers of harm and control that probation holds over young people, especially Black youth.⁹³

The prevailing inequities perpetuated by probation that flow from the enduring legacy of the juvenile legal system's operation as an apparatus of racialized social control and the societal biases held by system professionals demand a holistic transformation of probation that centers the developmental possibilities of all youth. As a starting point, the history of juvenile probation and the enduring threads of social control offer a more complete lens from which to evaluate current practices and imagine anew.

⁸⁷ See Nanda, *supra* note 7, at 681-702.

⁸⁸ See Doherty, *supra* note 27, at 303-09, 317-322; Nanda, *supra* note 7, at 736-39.

⁸⁹ See THE GAULT CTR., *A CALL TO EXPAND POST-DISPOSITION REPRESENTATION OF YOUTH IN THE JUVENILE LEGAL SYSTEM* 5 (2024).

⁹⁰ See, e.g., NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, *ADDRESSING BIAS IN DELINQUENCY AND CHILD WELFARE SYSTEMS* (2021); *Racial and Ethnic Disparities in the Processing of Delinquency Cases, 2005-2022*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION (Oct. 2024), <https://www.defendyouthrights.org/document/racial-and-ethnic-disparities-in-the-processing-of-delinquency-cases-2005-2022/>.

⁹¹ See George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 AM. SOCIO. REV. 554 (1998).

⁹² See Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 L. AND HUM. BEHAV. 483 (2004).

⁹³ See SHIRALDI, *supra* note 1, at 118-20.

A MORE COMPLETE HISTORY OF JUVENILE PROBATION²



A LIMITED ORIGIN STORY, FEATURING REHABILITATION

1825

New York opens the first House of Refuge

1841

Community supervision is first ordered in court in Massachusetts

1878

Massachusetts is the first state to formalize probation through legislation

1899

Illinois opens the first juvenile court

1825

1845

1865

1885

1905

1825-1865

Legal enslavement of Black children and adults

1865-1930

Black Codes and convict leasing schemes restore forced labor practices through carceral systems

1857

Dred Scott v. Sandford affirms racial hierarchies

1896

Plessy v. Ferguson affirms racial segregation

A MORE COMPLETE ORIGIN STORY, FEATURING SOCIAL CONTROL

1925

1945

1965

1985

2005

2025

1930-1950

Policing and juvenile court systems administer state-sanctioned racial violence and terror in the name of crime control at the height of the Jim Crow Era

1950-1970

Suppression of civil rights activities is reinforced through juvenile incarceration and probation under the guise of public safety

1970-2000

War on Drugs and Crime become proxies to surveil, control, and criminalize Black and Latine communities, supercharging systems of policing and punishment

2000-Present

Delinquency cases are declining, yet racial disparities deepen as we persevere a cyclical pattern where inequitable structures breed societal and individual biases that foster racial inequities

1974

Robert Martinson releases an unsupported claim he later retracts arguing that “nothing works” and calling for harsher punishment, amplifying racialized fears

1995

John Dilulio releases an inflammatory report he later retracts using racially coded terms to associate Black youth with crime and danger, resulting in a race to harden juvenile court laws and policies

DISMANTLING PROBATION

AND REVOLUTIONIZING COMMUNITY CARE



DISMANTLING AND REVOLUTIONIZING

Probation in its current existence has too often created a culture of fear and control for many youth.⁹⁴ One youth analogized their experience of being on probation as “having a weight put on you and stopping you from moving . . . like an anchor.”⁹⁵ And many youth offered examples of the activities they had to stop because of probation, such as going outside, playing sports, travelling, and spending time with friends.⁹⁶ One youth had to stop playing sports to find a job to pay off their ankle monitor fees as part of their probation, and they expressed, “you gotta understand, we’re still trying to figure out our life, like a lot of us wanted to play sports and stuff.”

This type of probation—one that is rooted in control—not only impedes a young person’s healthy development but also is counterproductive for public safety and must be dismantled while infrastructures for community care grow and strengthen. Research has shown that surveillance-oriented probation does not work.⁹⁷ It is ineffective in reducing recidivism and, in fact, may increase recidivism in some cases, and runs counter to adolescent development principles that clearly indicate the need for positive opportunities to develop autonomy and independence.⁹⁸

Adolescent development research explains that a young person’s risk-taking behaviors are a normal part of brain development.⁹⁹ As the brain develops and youth mature over time, the vast majority of youth naturally stop engaging in risky behaviors.¹⁰⁰ But probation and formal legal system involvement disrupt this natural trajectory by slowing down the process of development, often making matters worse for public safety.¹⁰¹ What youth and our communities need instead is a well-resourced social fabric that supports and promotes healthy development that exists in the community and for the community.¹⁰²

⁹⁴ Youth Interviews, *supra* note 2.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ THE ANNIE E. CASEY FOUND., [TRANSFORMING JUVENILE PROBATION: A VISION FOR GETTING IT RIGHT](#) 6-10 (2018).

⁹⁸ *Id.*

⁹⁹ NAT’L RESEARCH COUNCIL, [REFORMING JUVENILE JUSTICE](#), *supra* note 15, at 89-102.

¹⁰⁰ *Id.* at 23-26, 100-02.

¹⁰¹ See THE ANNIE E. CASEY FOUND., [TRANSFORMING JUVENILE PROBATION](#), *supra* note 97, at 9-10; see generally LAURENCE STEINBERG ET AL., OFF. OF JUV. JUST. AND DELINQ. PREVENTION, [PSYCHOSOCIAL MATURITY AND DESISTANCE FROM CRIME IN A SAMPLE OF SERIOUS JUVENILE OFFENDERS](#) (2015).

¹⁰² NAT’L RESEARCH COUNCIL, [REFORMING JUVENILE JUSTICE](#), *supra* note 15, at 100-02.

The key to healthy development, according to scientific literature, are adult role models, positive peers, and activities to practice independent decision making and critical thinking.¹⁰³ In essence, young people need space and time to grow in supportive and caring environments.¹⁰⁴ Studies have shown that youth need some form of unstructured time to play and explore their interests during adolescence and that time spent outside, with friends, and in activities, such as sports and the arts, are vital for healthy development.¹⁰⁵

In fact, the moments where young people recalled positive memories of probation were all shaped by their experiences with a caring probation officer who focused more on building a relationship with the youth and connecting them with tangible and meaningful resources, than surveilling their behavior. One young person shared a story of their probation officer who instead of penalizing their missed school days, took them out shopping for school clothes with a voucher, which in turn built trust and motivated the youth to start attending school regularly.¹⁰⁶ Others expressed a hope that the future of probation would be driven by flexibility and connection, where young people could access resources and services in their communities to meet their immediate needs and meaningfully support their transition into adulthood.¹⁰⁷

Revolutionizing probation from control and surveillance to community connection and support demands a holistic shift in culture, practice, and policies. It requires dismantling the current form of probation that prioritizes control, surveillance, and punishment, while simultaneously building communities of care that focus on delivering true healing, accountability, and

developmentally appropriate support. As this shift is underway, probation can play an important role in building trust with youth and community leaders so that probation can support youth by connecting them to community resources and services designed to promote healthy development, healing, and accountability—keeping youth and communities safe. Without this practice, the reinforcing feedback loop between structural inequities and individual biases will keep producing worse outcomes for young people and the public, trapping all of us in a cycle of harm. To break this cycle, we must embrace change rooted in an acknowledgment of past probation system failures, awareness of current probation system behaviors, and movement toward a horizon where probation systems honor our collective humanity with supportive practices that allow young people and communities to thrive.¹⁰⁸

To break this cycle, we must embrace change rooted in an acknowledgment of past probation system failures, awareness of current probation system behaviors, and movement toward a horizon where probation systems honor our collective humanity with supportive practices that allow young people and communities to thrive.

¹⁰³ *Id.*

¹⁰⁴ See generally Nansook Park, *The Role of Subjective Well-Being in Positive Youth Development*, 591 ANNALS AM. ACAD. POL. AND SOC. SCI. 25 (2004).

¹⁰⁵ THE GAULT CTR., [RESEARCH OVERVIEW ON POSITIVE YOUTH DEVELOPMENT](#) (2024).

¹⁰⁶ Youth Interviews, *supra* note 2.

¹⁰⁷ *Id.*

¹⁰⁸ Cf. MEADOWS, *supra* note 19, at 164-70 (“So how do you change paradigms? . . . You keep pointing at the anomalies and failures in the old paradigm. You keep speaking and acting, loudly and with assurance, from the new one. You insert people with the new paradigm in places of public visibility and power. You don’t waste time with reactionaries; rather, you work with active change agents and with the vast middle ground of people who are open-minded. Systems modelers say that we change paradigms by building a model of the system, which takes us outside the system and forces us to see it whole. . . . It requires our full humanity—our rationality, our ability to sort out truth from falsehood, our intuition, our compassion, our vision, and our morality.”).

JOIN THE JUVENILE PROBATION ACCOUNTABILITY COALITION

Youth Empowerment for Advancement Hangout (YEAH Philly) and the Gault Center are committed to dismantling juvenile probation and revolutionizing community care and will be convening a coalition, holding webinars, and working with youth to expose the realities and systemic harms of probation, all the while testing bold alternatives to probation that are rooted in community care instead of surveillance and control. Our aim is to ultimately create a national blueprint to end mass supervision and strengthen pathways for community-based healing, accountability, and safety for all youth.

Recognizing that we can create lasting change when we work together, we are looking for partners who are interested in joining the [Juvenile Probation Accountability Coalition \(JPAC\)](#) to build toward a future that moves us away from mass supervision and toward community-based support that holds generative possibilities for all youth. JPAC will offer a range of opportunities for partner involvement based on your capacity, availability, and interest.

If you are interested in learning more, please contact:

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ABOUT THE AUTHORS

The Gault Center is a national organization dedicated to upholding the constitutional right to counsel for all youth facing arrest. The Gault Center supports, trains, and mobilizes youth defenders and advocates across the country to deliver high-quality legal representation in juvenile court in line with the stated interests of youth to find liberatory passageways out of systems of punishment and into communities of care where youth can safely thrive and flourish. As part of the Gault Center's work to ensure the full panoply of constitutional rights are secured for youth in juvenile court, the Gault Center released a report in 2016 on the [critical need to reform probation orders](#) to promote positive youth development. Since then, the Gault Center worked intensively in nine jurisdictions to lead probation order reform efforts, analyzed over 580 juvenile probation orders, and heard from young people directly impacted by probation to receive their input on how to transform probation.

Youth Empowerment for Advancement Hangout (YEAH Philly) is a community-based organization that addresses the root causes of violence by directly serving young people in Philadelphia through evidence-based programming, promoting policy change to reduce mass incarceration in juvenile and criminal legal systems, and challenging racism, racial disparities, and injustice through court advocacy and case management. A core program of YEAH Philly includes the Violent Crime Initiative (VCI), which focuses on providing tenacious court advocacy and holistic, individualized case management to young people charged with violent or gun offenses. VCI's innovative model, which centers youth voice and tackles violence holistically as a public health issue, has led to lower rates of recidivism, fair treatment and representation, and genuine engagement and trust-building with youth—ultimately making communities safer while promoting the wellbeing of young people.



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