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## RESEARCH

### Should New Jersey Probation Officers Carry Weapons?

By William E. Carr, DPA, LCSW

The principal role of the Probation Officer (PO) is to enforce the sentence of the court. Their primary duties can be divided into two areas, pre-sentence (PS) and after sentence (AS) in either the Family or Criminal Courts. The function of the (PS) PO is primarily investigative. They prepare court ordered investigations and reports and ensure that mandated funds have been paid, et cetera. Some are assigned to liaison posts within the court in order to facilitate the intake function. Family Court officers as well as the (PS) officers normally perform no field work.

Excluding child support enforcement officers who work in the Family Court by enforcing (matrimonial dissolution and non dissolution) court orders, the (AS) officer does perform field work. The (AS) officer acts as the liaisons between the community and the court by supervising individuals sentenced to probation terms (probationers) and by ensuring that mandated funds have been paid. As an officer of the court and employee of the Judiciary, the PO adheres to directives of the Administrative Office of the Court (AOC) and

finally the New Jersey Supreme Court.

In 1974 the administrative director of the AOC issued directive 10-1973 restricting POs, under penalty of discipline, from carrying weapons. In a 2006 decision, the New Jersey Supreme Court ruled that POs served the court and were not law enforcement officers. The ruling served to confirm directive 10-1973 as well as a 1994 order (directive 9-94) which, in order to avoid the appearance of conflicts of interest and maintain the integrity of the sentencing courts, prohibited POs from belonging to police fraternal organizations (Ciancia, 1997).

Instead of the use of weapons, the AOC initiated a specific field policy which authorized field POs to be trained in the use of pepper spray and to partner with other unarmed officers when performing dangerous field work. The officer is also encouraged to seek the assistance of a local police officer when contemplating an impending dangerous situation while in the field.

The Probation Association of New Jersey (PANJ) was not

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enamored with the AOC's policy, they inferred that as full law enforcement officers, since 1992, the states parole officers have been mandated to carry weapons while on duty. Though their duties are clearly different, they contended that effectively, the danger level of supervising probationers and parolees were similar. The paramount duties of parole officers is to supervise individuals that have been paroled from a correctional institution, PANJ contends that POs periodically receive recidivists sentenced to probation by the courts that have committed past offenses equal to those committed by parolees.

The "Probation Officer Safety Community Act" called for the development of a specialized unit of trained and armed POs in each county, to perform potentially dangerous field work instead of the unarmed PO. According to PANJ President George Christie in his support for the act, POs are victimized an estimated 400 times per year. At the time of the debate, the union leader obviously believed that supervising POs who worked in the field were in eminent danger of harm if the act was not implemented (Christie, 2006.)

Eighteen months after PANJ President George Christie voiced his support for provisions of the "Probation Officer Safety Community Act" the school yard slaying of three college students and severely wounding of a fourth, occurred in Newark, New Jersey. At least one of those charged for the crime had previously been on probation in Essex County. Rudolfo Godinez had received two terms of probation; the last, an eighteen month term occurred in 2003. Godinez, an alleged MS-13 recruiter, on May 24, 2010, was found guilty of 17 counts including murder, robbery and weapons offenses. He was sentenced to three consecutive life sentences plus 20 years on July 9, 2010 for his involvement in the crime (NYDailyNews.com. 2010).

The constitutional provision of separation of powers between the two branches of government was the driving factor in this case. Citing the New Jersey Constitution, the Judiciary asserted that by passing the "Probation Officers Safety and Community Act" the legislature transcended their constitutional boundary's and therefore lacked the standing to control judicial employees. The AOC's subsequent rebuff and successful appeal to the Supreme Court insured that field POs would remain weaponless for the unforeseeable future.

A proposed option to place the weapons question on a future ballot as a public referendum as well as a proposed constitutional amendment to place the control of officers under the corrections department, failed to materialize after the Supreme Court resoundingly sided with the AOC and ruled against the original legislation in 2006. The landmark decision also dispelled the notion that the New Jersey Supreme Court could not rule on cases in which its structural composition would be affected (Kiminsky, Rutgers Law Journal, Vol. 38: 1367.)

According to the American Probation, Parole Association, approximately 34 states allowed for POs to carry fire arms during the performance of their duties. Some states, such as California, adult and juvenile probation is administered on the county level. All of California's 58 counties have armed POs with the exception of 9-10 of San Francisco bay Area Counties (APPA, 2006). Prior to the New Jersey Gubernatorial elections in 2009, candidate Chris Christie answered several of PANJ's questions. Candidate Christie stated that if approved by the voters, he would support the creation of a Bureau of Probation within the State Parole Board and transfer all probation functions to the Bureau. As a candidate, Christie appeared to support the

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position of PANJ (PANJ, 10/23/2009). If Governor Christie's position has not changed, the question left unanswered is: how can the overwhelming constitutional obstacles be overcome?

There are now four bills before the New Jersey Legislature that by various means calls for PO's to bear arms, those bills are as follows:

- A877 – Authorizes PO's to exercise police powers
- A965 – Transfers all probation functions and employees to the Bureau of Probation in the State Parole Board
- S2487 – Transfers all probation functions and employees to the Bureau of Probation in the State Parole Board
- SCR37 – Proposes a constitutional amendment authorizing a statute transferring probation functions from the Judiciary to the State Parole board (Bills 2010-2011).

#### Conclusion

An inherent dilemma exists when an autonomous agency is forced to rely on a separate organization to perform an essential aspect of its duties. When field officers are asked to depend upon municipal, county or state police officers, to assist in the supervision of dangerous probationers, the courts desired appearance of neutrality, exemplified by the implementation of (directive 9-94) is jeopardized.

In its quest to provide blind justice to court customers, the Judiciary is necessarily focused on (PS) matters in order to avoid any semblance of partiality, bias or questionable consultations, in fact, Canon 2 of the New Jersey Judicial Code of Conduct is: "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities." The maintenance of the

courts (PS) integrity is paramount to its survival, (AS) services are of lesser importance.

The court is functioning as any police agency will; it functions under the implicit rules of management and public policies, i.e., protect and defend one's primary organization and administrate with primary allegiance to the mission statement of that organization. In that the dilemma began with a constitutional power struggle at the top, there is no reason to believe that resistance will not continue to permeate down through the system. Particularly since only one party, the court, is overtly seeking an alliance.

Accordingly, all too often there are many variables and or conflicts that serve to prevent the long term smooth partnering of probation and the police for the primary function of probation field supervision.

- Contrasting mission statements **(Rehabilitation v. Arrest)**
- Budget restrictions and conflicts **(How many? How long? How often?)**
- Scheduling variances of field officers and community policing officers **(When? Where?)**
- Conflicting public perception **(Who is this officer? Why is he in my house?)**
- Divergent authority **(Who will lead? Who will follow? Why?)**

#### Finding:

The (PS) PO function involves very little or no field work and the safety of those officers is assured. However, the (AS) PO function involves the supervision of probationers, it is law enforcement oriented and their safety in the field is a significant issue. **In order to protect POs and also satisfy the stated objectives of the Judiciary by providing the necessary appearance of objectivity, it is recommended that the administration of (AS) field PO's be**

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**removed from the auspices of Judiciary. An effective re-assessment and improvement of the current policy by restructuring probation services accordingly is warranted.** This would put more law enforcement officers on the streets, enhance the supervision of probationers by protecting

them from themselves; insure the safety of the entire community as well as those dedicated officers who serve it. Ignoring this problem and denying its existence will not alleviate it; doing so will only exacerbate it.

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