



NEW YORK STATE
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2010-11 LEGISLATIVE SESSION

Senate Bill # 7426 (Assembly Bill # 10793)

Places responsibility for supervision of probation services in family court with the judiciary

The New York State Probation Officers Association (NYSPOA) is a professional organization of Probation Officers with the common goal of increasing public safety, raising awareness, and promoting professionalism in the field of community corrections.

The NYSPOA has long advocated for a unified Criminal Justice Policy for New York State. Such a policy would include a single Probation System, commencing with services provided to juveniles at the very front-end of the system, which is seamlessly connected to adult services.

In New York State, there are 57 County-based Probation Departments and a single New York City Probation Department. Probation Officers supervise approximately 125,000 adult criminals (more than the prison and parole population combined), which includes about 50,000 DWI and drug offenders, and 6,000 sex offenders. They conduct approximately 130,000 pre-plea/pre-sentence investigations per year. Furthermore, Probation Officers conduct approximately 50,000 juvenile intakes and 30,000 pre-dispositional investigations per year, along with supervising approximately 15,000 juveniles on probation.

Probation Officers carry out their duties in many different ways throughout the State. Some Probation Officers strictly do adult criminal supervision. Some strictly do juvenile supervision. Some only do juvenile Intake Diversion. Some only conduct investigations. Then yet others are generalists, who perform all these duties within specific geographic areas. Some Probation Departments have separate units providing services to Family Court and Adult Criminal Court. Yet others (generally smaller Counties) have no specific division of duties within their departments.

There is a consistent thread throughout Probation though; all Probation Officers are under one title under Civil Service Law and they are all Peace Officers under the Criminal Procedure Law. There is no separate title for Probation Officers who perform duties for Family Court or Criminal Court. They are all employed by their individual Counties or New York City, but report to the Division of Probation & Correctional Alternatives. This enables a Probation Officer to be employable in any jurisdiction throughout the State and be qualified to perform any probation duties assigned to them, regardless if it is in the Family Court or Criminal Court.

Our organization respects the difficult choices before us all, but our opinion in the matter of bifurcation of Probation is from the vantage point of how it potentially would affect all line Probation Officers. If bifurcation settles in, with Rules & Regulations for Family Court Probation under the Chief Judge potentially diverging from the Rules & Regulations for Criminal Court Probation under the Governor, our concerns would be great. This could lead to separate training requirements and qualifications for two specific and different types of Probation Officers. The potential for two Probation Officer titles could become reality. Morale for line Probation Officers within a department could be adversely affected. For example, under the current system, all Probation Officers are ranked by seniority within each department. But if there were two distinct Probation Officer titles, then seniority may no longer be the basis of promotion or position mobility within a department.

The NYSPOA has long advocated that all Probation Officers be Peace Officers. This status has been granted by the Legislature and the Governor signed it into law under Section 2.10 of the Criminal Procedure Law. In conjunction with this, all Probation Officers are required to attend Peace Officer Training, as well firearms and use of force training. This is required for all Probation Officers, irrespective of their specific duties. Each Probation Administrator in New York State has the discretion to allow their Probation Officers to carry a firearm, make arrests, and/or serve Probation Violation Warrants. Our organization's long standing position that all Probation Officers are one title and as such, are Peace Officers, remains unaltered.

The NYSPOA supports the idea of caseload standards for all Probation Officers. In a divided system, in which Family Court would have the appropriate caseload standards (and ideally fiscal resources to match), Adult Criminal Court supervision and investigation workloads could easily swell to unmanageable levels. Besides demoralizing and burning out Criminal Court Probation Officers, this may result in inadequately supervised criminals and place the public at undue risk.

If Probation in New York State is transferred to the Judiciary, the NYSPOA supports placing it under a separate regulatory agency and not the Chief Administrator of the Courts. This was recommended to then Chief Judge Judith S. Kaye by the Task Force on "The Future of Probation in New York State" in 2007 (which included a NYSPOA representative). Said Task Force suggested creating a new Office of Probation and Correctional Alternatives within the Office of Court Administration. This organization concurs with that recommendation and believes it would address potential "conflict of interest" concerns if the Judiciary was to have direct authority for Probation Services. Historically, one of the strengths of Probation in New York State has been Probation Officers' ability to make independent recommendations to the various Courts, based solely on their expertise as Probation Officers.

In conjunction with a strong regulatory agency, the NYSPOA supports having a strong Probation Commission. Said Commission should approximately reflect the current Probation Commission (as administered by DPCA) and that which was recommended by the Task Force on "The Future of Probation in New York State", in that they both have (would have) seven members. Furthermore, this organization recommends that the Probation Commission include members who are currently serving in the field of Probation, including a COPA member and a NYSPOA board member.

The aforementioned Task force also recommended that the "new" Commission would, "make recommendations to the Chief Judge on all administrative rules relating to the delivery of probation services." The Advisory Board, which is recommended in Senate Bill # 7426, more closely resembles the "Advisory Board" recommended in the aforementioned "The Future of Probation in New York State", which would assist the Probation Commission. The NYSPOA supports such a three-level (i.e. DPCA, Probation Commission, Advisory Board) arrangement, which would ideally ensure that Probation Administrators would be directing service delivery.

The NYSPOA supports adequate funding for all Probation Services. Since approximately 1990, the reimbursement rate to localities for Probation Services has plummeted from approximately 50% to the current less than 17%. If the 2010-11 Executive Budget is passed unaltered, reimbursement to localities will likely be below 15%. The NYSPOA realizes that this trend if unaltered will edge towards a complete “zeroing out” of State aid to localities for Probation Services. Presently, Counties and the City of New York are to be commended for funding the front-end of the State's Criminal Justice System far beyond their responsibility. This organization supports the Judiciary's promise of raising aid to localities funding for Probation Services back in the direction of the 50% reimbursement rate. If the unbalanced funding between Juvenile and Adult Probation Officers only lasts a very short period of time, the ramifications may not be too significant. However, if the bifurcation of funding between Juvenile and Adult Probation Officers persisted, there may be serious public safety and morale issues. Counties may respond by enhancing Family Court Probation Services (a positive outcome), but at the expense of their Adult Criminal Probation Services. If Probation Officers and resources are shifted to Family Court from Adult Criminal Court due to the higher reimbursement rates, the already often seemingly unmanageable criminal workloads could skyrocket.

In summary, the NYSPOA may support Senate Bill # 7426, if the following issues are fully resolved:

- all line Probation Officers would be under either the Executive or Judiciary
- a single regulatory agency, such as the Division of Probation & Correctional Alternatives (DPCA), for all line Probation Officers
- a Probation Commission, established under a regulatory agency
- an Advisory Board, similar to the one proposed, but would assist the Probation Commission
- maintaining one set of qualifications, training, and Peace Officer status for all Probation Civil Service titles
- retaining total control of local service delivery to the discretion of individual Probation Administrators, as is permissible by a independent regulatory agency, such as DPCA
- caseload standards for all line Probation Officers
- 50% reimbursement to localities for all Probation Officers

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