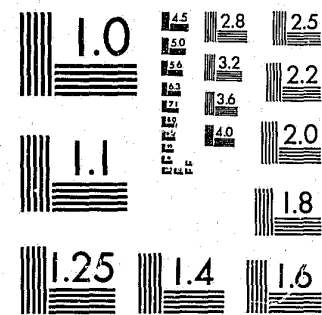


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NEW YORK STATE PROBATION AND PAROLE OFFICERS ASSOCIATION

POLICY STATEMENT ON PROBATION OFFICERS AS PEACE OFFICERS

Probation by statute is part of the Criminal Justice System. Individuals who either plead guilty or are found guilty after trial may be sentenced to probation. The criteria used to sentence a defendant to probation are: "(I) institutional confinement is or may not be necessary for the protection of the public, (II) the defendant is in need of the type of guidance, training or other assistance which can be effectively administered through probation supervision and, (III) the sentence is not inconsistent with the ends of justice."<sup>1</sup>

A sentence of probation always involves some risk to the community, but this risk must be taken. The National Advisory Commission on Criminal Justice Standards and Goals recommends the use of non-institutional means to deal with those convicted of crime as community based corrections, in the long run, is more effective than incarceration in preventing crime.<sup>2</sup> Several Presidential Commissions have also made the same recommendation. To minimize the risk to the community, and to maximize the services to the defendant, probation officers must be fully accountable for the whereabouts, activities and welfare of their clients.

Probation clientele are involuntary (Court ordered) and often unmotivated. This is the most difficult type of individual to deal with in a treatment setting. To overcome some of this negative motivation, professionals in the field of social work and criminal justice both agree that probation officers should work directly with the offender in his home community. The central office downtown is an artificial environment not conducive to community based treatment. Probation should be decentralized.

Working in the defendant's home community can be hazardous. Recognizing these hazards along with the need to provide community protection, the state legislature has conferred peace officer status on probation officers. A peace officer is exempt from the weapons licensing provision of the penal law and possesses powers of arrest. The New York City Probation Department has forbidden its officers to exercise their peace officer powers. The results have been disastrous. The State Comptroller's Audit Number AL-ST-40-74 reports that in New York City, "We were advised that home visits are not mandated, but only encouraged, because of the element of risk involved in having probation officers visit some of the neighborhoods. Most officers have discontinued home visits altogether..."<sup>3</sup> The New York City Probation Department in general order number 10-1-75 states "Among the factors that should be considered in determining the need for home or field visits are ...community conditions and the safety of the staff."<sup>4</sup> This situation existed before the present fiscal crisis. Effective probation supervision is almost non-existent in New York City.

The State Association's policy on firearms is that no probation officer should be denied his right to carry a firearm. However, in order to carry a firearm an officer must, as provided by the rules of the State Division of Probation, undergo training and pass a qualifying test. A firearm should be used by a probation

officer only to protect his life or the life of a third party. A probation officer should not be forced to carry a firearm. The duties of a probation officer are very diverse. Community conditions vary around the state, and duty assignments vary on a daily basis. For some officers, the need to carry a firearm may be minimal as opposed to others who either work directly in communities with high crime rates and/or are assigned the duty of executing a violation of probation warrant or search order.

Although every effort should be made to work with offenders in their home community, we recognize that not all offenders respond favorably to the supervision process. Unfortunately, for those individuals, community based supervision must be terminated in favor of a more structured environment.

In order for the Courts to maximize use of probation services, it is incumbent upon probation to insure accountability to the Courts and the public through effective supervision and enforcement of the Conditions of Probation. Compliance with the Conditions of Probation must be facilitated through positive reinforcement and assistance. For those offenders who are unable or unwilling to take advantage of the opportunity to remain free in the community and who violate their Conditions of Probation, it is essential that they be returned to the Court.

The certain knowledge that violators will be held accountable for their actions is essential to effective supervision. The necessary corollary to this is that offenders must have confidence in the ability of the probation officer to provide positive direction and services, and to be genuinely committed to the best interests of the individual offender. Deficiencies in either area, in services provided, or enforcement of conditions, will result in failures.

In the event that all probation casework practices fail, and the probation officer and his supervisor conclude that the offender's behavior has deteriorated to the point where he clearly is a menace to himself, or the community, or to both, formal violation proceedings should be initiated. Once the decision has been reached to initiate a violation proceeding, a violation warrant should be requested from the appropriate court in order to insure that the community's interest may be safeguarded via the speedy arrest and arraignment of the probation violator. Upon receipt of the warrant, the probation officer and the supervisor should determine the appropriate course of action in accordance with acceptable correctional casework practice. Based on the individual needs of the offender, plus the welfare of the probation officer and the community at large the probation officer and supervisor should develop an appropriate plan of arrest. A probation department should not delegate primary responsibility to other criminal justice agencies for locating and apprehending probation violators. In most cases, the probation officer, with the assistance of another peace officer, should effect the arrest himself.

The reasons for establishing such an arrest policy are as follows:

- (1) The offender is under the supervision of probation and not the police; therefore, it is the probation officer's responsibility to know the whereabouts of the offender.
- (2) Since the probation officer knows and understands the offender, he is in a better position to deal with the offender's anxieties and hostilities.
- (3) The probation officer is familiar with the correctional treatment process and, therefore, can prepare the offender for the future.
- (4) As a result of his skill in the use of authority, and the special training he receives in arrest techniques, the probation officer can make the most effective use of this correctional casework measure, thus allaying the offender's fears during this traumatic experience.
- (5) The probation officer using his intimate knowledge of the offender, his psychological background, his habits, whereabouts, associates, family, friends, jobs, etc. can very quickly locate the offender and using this knowledge, which the police do not have routine access to, plan a safe and speedy arrest.
- (6) Police agencies traditionally give violation warrants a low priority.

Other probation agencies have adopted similar viewpoints regarding probation casework. For example, a principal probation officer in England noted that, "The probation casework process is enriched by enforcement, and the explanation appears to centre on the fact that enforcement is an essential component of all early socializing processes. If there is anything distinctive about enforcement in casework, it is that the caseworker needs more often to show himself as concerned through positive action."<sup>5</sup>

Probation officers have the authority to execute their own violation warrants because the New York State Criminal Procedure Law defines a probation officer as a peace officer. Although the improper use of peace officer powers can subject both the probation officer and his employer to civil suits, the proper use of this correctional tool can preserve the continuity of the correctional treatment process. The former Sanford Bates states: "We must keep in mind that probation is not only social work but also a part of the community's law enforcement efforts. A probation officer may thoroughly understand the principles underlying social work, but he also must remember that he is a law enforcement officer and on occasion this authority must be invoked."<sup>6</sup>

Aside from the philosophical considerations which underlie our policy, there is also a very pragmatic reason. A recent study

completed by the New York State Commission of Investigation reveals that a large number of probation violation warrants were outstanding in a particular jurisdiction due to the inability of the local police to execute these warrants. Because of administrative policy, probation officers in this agency do not execute violation of probation warrants. Although police manpower shortages were noted in the study, it is also noted that probation violation warrants received a "low priority."<sup>7</sup> Since our image and professional standing in the community are dependent upon our ability to safeguard the welfare of the offender and the citizens at all stages of the supervision process, probation personnel should not routinely refer all warrants to local police agencies for execution.

#### FOOTNOTES

- 1 New York State Penal Law, Section 65.00.
- 2 National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections, By The Commission, Washington, D.C., 1973, pp. 597-598.
- 3 New York State Comptrollers Office, Audit Report on the Executive Department, Division of Probation, Audit Number AL-ST-40-74, June 14, 1974, p. 36.
- 4 New York City Probation Department, General Order Number 10-1-75, "Subject: Home and Field Visits", Feb. 14, 1975.
- 5 A.W. Hunt, "Enforcement in Probation Casework," The British Journal of Criminology, vol. 4, Jan., 1964, p. 251.
- 6 "When is Probation Not Probation?," Federal Probation, vol. 24, Dec., 1960, p. 19.
- 7 State of New York Commission of Investigation, Report of the New York State Commission of Investigation Concerning the Warrant Division of the New York City Police Department, Sept. 9, 1974.

**END**