

VI. Probation

John E. Davis III

Probation plays a central role in the juvenile justice system. The philosophy of juvenile courts is to provide individualized treatment for the children who are referred to the court,¹ and probation is one of the juvenile court's main tools in working toward this goal. This section will explore the ways in which juvenile probation services are provided by Arizona's juvenile courts, with emphasis on the juvenile probation officer's role and the statutory structure within which these services are furnished.

A. THE PROBATION SYSTEM

The primary function of the probation staffs of Arizona's juvenile courts is to provide services to juveniles who have been officially adjudicated delinquent or incorrigible and then placed on probation by the court. Since commitment is seldom recommended, the great majority of youths processed by the courts studied are placed on probation.² Contact between these juveniles and probation officers, however, begins before the juvenile is officially placed on probation. In Maricopa County, the juvenile first sees an intake officer and then, if detained, the "institutional probation officer."³ If the youth subse-

1. E. ELDEFONSO, *YOUTH PROBLEMS AND LAW ENFORCEMENT* 62 (1972).

2. In Pima County, only 72 children were committed in 1972 and only two in 1973. PIMA COUNTY JUVENILE COURT STATISTICS FOR 1973. New policies instituted by the presiding juvenile court judge probably account for the drop in commitments. The theme of these policies has been to develop more community based correctional programs for juveniles rather than commit juveniles to state institutions. Similar policies are in effect in Maricopa County, where there were 2,330 dispositions during the first 11 months of 1973 and only 201 commitments to the State Department of Corrections. MARICOPA COUNTY JUVENILE COURT CENTER STATISTICS. Cochise County has a much smaller juvenile population but has consistently had a low commitment rate. ARIZONA STATE DEPARTMENT OF CORRECTIONS, *CHARACTERISTICS OF OFFENDERS* (1973).

3. In Maricopa County, the detention officers in charge of operating the juvenile detention facility are educationally and otherwise qualified to be juvenile probation officers. Usually, 1 year is spent as an "institutional probation officer" [IPO] before moving on to supervising probationers. Since they have the qualifications to be field pro-

quently is adjudged delinquent or incorrigible, a supervising probation officer is assigned who conducts an investigation and makes a recommendation for disposition.⁴ The probation officer's investigation and evaluation of the child and his family, school, and community situation can result in one of three recommendations: If the child and his family are not believed to need the services of the court, he may recommend that the case be closed. Alternatively, if the probation officer feels that the child would benefit from the supervision and guidance of a probation officer and that probation would be sufficient to achieve the correctional aims of the court, then probation is recommended. Finally, if the probation officer believes that a "structured environment" is needed, commitment to the State Department of Corrections is recommended.⁵

In Pima County, probation officers from the Screening and Crisis Intervention Unit [SCI] handle preparation of the dispositional report. If the juvenile is adjudicated delinquent or incorrigible at a contested adjudication and placed on probation, he soon thereafter is introduced to a team of probation officers who will supervise his probationary period. If the juvenile has chosen to admit the charges,⁶ the probation team often attends the uncontested adjudication/disposition hearing in order to meet the juvenile as soon as possible.⁷ In contrast to Pima and Maricopa counties, in Cochise County a single probation officer usually conducts the initial interview with the juvenile, later writes the presentence report⁸ containing the disposition recommendation, and supervises the juvenile's probation.⁹

bation officers, these IPO's often provide valuable assistance to the probation officer who is later assigned to supervise the juvenile's probationary period. Interview with Susan McConville, Institutional Probation Officer, Maricopa County Juvenile Court Center, in Phoenix, Jan. 9, 1974.

4. There are usually 30 days until the disposition hearing at which time the probation officer must submit his report and make his recommendation. This period was criticized as too short, and a proposed court scheduling procedure would extend it to 90 days. Interview with Charles Rose, Probation Supervisor, Maricopa County Juvenile Court Center, in Phoenix, Jan. 23, 1974.

5. Interviews with probation staff, Maricopa County Juvenile Court Center, in Phoenix, Jan. 1974. In addition to aiding the court in making dispositional decisions, the report is designed to allow "the probation officer to objectively review the case and to crystalize his or her observations in written form, as well as providing an opportunity for the probation officer's supervisor to review the substance of the treatment plan." Maricopa County Juvenile Court Center, Departmental Directive 35, July 27, 1973.

6. See section IV, "Adjudication," *supra*, at 344-46.

7. Pima County uses three person teams to supervise juvenile probationers. Each team supervises probationers who live in a particular geographic area of the county. Each juvenile probation officer has his own caseload but is familiar with the caseloads of his fellow team members. This arrangement hopefully provides better supervision because the probation officer has someone who is familiar with the particular case to aid him in making decisions. Interview with Francis Bellman, Assistant Director of Court Services, Pima County Juvenile Court Center, in Tucson, Feb. 6, 1974. See also note 106 *supra*.

8. See text accompanying notes 43-44 *supra*.

9. Interviews with probation staff, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 1974.

During the course of this study, a very close working relationship between probation officers and the judges and referees was observed. The hearing officers expressed total confidence in the juvenile probation officer's professionalism and judgment and felt that their recommendations usually were appropriate and well founded. The probation officer's recommendation at disposition is followed in nearly all cases. Though they follow the probation officer's recommendation in almost every instance, neither the judges nor the referees feel that they merely "rubber stamp" the probation officer's decision. All hearing officers interviewed stressed that they have declined to follow the probation officer's recommendation where they felt it was incorrect. In those few instances in which they disagreed with the recommendation, they usually would continue the case for a few weeks to give the probation officer a chance to "refine" his recommendation. Although the judge is not required to "spell out his reasons for either granting or denying probation," and although he is granted broad discretion in deciding whether to impose incarceration or probation,¹⁰ certain standards must be met in exercising this discretion. The decision must not be capricious or arbitrary, and an investigation of all facts and circumstances necessary for an intelligent exercise of sound discretion is required.¹¹

If a court places a juvenile on probation, a closely supervised period generally follows. During this period, the supervising probation officer maintains continuing contact with the juvenile and makes "collateral contacts" with teachers and parents.¹² The probationary period ideally is viewed as a trial period during which the probationer is aided and encouraged to prove that he no longer needs the supervision of a probation officer. The juvenile probation officer's function is to direct a child's energy into productive and nondelinquent behavior.¹³ In some instances this may involve group counseling sessions, and in others specialized programs or even placement outside the home where a change of environment is deemed productive.

The most common practice in dispositions resulting in probation is to set an indefinite term of probation.¹⁴ This procedure is favored

10. *Cf. State v. Douglas*, 87 Ariz. 182, 186-87, 349 P.2d 622, 624-25 (1960).

11. *Cf. State v. Moreno*, 17 Ariz. App. 548, 549, 499 P.2d 162, 163 (1972). See also Fant, *Impact of the Gault Decision on Probation in Juvenile Courts*, 33 *FED. PROBATION* 14, 16-17 (1969).

12. Having the probationer report in to the supervising probation officer for formal interview sessions is disfavored, and only probation officers in rural areas with large caseloads followed that practice. It is believed that frequent and continuing contact with the juvenile in his own environment will maximize the chances of success. Thus, the juvenile probation officers seek to make contact with their probationers in the "street" rather than in their offices. Interview with Charles Rose, *supra* note 4.

13. Interview with Francis Bellman, *supra* note 7.

14. Interviews with probation staffs in Pima, Maricopa, & Cochise counties, Jan. 1974. By statute the probationary period may last until the youth is 21, ARIZ. REV.

by the staffs of the Pima County and Maricopa County juvenile courts, because it gives the probation officer great flexibility in his attempts to aid in the rehabilitation of the juvenile.¹⁵ The indefiniteness of the probationary period is often a source of confusion to parents and juveniles, however, who do not understand that there is no "sentencing" for a particular crime at a juvenile court disposition. Too often, at disposition hearings observed in Pima and Maricopa counties, the nature of the indefinite period of probation was not sufficiently explained to the juvenile and his parents. It should be standard procedure at dispositions to explain that the probationary period is indefinite and to give the juvenile and his parents some idea of the factors which will be evaluated by the probation officer when he considers recommending termination.

In Maricopa County, the factors considered by the juvenile probation officer in deciding whether to recommend termination are vague. The probation officer evaluates the juvenile's success in solving the problem or problems which caused him to appear before the court, and termination is recommended when the probation officer determines his services are no longer needed.¹⁶ While 1 year is viewed as a "yardstick," the probation officer's supervisor makes a review of the probationer's status every 3 months.¹⁷ The policy in the counties studied was to terminate probation if the probationer reached the age of 18 during the probationary period because youths of this age are assumed to be too old for the services that juvenile court can provide.¹⁸

The situation in Pima County is very similar in that probation is terminated in 90 percent of the cases after 1 year.¹⁹ Since a review can be requested at any time, the staff felt that there were enough checks on the length of probation so that a specific time need not be set by the court or by statute.²⁰ As in Maricopa County, the factors which the probation officer uses in deciding to terminate probation are

STAT. ANN. 8-202(D) (1974), but in practice neither the juvenile institutions of the State Department of Corrections nor the county probation departments generally work with a person over the age of 18. Interviews, *supra*.

15. Interviews with probation staff members, Maricopa & Pima County Juvenile Court Centers, Jan. & Feb. 1974. Juvenile court probation officers and referees interviewed for this project claimed that the indefinite term was not subject to abuse where professionally trained and oriented probation officers determine the length of the probationary period.

16. Interviews with probation staff, Maricopa County Juvenile Court Center, in Phoenix, Jan. 1974.

17. Interview with Charles Rose, *supra* note 4.

18. Some referees and most probation officers in Maricopa County felt that automatic termination at age 18 was required by statute. Interviews with probation staff, Maricopa County Juvenile Court Center, in Phoenix, Jan. 1974. This conclusion is obviously mistaken. See note 14 *supra*.

19. Interview with Francis Bellman, *supra* note 7.

20. Interviews with probation staff, Pima County Juvenile Court Center, in Tucson, Feb., 1974.

not specific. The achievement of certain goals set for the juvenile and related to his particular problems was a significant factor to most probation officers. One of the more concrete criteria was the length of time the probationer had gone without being in trouble.²¹

In Cochise County, the length of probation may or may not be indefinite depending on the probation officer involved. Some officers feel that a definite term of probation is preferable. The period of probation, whether originally set as a definite or an indefinite period, however, usually lasts between 6 months and a year. As in the larger counties, termination is made when, in the probation officer's judgment, the juvenile no longer needs the probation officer's supervision and counseling.²²

All of the juveniles receiving treatment by the probation staff are not, however, official probationers. Many unofficial probationers are provided counseling and treatment through the juvenile court's "diversion" programs, although they have never been adjudicated delinquent or incorrigible. Pima and Maricopa counties have ongoing diversion programs, which involve specialized units of probation officers who provide needed services to troubled juveniles without the necessity of their going through the court process. Pima County's Voluntary Intensive Probation [VIP] Program attempts to prevent demonstrated problem children from violating the law by providing both the children and their parents with counseling at a predelinquency stage. Nevertheless, if the juvenile subsequently violates the law, the VIP probation officer may have the option, depending on the seriousness of the violation, of continuing to work with the youth in an informal capacity or recommending formal court action.²³ A similar organization in Maricopa County is known as the Adolescent Offenses Unit [AOU] and focuses on juveniles who are involved in incorrigibility offenses such as disobedience, truancy, or curfew violations. The goal of the program is similar to Pima's VIP program in that the family as a whole is assisted in resolving problems hopefully before any more serious offenses are committed.²⁴ Although Cochise County lacks the staff to provide the more

21. Interviews with probation staff, Pima County Juvenile Court Center, in Tucson, Nov. 1973, Feb. 1974.

22. Interviews with probation staff, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 1974.

23. Interview with Richard Wilson, Supervisor, Voluntary Intensive Probation Unit, Pima County Juvenile Court Center, in Tucson, Feb. 8, 1974.

24. Interview with Sandra Padigimas, Probation Officer, Adolescent Offenses Unit, Maricopa County Juvenile Court Center, in Phoenix, Jan. 23, 1974.

Although these programs provide a needed service in trying to keep incorrigibles out of the formal processes of the juvenile justice system, they have been criticized by members of the public defenders' staff. The problem arises when the VIP or AOU probation officer determines that the juvenile should be referred for formal court action to be adjudicated delinquent or incorrigible and placed on official probation. The juve-

extensive services which Maricopa and Pima provide through their AOU and VIP programs, it does have a small scale program modeled after Pima's VIP, and it also makes use of consent decrees and prepetition hearings to provide a modified type of diversion program.²⁵ A consent decree is used when a family seeks help to aid it in enforcing the family's rules upon a disobedient child. The juvenile probation officer then helps the family and child draw up a set of family rules which they take home with them.²⁶ The prepetition hearing is another device used in Cochise County to avoid placing first time offenders on probation. It is described as a "double or nothing deal" whereby the probation officer recommends a prepetition hearing be held. At the hearing, the referee admonishes, lectures, and encourages the juvenile to stay out of trouble. It is then explained to him that if he stays out of trouble for 90 days the petition will be dropped, but that if he gets into further trouble he will have to face the same referee who gave him this chance to avoid punishment.²⁷

B. THE JUVENILE PROBATION OFFICER'S ROLES AND DUTIES

The juvenile probation officer is a key figure in the juvenile justice system, who is called upon by statute and practice to perform a wide variety of roles. These roles, however, often are contradictory, and the probation officer frequently is placed in situations where his relationship of trust with the juvenile probationer seemingly collides with his duty to protect society and serve the court.²⁸

The first area of conflict arises due to a provision in the Arizona statutes defining the rights and duties of a juvenile court officer to include "the authority of a peace officer in the performance of his

nile and his family may feel their trust has been abused if information about delinquent or incorrigible acts which was confidentially volunteered to the probation officer is used as the basis of a referral for formal court action. The staff members of these programs claimed to recognize the potential for abuse and also claimed that abuses occurred infrequently if at all. Interviews with the juvenile probation staffs, Maricopa and Pima counties, Jan. and Feb. 1974. One writer has suggested much of the criticism of these diversion programs could be eliminated if it was made impossible to resurrect the original offense or reason for referral as the basis for filing a petition. Gough, *Consent Decrees and Informal Service in the Juvenile Court: Excursions Toward Balance*, 19 U. KAN. L. REV. 733-38 (1971). Thus, only a new offense could be the basis for a petition.

25. See section II, "Detention," *supra* at 267, 268.

26. Interview with Ronald Hunter, Juvenile Probation Officer, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 30, 1974. For a discussion of possible problems with consent decrees, see Comment, *The Consent Decree and New York Family Court Procedure in "JD" and "PINS" Cases*, 23 SYRACUSE L. REV. 1211 (1972).

27. Observations of prepetition hearings, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 30, 1974. It should be pointed out that, if the juvenile contests the second petition, he will face the judge and not the referee.

28. While members of the legal profession may find it difficult to imagine how one person can serve the state at trial, and then represent the defendant at sentencing to argue for suspension of sentence and probation, the probation officer's view of his function allows him to serve in many different roles without ethical problems.

duties.”²⁹ Although most juvenile probation officers interviewed expressed a reluctance to exercise their peace officer powers, almost every one of them related at least one incident where the peace officer label on their identification card had been a useful symbol of authority in helping to avoid what one probation officer called an “ugly situation.” The most common such situation described was one in which a juvenile probationer needed to be taken into custody because of a home environment which had undergone a recent and drastic deterioration. By using their peace officer identification, the probation officer was able to calm the resistance of the parents and take the child into custody without summoning the police. Only one probation officer related instances of using the peace officer powers to apprehend and admonish juveniles in the manner of the pre-*Gault* “juvenile officers” who operated like special police for juveniles. Thus, although their peace officer powers may be quite broad, in practice juvenile probation officers contend that they usually confined the exercise of these powers to situations where the health or safety of the child was in danger.³⁰

Another situation in which the feeling of trust and confidence necessary for the juvenile probation officer's therapeutic role could conflict with his other duties would arise if he were called upon to testify against the juvenile. This problem would be most acute in those situations where the probation officer has been supervising the offender's probation, but also might occur where the probation officer is working with a first offender in preparing the presentence report and disposition recommendation. Arizona case law gives the adult probation officer carte blanche in this situation to testify at a trial or revocation hearing. The adult probationer has been held to have assumed the duty to

29. ARIZ. REV. STAT. ANN. § 8-205(e) (1974). It is not completely clear what obligations and authority is given to the juvenile probation officer by this section. The definitional section provides only that a peace officer is a “law enforcement officer.” *Id.* § 8-201(14) (1974).

30. Interviews with probation staff, Cochise, Maricopa, and Pima County Juvenile Court Centers, in Bisbee, Ariz., Phoenix & Tucson, Jan. & Feb. 1974. Most of the juvenile probation officers interviewed for this study ranked their treatment and rehabilitative functions as being more important than their peace officer function and felt that the “peace officer” label was rather inappropriate. In contrast, adult probation officers rank protection of society as their first priority. This may be appropriate given the different philosophies and purposes of the adult criminal court and the juvenile court. Interview with James Nunez, Adult Probation Officer, Pima County, in Tucson, Feb. 26, 1974.

Probation personnel in administrative positions explained another reason for including “peace officer” as one of the juvenile probation officer's duties and powers. The Public Safety Retirement System for state employees performing hazardous duties is a very advantageous one, and thus the peace officer label provides a basis for arguing that the juvenile probation officer's job is hazardous enough to warrant inclusion within this retirement system.

The *Uniform Juvenile Court Act*, in contrast to the Arizona statutes, states that a “probation officer does not have the powers of a law enforcement officer” and may take a juvenile into custody only if the juvenile's “health or safety” is in danger. The comment to this section of the Act advances the view that the “primary role of the pro-

"truthfully communicate" with his probation officer.³¹ Further, "since the *Miranda* warnings are not required in conferences between a probation officer and probationer the probation officer could properly relate those conferences to the trial judge at the revocation hearing"³² A federal judge has stated, concerning adult probation, that "[t]here is no privity of relationship between the probation officer and the client. The probation officer's first obligation is to the court and no promises should be made . . . the probation officer should not mislead the defendant by telling him that he will keep the information confidential."³³

In contrast to the situation in the adult criminal courts, however, the *Arizona Rules of Procedure for the Juvenile Court* [*Juvenile Rules*] state that the juvenile probation officer may not testify about a juvenile's extrajudicial statements unless they were voluntarily made following an informed and intelligent waiver of his *Miranda* rights.³⁴ In Pima and Maricopa counties, the protection afforded by this rule is strengthened by the county attorneys' reluctance to call probation officers as witnesses at contested adjudications.³⁵ Additionally, it is the unofficial judicial policy in Maricopa County to treat everything the juvenile says to the probation officer as privileged for purposes of the adjudication hearing.³⁶ Probation officers commented that they routinely assure juveniles that they will not testify against them, and that they informed juveniles they could still deny the charges even if they were guilty.³⁷ In a situation where a "physically referred" juvenile³⁸ started pouring out his story concerning a serious offense, probation officers interviewed said they would stop him and tell him to get a lawyer.³⁹

These protections would seem to work reasonably well in the case of a contested adjudication. But where the juvenile has confessed to the probation officer and decided to admit to the allegations of the peti-

bation officer is the care, protection, treatment and rehabilitation of the child [and] incompatible roles such as the power of arrest, conducting the accusatory proceeding in juvenile court [or] representing the child in court, have been excluded." UNIFORM JUVENILE COURT ACT § 6(5) & Comment.

31. *State v. Jackson*, 16 Ariz. App. 476, 478, 494 P.2d 376, 378 (1972).

32. *Id.* A revocation hearing is held to determine whether to revoke an individual's probation and commit him to one of the state institutions or to continue his probation.

33. Cambell, *A Federal Judge's Views on Probation Practices*, 24 FED. PROBATION, 10, 12 (1960). This view may be appropriate for adult probationers but is contrary to the basic philosophy of the juvenile justice system.

34. ARIZ. R.P. Juv. Ct. 18.

35. Interviews with juvenile court staff, Maricopa and Pima County Juvenile Court Centers, in Phoenix & Tucson, Jan. & Feb. 1974.

36. Interview with the Hon. Gerald B. Strick, Maricopa County Juvenile Court Center, in Phoenix, Dec. 1973.

37. Interviews with probation staff, Cochise, Maricopa, and Pima County Juvenile Court Centers, in Bisbee, Ariz., Phoenix, & Tucson, Jan. & Feb. 1974.

38. Physically referred means arrested and brought to the juvenile detention facility by the police. See section I, "Intake," *supra*, at 242-44.

39. See text & notes 53-58 *infra*, for discussion of the probation officer acting as legal advisor.

tion, he usually waives his right to counsel.⁴⁰ Thus, there is no one to object to whatever statements the juvenile probation officer would choose to make. Two examples may help to illustrate the dangers inherent in a situation where a juvenile has made admissions to a probation officer during the predisposition stage and then waived his right to counsel, choosing to admit to the charges in the petition at an uncontested hearing. In Pima County, the juvenile probation officer is sworn as a witness and discusses the case with the referee during the uncontested hearing.⁴¹ Thus, even the most scrupulous efforts by the referee to ensure that the juvenile understands that he may still deny the petition and insist the state prove its case may be to no avail. Since the juvenile has already "let the cat out of the bag" in talking to the probation officer, he may be skeptical about his chances of placing it "back in the bag" and denying the petition.⁴²

This problem is even more acute in Cochise County, where usually only one juvenile probation officer is available to serve an entire community. The police deal directly with the juvenile probation officer, who must handle the case from the instant of referral, through adjudication and disposition, and then supervise the probationary period. The possibility that the probation officer testifying against the juvenile may inhibit the child from exercising his constitutional rights is illustrated by the estimate of one Cochise County juvenile probation officer that there were "only five or six cases in 5 years where the kid refused to cooperate [plead guilty] and said 'prove it.' They usually cop out to the crime and two or three other crimes too."⁴³ The fact that the juveniles also were told that "if you want us to prove it in court you have that right and it won't affect my recommendation," did not seem to have much effect on the number of juveniles who wished to deny the charges against them.⁴⁴

A third situation where the juvenile probation officer might experience a role conflict involves disclosure of information gathered by the probation officer during his efforts to treat the juvenile. Even though the probation officer does not actually take the stand and testify, there is a danger that the probation officer may become too closely identified with the prosecutorial function⁴⁵ and become an investigatory tool for

40. Uncontested adjudications observed in Phoenix and Tucson, Jan. & Feb. 1974. In none of the uncontested hearings observed was the juvenile represented by counsel.

41. Uncontested hearings are almost always heard before juvenile court referees rather than by the juvenile court judge. Interviews with probation staff and hearings observed at the Pima County Juvenile Court Center, in Tucson, Feb. 1974.

42. *Id.*

43. Interview with probation officer, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 1974.

44. *Id.*

45. There are circumstances where the juvenile probation officer cannot avoid this. See text & notes 81-86 *infra*.

the prosecution. This would occur if the confidential information the probation officer has gathered from the juvenile, his family, and friends ended up in the hands of the prosecution and police. The juvenile probation officer's confidential relationship with the juvenile would be destroyed at the outset if the probation officer's function became identified in the juvenile's mind with that of a police investigator.

The potential for such a role conflict is lessened by the Maricopa County guidelines and policies which state that prior to a contested adjudication it is unethical for the probation officer to divulge to either the prosecution or defense any statements made by the child relating to the alleged offense. To further insulate the probation officer from the accusatory function, it also is declared to be inappropriate for a probation officer to attempt to influence the attorneys on either side in any way in the conduct of their case.⁴⁶ The local rule in Pima County is similar but less detailed simply stating that the file containing all matters relating to the juvenile "shall not be made available to any counsel including the County Attorney and counsel for the juvenile until after the adjudication."⁴⁷ These local rules are important, because to give either side too broad a right to compel disclosure could dry up the probation officer's sources of information and injure the probation officer's relationship with the juvenile. The chances of rehabilitating a juvenile through probation would be lessened if, as a result of the information disclosed at the adjudication, the juvenile felt that his trust in the probation officer had been misplaced.⁴⁸

Considerations different from those which were significant during the adjudication arise at the dispositional or sentencing stage. The probation officer's report is very influential,⁴⁹ and either the county attorney or the juvenile's counsel may wish to question or rebut information gathered by the probation officer and reported to the judge to aid his dispositional decision. The *Juvenile Rules* provide that at the dispositional stage the probation officer's report shall be made available to counsel for both the state and the juvenile.⁵⁰ However, the *Juvenile Rules* recognize that complete disclosure may be harmful to the juvenile, and thus the court has the discretion to withhold any material that may be psychologically damaging to the juvenile or his family.⁵¹ One further limitation would seem to be appropriate and that is that the pro-

46. Maricopa County guidelines clearly state, "it is inappropriate for a probation officer to engage in or contribute to the plea bargaining process." Maricopa County Juvenile Court Center, Departmental Directive 40, Nov. 23, 1973.

47. PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 10.

48. See Zastrow, *Disclosure of the Pre-Sentence Investigation Report*, 35 FED. PROB. & BATION, 20 (1971).

49. See text & notes 43-44 *supra* & 56-57 *infra*.

50. ARIZ. R.P. JUV. CT. 9(A).

51. *Id.* rule 9(b).

bation officer's actual recommendation should not be disclosed. The probation officer's recommendation is intended as an aid to the judge only, and disclosure of the other material in the probation officer's report gives the attorneys a fair opportunity to present whatever arguments they feel are appropriate. The Arizona supreme court has applied requirements similar to the juvenile court rule to adult proceedings and held that the probation officer's actual recommendation was not a part of the report subject to disclosure.⁵² This limitation on disclosure also seems appropriate in juvenile proceedings.

Another role which juvenile probation officers often seem to assume is that of legal advisor. Members of public defender offices criticized probation officers for giving juveniles legal advice, suggesting that this advice is often incorrect and may deter the juvenile from asking to be represented by counsel at trial.⁵³ One juvenile probation officer, describing routine procedure, stated, for example, that after reading the charges to the juvenile he would "explain the law to him."⁵⁴ Even if the probation officer does not give misleading advice concerning the likelihood of success of the juvenile's defenses, he may contribute to an injustice by failing to encourage the juvenile to seek legal counsel. The manner in which the probation officer explains the juvenile's rights has a great deal to do with whether the juvenile chooses to exercise them.⁵⁵ Probation officers often seem to explain the juvenile's "right to counsel," for example, in terms of "do you want an attorney or are you willing to talk."⁵⁶ The juvenile then "talks for himself" and explains the situation. The probation officer then may express his opinion of the legal merits of the juvenile's explanation, often resulting in a decision by the juvenile not to contest the allegations of the petition and to waive his right to counsel.

In some of the uncontested hearings observed for this project, juveniles had chosen to waive their rights and to admit to the charges contained in the petition, although they seemed to have a viable defense. In one uncontested hearing,⁵⁷ for example, a juvenile had chosen to admit to charges of aggravated assault. When the referee took his plea everything went smoothly until the petition was read a second time. At

52. *State v. Pierce*, 108 Ariz. 174, 494 P.2d 696 (1972).

53. Interviews with deputy public defenders, Maricopa & Pima County Juvenile Courts Centers, Jan. & Feb. 1974.

54. Interview with probation officer, Pima County Juvenile Court Center, Feb. 1974.

55. A few juvenile probation officers stated that protection of the juvenile's rights was primarily "a lawyer's job." In contrast, many of the juvenile probation officers interviewed rated protection of rights as one of their most important roles.

56. Interviews with probation officers in Cochise, Maricopa & Pima counties, Jan. & Feb. 1974.

57. Hearing observed at Pima County Juvenile Court Center, in Tucson, Jan. 1974.

this point, the boy attempted to explain that his carrying of the knife was not "premeditated," that it was "a boy fighting a man" and that he had acted in self defense. The probation officer then spoke to the referee conducting the hearing to see if the petition could be reworded. Fortunately, the referee and the probation officer ultimately agreed that the hearing should be continued so that a contested hearing could be held where the juvenile could be represented by counsel.⁵⁸ It is possible that the juvenile came up with this defense at the last minute; if not, however, the probation officer clearly should have made sure that this boy did not waive his rights. In another case, a boy of 11, who was described in the probation officer's report as a slow learner, admitted to charges of shoplifting. Later, however, he claimed that he committed the act only because he was threatened with a beating by older boys if he did not steal for them.⁵⁹ Again, this may have been a last second evasion; but if this story had any substance, the boy had a possible defense to the charge he was admitting.

C. CONDITIONS OF PROBATION

When a juvenile is placed on probation certain restrictions are placed on his freedom. The conditions which may be imposed are not set by statute, but rather are left to the court's discretion.⁶⁰ Failure to abide by them may result in revocation of probation, and commitment to the State Department of Corrections. The conditions are of two types: the standard conditions of the probation agreement signed by the juvenile at the disposition hearing⁶¹ and those individualized special conditions which the court may feel are needed in a particular case. The probation officer's recommendation concerning what, if any, special conditions of probation should be imposed is followed without modification in most cases. Additionally, members of the county attorney's office occasionally recommend special conditions which seem advisable based on the interviews they have had with the police and witnesses in preparing to prosecute the case.⁶²

It is reasonable, given the purpose of the juvenile justice system, to expect that all conditions of probation would be reasonably related

58. The conduct of this hearing emphasizes the importance of proper procedure at these uncontested hearings to ensure the juvenile's plea is voluntary and that the juvenile has made a knowing and intelligent waiver of his rights.

59. Hearing observed at Maricopa County Juvenile Court Center, in Phoenix, Jan. 1974.

60. ARIZ. REV. STAT. ANN. §§ 8-241 (1974); ARIZ. R.P. JUV. CT. 8.

61. For representative probation agreement forms, see App. C, *infra*, at 435.

62. Interview with Palmer Schumacher, Deputy County Attorney, Maricopa County Juvenile Court Center, in Phoenix, Jan. 10, 1974.

to rehabilitation and be nonpunitive in nature.⁶³ In addition, due process would seem to require that the conditions should be definite enough to afford the juvenile warning of the type of conduct which is proscribed. It is possible, however, that this latter requirement is not being complied with, since one juvenile probation officer candidly admitted, "[t]he conditions are broad enough to hang them for anything they do." A proper balance must be found between the preservation of the juvenile's due process rights, and the need for adequate discretion and flexibility for the probation officer to properly supervise the juvenile's probation.⁶⁴

The manner in which special conditions of probation are imposed raises the problem of impermissible delegation of judicial authority.⁶⁵ Much conflicting information was offered concerning the manner in which these special conditions become part of the probation agreement. Some probation officers stated that special conditions are not written on the probation agreement; thus, it would seem that they are extrajudicially imposed by the probation officer sometime after the adjudication. The division of functions found in Pima County contributes to extrajudicial imposition of conditions in that one probation officer handles the case until disposition and then makes the report at disposition. After disposition, another probation officer takes over and does the actual supervision of the juvenile during his probationary period. The first officer may not want to tie the supervising probation officer's hands, and the supervising officer may later discover conditions which should be added.

Other probation officers, however, insisted that the special conditions are imposed only at disposition and are made a part of the written agreement. The apparent contradiction perhaps is made moot by a standard condition imposed in all three counties. The probationer in Pima and Maricopa counties agrees to follow the "advice and instruction" of their probation officer, and in Cochise County is "subject to such further rules of probation deemed necessary by the court or the probation officer."⁶⁶ This condition, which is judicially imposed and

63. See AMERICAN BAR ASSOCIATION PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PROBATION § 3.2 (Approved Draft 1970) [hereinafter referred to as ABA STANDARDS]. The CAL. WELF. & INST'NS CODE § 730 (West 1972) specifically mentions that the "fitting and proper" conditions imposed on probation should enhance the juvenile's rehabilitation.

64. For example, conditions that the probationer "properly conduct himself at all times" or attend school "regularly" approach the limits of permissible vagueness. The ABA STANDARDS, *supra* note 63, § 3.1(b), recommend that the probation officer have the "authority to implement judicially prescribed conditions but the conditions should be sufficiently precise so that the probation officers do not in fact establish them."

65. ARIZ. R.P. JUV. CT. 8 requires only that the "order shall set forth the conditions of probation."

66. See probation agreement forms, App. C, *infra*, at 435-37.

part of the written agreement, is so broad that the probation officer may feel he has a basis for imposing additional special conditions.

Ex parte orders, issued by a juvenile court referee, currently impose some continuing judicial control over the conditions of probation in Maricopa County.⁶⁷ Under this procedure, the probation officers must confer with a referee and explain the need for the new special condition. The final decision on its imposition then rests with the referee. This device provides the minimum of control which the court should exercise over the probation officer's imposition of special conditions. There do not seem to be any procedures, beyond those which the probation officer chooses to adopt, for notifying the juvenile and his parents of any special conditions he later finds are necessary.

The most commonly imposed special condition is that the juvenile refrain from associating with certain persons. This condition would seem to be necessary so frequently that it is surprising that only the Cochise County probation agreement form lists it as a standard condition.⁶⁸ The fact that it is not listed on the Pima and Maricopa agreements makes it likely that probation officers extrajudicially impose the condition or make use of the broad standard condition that the probationer follow his "instructions" to limit the juveniles association with certain persons. In discussing this condition in relation to adult probationers the Arizona court of appeals observed that "[p]robation is calculated to aid the individual in rehabilitation. Quarantine from the old crowd and others with a demonstrated propensity toward lawlessness should increase the chances for reformation by removing temptation from improper association."⁶⁹ This statement would seem to have equal application to a juvenile's probation.

Restitution is a controversial condition of probation. Although it is not mentioned in the Arizona statutes or in the standard conditions of probation of any of the three counties, it is sometimes imposed as a special condition.⁷⁰ At least one court, however, has held that it is questionable whether the same court could have jurisdiction both to adjudicate a child delinquent and to compel payment by the parent.⁷¹

67. This procedure is used mainly to change a juvenile probationer's place of residence. It is suggested that it also should be used when any other significant change in the conditions of probation is sought.

68. See App. C, *infra*, at 436-37.

69. State v. Hennessy, 13 Ariz. App. 546, 547, 479 P.2d 194, 195 (1971).

70. In contrast to the Arizona statutes, the applicable California statute mentions restitution as a permissible condition. CAL. WELF. & INST'NS CODE § 730 (West 1972). A representative California probation agreement form provides as one of the standard conditions that "if restitution has been ordered, you must make payment as promptly as possible and as directed by your probation officer." Restitution may involve the actual repair of the damage done or payment of money damages. See App. C, *infra*, at 437-38, for California probation agreement form.

71. *In re Weiner*, 176 Pa. Super. 255, 106 A.2d 915 (1954). In this case the juvenile court had required a father to make restitution. The father appealed, and the appellate

The practice of having a juvenile court order restitution has been questioned by some on the ground that such a decree seems more in line with the function of a court of general jurisdiction awarding a judgment for damages than with the purely rehabilitative function of a juvenile court.⁷² If the juvenile court does in fact have jurisdiction to compel some payment, the amount of restitution ordered should not exceed the damages which are directly related to the juvenile's actions.

There were differences of opinion among juvenile court employees concerning both the desirability of restitution and the frequency of its use in Arizona. Many probation officers and referees felt restitution to the victim was inappropriate because the parents, who were often poor, ended up paying, and the juvenile learned nothing from the experience.⁷³ Other probation officers felt that restitution could be an excellent method of teaching a child the consequences of his actions, and that it was consistent with a rehabilitative goal if carefully fitted to the juvenile's offense. Actual work for the victim of the juvenile's offense was advocated by those favoring restitution to meet the criticism that the parents pay.⁷⁴

Restitution often may be imposed extrajudicially by probation officers. In Maricopa County, interviewers were told that probation officers often see that restitution is done" and in Pima County that, "restitution is used frequently prior to adjudication."⁷⁵ Restitution should only be imposed by the court, and probation officers are perhaps abusing their authority when they impose it outside the formal judicial process. Due process would seem to be better served where the juvenile probation officer recommends restitution as a condition of probation and the juvenile court judge at disposition makes the decision to impose it or not.

Another condition of probation may involve placement outside the home. The applicable statute provides that a delinquent or incorrigible child may be awarded "to a private agency or institution, subject to the supervision of a probation officer."⁷⁶ These private institutions are

court held that the juvenile court had no authority to order restitution. The court pointed out that in the absence of negligence by the parent or a situation where the child is acting as the parent's agent there is no common law liability on a parent of a delinquent child to make restitution. Thus, since the juvenile court statute did not authorize the juvenile court to order restitution, the juvenile court was without jurisdiction to make such an order. *Id.* at 261, 106 A.2d at 918.

72. See Comment, *Juvenile Probation: Restrictions, Rights, and Rehabilitation*, 16 St. Louis U.L.J. 276 (1971).

73. An Arizona statute limits parental liability to \$500 for "malicious or willful misconduct" by their minor child. ARIZ. REV. STAT. ANN. § 12-661 (1956). The parent is liable for all damages if the minor vandalizes a school. *Id.* § 15-446(B) (Supp. 1973).

74. The most enthusiastic support for restitution as a condition of probation was expressed by county prosecutors.

75. Interviews with court staff, Maricopa & Pima County Juvenile Court Centers, Jan. & Feb. 1974.

76. ARIZ. REV. STAT. ANN. § 8-241 (1974).

governed by state regulations.⁷⁷ Members of the Maricopa County juvenile court staff inspect each placement facility at least once a month. The program of the facility is reviewed and all the juveniles are interviewed. If the placement team or supervising probation officer discovers that the program is inadequate or the children are mistreated, utilization of the facility is suspended. In Maricopa County, the probation officer may not place a juvenile outside the home without going through the judicial process.⁷⁸ In Pima County, until recently, placement outside the home was accomplished without any judicial hearing and without the parents' permission. This is no longer allowed and procedures similar to Maricopa County's are now required.⁷⁹ If the juvenile is placed in a Phoenix facility, the supervising probation officer visits twice a month on the average. If the placement facility is in Tucson, the probation officer visits approximately once a week.⁸⁰

D. PROBATION REVOCATION

The role of the juvenile probation officer during the adjudicatory process generally is minimized, since he usually will not be called as a witness and the information he has gathered and placed in his files will not be used.⁸¹ If the juvenile is on probation and he commits some new prohibited act, however, his probation officer often cannot avoid some involvement in the accusatory process.

The petition which is the basis for the probation revocation hearing may be filed either by the juvenile probation officer or by a deputy county attorney. In Maricopa County, the probation officer retains complete authority over the decision whether to file petitions concerning violations of the conditions of probation, or for minor violations of the law.⁸² When the juvenile probation officer originates a petition alleging incorrigibility or a violation of the conditions of probation, he provides certain information to the county attorney. This information includes a copy of the parent's or witness' statement and any pertinent information which will aid the county attorney in the successful prosecution of the case.⁸³ In Cochise County, a petition to revoke may be

77. *Id.* §§ 8-501 to -520.

78. Interview with B. Newman, Probation Officer in Charge of Placement, Maricopa County Juvenile Court Center, in Phoenix, Jan. 11, 1974.

79. Interview with Francis Bellman, *supra* note 7.

80. Interviews with probation staff, Pima County Juvenile Court Center, Nov. 1973, Feb. 1974. Probation in Cochise County generally means "at home," since no local placement facilities are available, and placement outside the county is disfavored. This situation may be remedied in the future as there are plans for a facility in Cochise County which may be able to serve this function.

81. See text & notes 31-51 *supra*.

82. If the probationer is charged with a felony the decision whether to file a delinquency petition lies with the county attorney.

83. Maricopa County Juvenile Court Center, Departmental Bulletin 86, Sept. 5, 1973.

used, and juvenile probation officers have great discretion as to what action will be taken upon notification of subsequent arrest or complaints from the school or family.⁸⁴ In Pima County, a petition to revoke probation is not used at the present time. Instead, a formal delinquency adjudication is started. The petition alleges that a delinquent act has been committed rather than that the conditions of probation have been violated.⁸⁵ This petition may be originated by the probation officer or the county attorney.⁸⁶

Although "probation revocation hearings" are common in Arizona, it is rare for the result of the hearing to be revocation and commitment to the Department of Corrections. In Pima County, only two children were committed in 1972 and only 72 the previous year.⁸⁷ In Maricopa County, while a higher percentage of juveniles are committed, juvenile court referees and probation officers estimated that in only about one out of 10 revocation hearings is the juvenile actually committed. Referees and probation officers interviewed asserted that in most cases the probation officer does not file the petition with commitment in mind, but is trying to "shake the kid up" through the psychological impact of the hearing and the lecture from the bench so that probation can be successfully continued.⁸⁸ Thus, the probation officer's recommendation for disposition after the juvenile is found to be in violation of probation usually is not commitment, but continued probation. Probation officers sometimes take advantage of this opportunity to have a new condition of probation, such as placement outside the home, imposed.

The factors or criteria which cause a juvenile probation officer actually to recommend revocation and commitment to the State Department of Corrections are difficult to define. It is apparent that this decision is almost always reached only after some new act of delinquency or incorrigibility has been committed.⁸⁹ Probation officers seldom recommend revocation and commitment because of a violation of a condition of probation.⁹⁰ Probation officers emphasized that the decision is based essentially on the juvenile's individual circumstances. In most cases everything but the "structured environment" offered by the State Department of Corrections will be tried before the probation officer will recommend commitment.

84. Interviews with probation staff, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 1974.

85. Interviews with juvenile court staff, Pima County Juvenile Court Center, in Tucson, Nov. 1973, Feb. 1974.

86. *Id.*

87. PIMA COUNTY STATISTICS, 1973 FACT SHEET.

88. Interviews with juvenile court staff, Maricopa County Juvenile Court Center, in Phoenix, Jan. 1974.

89. Interviews with probation staffs, Cochise, Maricopa and Pima County Juvenile Court Centers, in Bisbee, Ariz., Phoenix, & Tucson, Jan. & Feb. 1974.

90. Interview with Francis Bellman, *supra* note 7.

The courts have great discretion in ruling on the sufficiency of grounds for revocation. With respect to adult probation, the Supreme Court of Arizona has required only that probation not be revoked arbitrarily or capriciously.⁹¹ An adult probationer's revocation and commitment was upheld where the probationer was found not guilty of the crime charged but failed to rebut allegations of failure to make restitution, drinking, and association with persons of lawless reputation in violation of the conditions of probation.⁹² In reviewing the grounds for revocation of a juvenile's probation, Arizona juvenile courts hopefully would insist on more substantial grounds than those accepted in some recent cases from other states. For example, in Texas no abuse of discretion was found where the trial court revoked a juvenile's probation and committed him because he had been absent from school for 16 days.⁹³ The revocation and commitment was upheld despite the fact that the boy was working with his father and work permit forms had been filled out after a conference with the school principal, who had advised the mother the boy could not keep up with the school work. In Mississippi, probation was revoked although "the court conceded that there had been no violation of any express condition." Instead, probation was revoked because of a violation of an "implied condition of good behavior." The court reasoned that since the probationer should have realized his behavior "might result in revocation," his probation could be properly revoked.⁹⁴

E. LEGAL ISSUES AND PROBLEMS PRESENTED BY ARIZONA'S STATUTORY SCHEME

In Arizona, the juvenile court judge is given the statutory authority to appoint the probation staff of the juvenile court and they serve at his pleasure.⁹⁵ The effect of this statutory scheme is that the juvenile court judge is not only the chief judicial officer of the juvenile court but also bears the ultimate administrative responsibility for the court. There is a danger that the judge's impartiality will be affected by his administrative duties and that the dispositional recommendations of the probation staff will be influenced by the administrative organization.

91. *State v. Fimbres*, 108 Ariz. 430, 432, 501 P.2d 14, 16 (1972), noted in "Admissibility at Probation Revocation Hearings of Incriminating Statements Made to Probation Officers," 15 ARIZ. L. REV. 593, 731, 742 (1973).

92. *State v. Flores*, 108 Ariz. 231, 495 P.2d 461 (1972).

93. See *In re Seay*, 487 S.W.2d 1770 (Tex. Civ. App. 1972); *Echols v. State*, 481 S.W.2d 160 (Tex. Civ. App. 1972).

94. *In re Littell*, 232 So. 2d 733, 736 (Miss. 1970). The juvenile probationer had been taken into custody but apparently not charged with "car prowling," shoplifting, two incidents of assault and battery, and creating a public disturbance.

95. ARIZ. REV. STAT. ANN. §§ 8-202(E), -203(A), -204(A) (1974).

The Supreme Court of Arizona recently was called upon to decide whether the juvenile court judge's administrative responsibilities and supervisory relationship with the juvenile court staff resulted in a juvenile being denied the constitutional guarantee of an impartial judge.⁹⁶ The appellants alleged that the juvenile court judge's position as appointer, director and administrator, coupled with his close and continuous relationship with the staff, increased the potential for prejudicial comment or disclosure outside the record and placed the judge in a position of "partisan allegiance" with the possible effect of influencing him in his weighing of the evidence.⁹⁷ In reviewing these arguments, the court said only that it was persuaded by appellee's argument that the juvenile court judge "merely supervises the operation of the court employees."⁹⁸ The court did not agree that the juvenile court judge's supervisory relationship with the court staff deprived the accused juvenile of the right to a fair and impartial trial, since the juvenile court employees did not forward investigative reports or have any involvement in the case prior to the adjudicatory hearing.⁹⁹

Although the Arizona supreme court found no merit to the challenge made in this case, the statutory structure does present a danger that probation officers recognize. One officer observed that "[i]f I was the kid I would get nervous knowing the probation officers have the judge's ear. We work very closely with the judge and the referees. If the judge wants me fired, he gets me fired."¹⁰⁰ It is incumbent on the judge and the staff to ensure that during the dispositional stage the probation officers do not merely "play to the bench" and recommend only what they feel the judge wants to hear. The supervisor and supervisee roles created by statute must not be allowed to influence either the judge's impartiality or the probation staff's professional judgment.

The superior court judges interviewed for this study generally felt that the present statutory scheme was satisfactory. One emphasized that probation services and probation officers must be "responsive" to

96. *In re Pima County Anonymous*, Juvenile Action No. J24818-2, 110 Ariz. 98, 515 P.2d 600 (1973).

97. Brief for appellant at 67-74, *id.*

98. 110 Ariz. at 102, 515 P.2d at 604.

99. *Id.* at 101-02, 515 P.2d at 603-04. But see *In re Reis*, 7 CRIM. L. RPTR. 2151 (R.I. Fam. Ct., Apr. 14, 1970). In *Reis*, the Rhode Island Family Court held that the Rhode Island juvenile justice system denied juveniles due process of law, because the judge's administrative responsibilities and his relationship with the court staff were prejudicial to fair and impartial judgment. The court held that the judge was placed "in a position of actively participating through [his] own official arm, in the investigative and accusatory phase of his [the juvenile's] proceedings and then sitting in judgment on what its official arm had done, even to the point of passing on the credibility of its probation officer as a witness if he is called upon to testify." *Id.* at 2152.

100. Interview with juvenile probation officer, Pima County Juvenile Court Center, in Tucson, Feb. 1974. Similar comments were made by other probation officers interviewed for this project.

the court, and that there is no inherent conflict in a judge's carrying out both administrative and judicial duties.¹⁰¹ The judges stressed that the "social file" containing the probation officer's findings and opinions was not reviewed until after the adjudicatory stage and was used only for dispositional purposes. It was suggested that any potential conflicts presented by the current system were far outweighed by its benefits, in that the judge's administrative control over probation services gives the judge total confidence in the procedures and services provided by the probation staff and thus aids the judge's decision making at the dispositional stage.¹⁰²

A related problem presented by Arizona's statutory scheme is the potential for administrative instability created by the statutory provision for annual appointment of the presiding juvenile court judge from among the superior court judges.¹⁰³ In the past, insecurity among the probation staff due to the turnover in judges has been cited as a serious problem in the juvenile court system. It has been suggested that the high turnover rate among probation officers in Pima and Maricopa counties in 1969 was a result of the organizational set up, and that recruitment has been adversely affected by the insecurity engendered by this form of administration.¹⁰⁴ The difficulty in fulfilling the dual roles of the judge is compounded by the fact that the administration of probation services requires an expertise in the social sciences which in the opinion of one writer most judges do not possess.¹⁰⁵ Persons in supervisory positions in the counties' juvenile probation systems, however, praised the present set up and found few, if any, problems in practice. Nonsupervisory members of the court staff, however, did point out some problems under Arizona's county organized system with all employees serving at the judge's pleasure. In both Pima and Maricopa counties, there is a rather high turnover of professional staff which may indicate that there are some morale problems created by the present organization.¹⁰⁶ However, most employees agreed that, as long as the

101. Interview with the Hon. Ben C. Birdsall, Presiding Judge, Pima County Superior Court, in Tucson, Jan. 7, 1974.

102. Interview with the Hon. Robert C. Broomfield, Presiding Judge, Maricopa County Juvenile Court, in Phoenix, Jan. 9, 1974.

103. ARIZ. REV. STAT. ANN. § 8-202(E) (Supp. 1973).

104. D. HUEBNER, REPORT OF A STUDY OF PROBATION IN ARIZONA 32, 33 (1969). Recruitment in Pima and Maricopa counties does not seem to be a problem at the present time. Probation Supervisor Charles Rose estimated that in Maricopa County there were five or six applicants for each opening. Interview with Charles Rose, *supra* note 4.

105. HUEBNER, *supra* note 104, at 32-33. According to this study a judge cannot be "expected to exercise the close control required to manage the operation of complex organization in addition to supervising his calendar and court room activities." *Id.*

106. Interviews with probation staff members, Maricopa and Pima County Juvenile Court Centers, in Phoenix & Tucson, Jan. & Feb. 1974. For example a 50 percent turnover of the professional personnel was experienced at the Pima County Juvenile Court Center in an 18 month period during 1972 and 1973.

director of court services stayed, frequent changing of judges did not seriously hurt the probation program.

One alternative to Arizona's county system would be a centralized state agency with responsibility for probation, parole, and correctional facilities such as presently exists in 13 states.¹⁰⁷ Another would be a county system with the probation staff hired by and responsible to the county board of supervisors. Both of these alternatives were criticized strongly by those juvenile court employees interviewed. Most juvenile probation professionals, interviewed for this study, favored a decentralized approach to correctional services. This would be accomplished by expanding county correctional services to provide supervision for both probationers and parolees. Such a reorganization would replace the centralized state parole system and leave that state agency with responsibility for only correctional institutions.¹⁰⁸

Further decentralization seems to be the current trend in probation services. A bill which died in committee in the thirty-first Arizona legislature would have provided state funds to improve community-based probation services through the concept of a state probation subsidy.¹⁰⁹ This proposed statute for probation subsidy, House Bill 2122, was modeled after a California statute which has proved very successful.¹¹⁰ The abortive Arizona version, while preserving the authority of the counties to determine probation methods, provided for the chief probation officer of the county, in consultation with the Director of the Department of Corrections to create and implement programs, with state funding, for the improvement of juvenile and adult probation services in the counties.

In California, there were some initial problems with this state subsidy to probation, because the California statute originally provided the funds based solely on a decrease in commitments; thus, counties with strong ongoing local programs and low numbers of commitments did not receive their fair share of the state funds because of already low commitment rates.¹¹¹ The Arizona version recognized this problem,

107. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 136 (1967).

108. Interview with Francis Bellman, *supra* note 7; interview with Charles Rose, *supra* note 4. But see D. HUEBNER, *supra* note 104, at 48.

109. H.B. 2122, 31st Legis., 2d Reg. Sess. (1974).

The current statute provides for a state subsidy for counties of less than 250,000 population (*i.e.*, all counties except Pima and Maricopa) by allowing these counties to contract with the Arizona Department of Corrections for qualified probation officers, with the state and the county sharing the salary and "expenses." The statute also allows two or more counties to share a juvenile probation officer's services and split the costs. ARIZ. REV. STAT. ANN. § 8-203 (1974). However, none of the rural counties eligible for this program make use of the current statutory provisions. Interview with Charles Rose, *supra* note 4.

110. See R.L. SMITH, A QUIET REVOLUTION: PROBATION SUBSIDY (1971).

111. *Id.* at 46.

and provided that the funds would be apportioned among the counties in proportion to their population. In this way, both large and small counties would have benefited from the availability of state funds.

Probation personnel favor this approach. In Maricopa County, this program would have helped correct the present lack of manpower caused by a shortage of funds.¹¹² The allocation scheme would have helped both the small and large counties and would not have penalized counties, such as Pima, with a very low commitment rate.¹¹³ The approach embodied in House Bill 2122 was favored unanimously by the deputy probation officers doing the actual probation field work. The officers believed that it would reduce caseloads, provide more placement alternatives, and, in general, have a positive effect on probation services.¹¹⁴

Other factors which have an effect on the quality of juvenile probation supervision and treatment are the education, training, salaries, and caseloads of juvenile probation officers. Arizona statutes require that the director of court services and the deputy probation officers in counties of over 250,000 population "shall have at least a bachelors degree" with a preference stated for degrees in the behavioral sciences.¹¹⁵ These minimum standards do not apply in counties of less than 250,000 population. In Pima and Maricopa counties, lack of college educated staff is not a problem, and good in-service and continuing education programs are available through the nearby state universities.¹¹⁶ The smaller counties, however, have problems in these areas. The University of Arizona in Tucson, for example, is too far away to enable Cochise County Juvenile Court employees to use its programs for continuing education. Cochise College in Douglas is a 2-year institution and does not offer the necessary upper division course work, and there are no in-service training programs available in Cochise County. The county has attempted to rectify the lack of in-service training programs by having their new probation officers initially trained in Pima County programs but so far Pima's program has been too crowded.¹¹⁷

Due to low salaries and the training problems noted above, it is not surprising that Cochise County does not have a sufficient number of probation officers and, according to staff members, could use at least

112. Interview with Ernesto Garcia, Director of Court Services, Maricopa County Juvenile Court Center, in Phoenix, Jan. 22, 1974.

113. Interview with Francis Bellman, *supra* note 7.

114. Interviews with probation staffs, Maricopa and Pima County Juvenile Court Centers, in Phoenix & Tucson, Jan. & Feb. 1974.

115. ARIZ. REV. STAT. ANN. § 8-203(C) (1974).

116. Interviews with the juvenile court staffs, Maricopa and Pima County Juvenile Court Centers, in Phoenix & Tucson, Jan. & Feb. 1974.

117. Interviews with juvenile court staff, Cochise County Juvenile Court Center, in Bisbee, Ariz., Jan. 30, 1974.

two more juvenile probation officers. Maricopa County could use additional staff also, as some probation officers in the recent past were supervising as many as 60 juveniles. Currently the average is about 40.¹¹⁸ In Pima County, the caseloads fluctuate up to 40 or more.¹¹⁹ Well-organized volunteer programs with full-time directors supplement the professional staffs in both Pima and Maricopa counties. Cochise County makes use of student volunteers from Cochise College.

The recommended maximum caseload for a juvenile probation officer is 35.¹²⁰ The present Arizona statute recognizes this goal by allowing the appointment of "additional deputy probation officers, not to exceed one for each thirty-five children under protective supervision or on probation to the juvenile court."¹²¹ The wording of this statute contributes to a "statistics game" currently practiced in some counties. Probationers who no longer need active supervision are carried on the records as "on probation" so that there is always at least a one to 35 ratio of probation officers to probationers as required by the statute. Since these children are no longer supervised, probation officers are freed either to give intensive attention to probationers with severe problems or to staff the "diversion" programs.¹²² The unofficial probationers served by these diversion programs are not included within the present statutory wording because the juveniles have not been adjudicated and officially placed on probation. House Bill 2122 would have helped to end this "statistics game" by adding children under "preadjudication supervision, counseling and investigation" to the current wording of "protective supervision or on probation."¹²³ Thus, additional deputy probation officers would have been authorized to meet the needs of these children.

118. Interviews with juvenile court staff, Maricopa County Juvenile Court Center, in Phoenix, Jan. 1974.

119. Interviews with juvenile court staff, Pima County Juvenile Court Center, in Tucson, Jan. & Feb. 1974. Caseload comparisons between the counties are difficult because of the differences in organization. In Cochise County, one probation officer may have to handle every function from referral to supervision. In Pima County, one probation officer (from the Screening and Crisis Intervention Unit) does the presentence investigation and another does the supervision. In Maricopa County, one probation officer handles both presentence investigation and supervision.

120. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 30, 70 (1967). As this study points out, no single standard caseload number can be applied as some probationers need more supervision than others. The figure of 35 is adopted as an average to give lower caseloads to some probation officers whose probationers need close supervision while others can adequately handle larger caseloads. This maximum caseload also is affected by geographical factors which would require probation officers in sparsely populated areas, such as Cochise County, to have smaller caseloads.

121. ARIZ. REV. STAT. ANN. § 8-208(B) (1974). Probation officers advocated this "floor" be deleted from the statute.

122. See text & notes 22, 27 *supra*.

123. H.B. 2122, 31st Legis., 2d Reg. Sess. (1974).

F. CONCLUSIONS AND RECOMMENDATIONS

A vital ingredient for a successful juvenile probation system is a statutory scheme which provides the juvenile court with sufficient resources to accomplish its goals. The statutory scheme also must clearly define the framework within which the juvenile probation staff must operate to ensure that those juveniles who need the court's services are served and those who do not need the court's services are not brought into a system which will do them more harm than good.

Arizona's statutory system for juvenile probation is adequate in some areas but lacking in others. In the areas of funding and administrative organization, there is a need for reform. Also, the statutes and practices which force the juvenile probation officer to perform conflicting roles should be overhauled to allow these officers to concentrate on rehabilitating juveniles without the conflict in roles which is now the norm.

The conditions of probation which are placed on a juvenile probationer need continuing and close scrutiny by the probation staffs and the judges and referees of Arizona's juvenile courts. This scrutiny is needed to ensure that the conditions are not overly broad or vague and also to ensure that all conditions serve the rehabilitative goals of the juvenile justice system. The manner in which these conditions are imposed is an area deserving of special attention by judges and referees.

Juvenile probation officers have great discretion in recommending revocation of probation and in general they use this discretion well. However, the decision must not rest with them alone and judges and referees must not become overly dependent on the probation officer's judgment. The juvenile probation staffs studied for this project were in general progressive, treatment oriented, and hard working. Hopefully this will remain so because they are vested with great discretion and power and operate in a system of justice where many of the formalities and procedural safeguards are relaxed.