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COPS OR COACHES? THE STATUTORY ROLE OF JUVENILE PROBATION OFFICERS IN A TRANSFORMATIVE AGE

Justin Iverson & David S. Tanenhaus***

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“Every probation officer, assistant probation officer, and deputy probation officer shall have the powers and authority conferred by law upon peace officers.”

–California¹

“The duties of a full-time or part-time juvenile probation officer may not be performed by a person serving as a law enforcement officer.”

–Montana²

ABSTRACT

For more than a century, juvenile justice proponents have had a difficult time precisely defining the proper role of the juvenile probation officer while simultaneously stressing that the juvenile probation department is the “workhorse” of the entire system. Existing literature largely focuses on which aspects of policing and social work these officers should embody while ignoring the foundational moorings in state statutes. This Article offers both a historical account of the rise of the juvenile probation officer and a thorough analysis of each state’s laws regarding peace officer status,

* Research Librarian and Assistant Professor at the William S. Boyd School of Law, University of Nevada, Las Vegas.

** Professor of History and James E. Rogers Professor of History and Law at the William S. Boyd School of Law, University of Nevada, Las Vegas. The authors would like to extend gratitude to Riley Helgren and Kiana Parkes for their diligent research assistance on this project. They would also like to thank Maryam Ahranjani, Dacoda Blackburn, Michael S. Green, Eve Hanan, Lydia Nussbaum, Robert Martinez, Lena Rieke, Addie Rolnick, Ashley Rubin, John Valery White, and scholars from the Punishment & Society network for their helpful feedback on an earlier draft of the Article. Finally, this Article could not exist in its best form without the diligent work of the *Michigan State Law Review* editors, to whom the authors are eternally grateful.

1. CAL. WELF. & INST. CODE § 283 (West 2023).
2. MONT. CODE ANN. § 41-5-1703 (2023).

employing authority, the power of arrest, and the power to carry firearms on duty. In this transformative time for the juvenile justice system, reformers must contemplate the proper role of statutory authority in realigning the scope of juvenile probation officers and their duties.

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INTRODUCTION

In his foreword to Pauline Young's classic treatise, *Social Treatment in Probation and Delinquency*, legendary Harvard Law School Dean Roscoe Pound articulated the doctrine of *parens patriae* as a guiding principle in structuring an effective juvenile justice system.³ Dean Pound, a leading proponent of the socialization of law, argued that a key distinction between adult and juvenile probation officers lay in the state's role as a parental authority rather than as a mechanism of penal control.⁴ He differentiated juvenile probation officers from adult probation officers, who were often ex-police officers, merely "holding jobs," and primarily agents of surveillance.⁵ Juvenile probation officers, who were supposed to be trained social workers, should focus on treatment of not only the offender, but the entire family.⁶

3. See Roscoe Pound, *Foreword* to PAULINE V. YOUNG, *SOCIAL TREATMENT IN PROBATION AND DELINQUENCY*, at xxv (1st ed. 1937).

4. See *id.* at xxvi.

5. See *id.* at xxx.

6. See *id.* at xxix.

Dean Pound posited that while police officers can only be expected to employ “enlightened common sense” in dealing with juveniles, we must expect much more from juvenile probation officers.⁷ This includes cooperation between various professionals as well as both public and private agencies toward a common goal of rehabilitation.⁸ Thus, according to Pound, juvenile probation officers and police officers should be different kinds of state actors.⁹ He cautioned against hiring ex-police officers as juvenile probation officers because their work should not be based on a “theory of probation as surveillance.”¹⁰

As Pound explained, juvenile probation required individualized case work.¹¹ “If we look only at one type of case,” he explained, “the probation officer may have to consult a physician, a psychometrist, and a psychologist.”¹² Pound added, “[i]n twenty years of experience as dean with nervous breakdowns, insomnia, and nervous scare on the part of ambitious adult students, I have often wished I could combine the special knowledge and technique of all these.”¹³ He concluded, “[t]he juvenile probation officer has need of access to much more.”¹⁴

Although it was clear that a juvenile probation officer (JPO) should not be a police officer, it was less clear what their actual training, method, and specific role should be.¹⁵ Pound’s foreword included his famous warning:

If one is inclined to minimize the need of systematic administrative supervision of juvenile probation, let him consider one item. Child placement involves administrative authority over one of the most intimate and cherished human relations. The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts and courts of domestic relations. The latter may bring about a revolution as easily as did the former.¹⁶

Juvenile probation mattered so much because it expanded state power so dramatically.¹⁷ And, as the work of abolitionists such as Dorothy Roberts has shown, the child welfare system did shatter countless

7. *See id.* at xxviii.

8. *See id.* at xxix–xxx.

9. *See id.*

10. *Id.* at xxx.

11. *See id.* at xxix.

12. *Id.*

13. *Id.*

14. *Id.*

15. *See id.* at xxx.

16. *Id.* at xxvii.

17. *See id.*

Black families.¹⁸ Roberts refers to this system as “civil family policing”—a counterpart to the criminal law enforcement apparatus.¹⁹ According to Roberts, the effect of these systems operating in ostensibly well-meaning conjunction is mass state surveillance and over policing of impoverished communities without the need to convict people of crimes.²⁰

For more than a century, juvenile justice proponents have had a difficult time precisely defining the proper role of the JPO, while simultaneously stressing that the juvenile probation department is the “workhorse” of the entire system.²¹ Undoubtedly, JPOs are part of Roberts’ civil family policing system in which the state threatens to take children from their homes.²² The question becomes, however, whether their role can simultaneously be to serve as a member of law enforcement and as a counselor to so-called at-risk youth.²³

These questions about the proper role of JPOs are once again pressing because scholars, policymakers, and juvenile justice professionals are examining the relationship between juvenile probation and mass incarceration in the United States.²⁴ Many are calling for a transformation of the philosophy and practices of juvenile justice, including probation.²⁵ Much like Dean Pound, juvenile justice

18. See DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 21–24 (2022) [hereinafter *TORN APART*].

19. Dorothy Roberts, *A Veneer of Benevolence*, *INQUEST: FUTURES* (Apr. 29, 2022), <https://inquest.org/a-veneer-of-benevolence> [https://perma.cc/KAH3-X44U].

20. See *id.*; see also JANE M. SPINAK, *THE END OF FAMILY COURT: HOW ABOLISHING THE COURT BRINGS JUSTICE TO CHILDREN AND FAMILIES* 4–6 (2023) (discussing the family court’s interventionism as an approach that demands individual responsibility for the wellbeing of families and communities—an approach that compounds racism and disdain for those in poverty—when collective action would be more effective and equitable).

21. See Patricia McFall Torbet, *Juvenile Probation: The Workhouse of the Juvenile Justice System*, *OFF. JUV. JUST. & DELINQUENCY PREVENTION*, 1–2 (1996), <https://ojjdp.ojp.gov/library/publications/juvenile-probation-workhouse-juvenile-justice-system> [https://perma.cc/NU4V-CNVA].

22. See *id.*; see also Roberts, *supra* note 19.

23. See Torbet, *supra* note 21, at 2.

24. See CARA H. DRINAN, *THE WAR ON KIDS: HOW AMERICAN JUVENILE JUSTICE LOST ITS WAY* 67 (2017); Josh Gupta-Kagan, *The Intersection Between Young Adult Sentencing and Mass Incarceration*, 2018 *WIS. L. REV.* 669, 672, 709, 730 (2018).

25. See Emily Buss, *Developmental Jurisprudence*, 88 *TEMP. L. REV.* 741, 750–51 (2016); Robert G. Schwartz, *A 21st Century Developmentally Appropriate Juvenile Probation Approach*, 69 *JUV. & FAM. CT. J.* 41, 44–47 (2018); TRANSFORMING JUVENILE PROBATION: A VISION FOR GETTING IT RIGHT, ANNIE E.

reformers in the twenty-first century are concerned that JPOs act like police officers and function primarily as agents of surveillance and punishment.²⁶ JPOs spend too much time arresting youth for violating court-ordered probation conditions and not enough time mentoring youth on making better decisions.²⁷ Although the juvenile justice system began as a protectionist project whereby the state accepts responsibility for youth, over time, especially during the Get Tough Era²⁸ of the 1980s and 1990s, the methods employed by the state became distinctly more punitive rather than investing in programs to reduce crime and delinquency.²⁹ There have been two primary responses: one group seeks to improve the system to align with modern best practices, which we refer to as “institutional reformers,”

CASEY FOUND. 3 (2018), <https://assets.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf> [<https://perma.cc/7B2E-V9R3>]; Josh Weber, Michael Umpierre & Shay Bilchik, *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes*, GEO. UNIV. CTR. JUV. JUST. REFORM 1 (2018), <https://csgjusticecenter.org/wp-content/uploads/2020/02/Transforming-Juvenile-Justice-Systems.pdf> [<https://perma.cc/FF5X-2QNH>]; Samantha Harvell et al., *Bridging Research and Practice: A Handbook for Implementing Research-Informed Practices in Juvenile Probation*, URBAN INST. 3, 7 (Sept. 2019), <https://www.urban.org/research/publication/bridging-research-and-practice-handbook-implementing-research-informed-practices-juvenile-probation> [<https://perma.cc/H8SZ-ML9P>]; Melissa Sickmund, Moriah Taylor & Zoe Livengood, *Desktop Guide to Good Juvenile Probation Practice*, NAT’L CTR. JUV. JUST., at iii (2nd ed. 2020), <https://www.goodjuvenileprobationpractice.org/> [<https://perma.cc/7RYJ-JU4R>]; Samantha Harvell, Leah Sakala & Andreea Matei, *Transforming Juvenile Probation: Restructuring Probation Terms to Promote Success*, URBAN INST. (Apr. 2021), https://www.urban.org/sites/default/files/publication/104093/transforming-juvenile-probation_0.pdf [<https://perma.cc/MP53-C438>].

26. See Patricia Soung, *Is Juvenile Probation Obsolete? Reexamining and Reimagining Youth Probation Law, Policy, and Practice*, 112 J. CRIM. L. & CRIMINOLOGY 549, 554 (2022); Jyoti Nanda, *Set Up to Fail: Youth Probation Conditions as a Driver of Incarceration*, 26 LEWIS & CLARK L. REV. 677, 689 (2022).

27. See Randi Jay Harms, *Detention for Probation Violators: Characteristics of Youth Locked Up For Violating Probation*, WICHITA STATE UNIV., at 12 (May 2012), https://soar.wichita.edu/bitstream/handle/10057/5392/t12017_Harms.pdf.

28. For those unfamiliar, the Get Tough Era was a roughly 20-year period beginning in the 1980s in which punitive policy dominated the juvenile justice reform landscape. See Donna M. Bishop & Barry C. Feld, *Juvenile Justice in the Get Tough Era*, in *ENCYCLOPEDIA OF CRIMINOLOGY & CRIMINAL JUSTICE* 2766 (Gerben Bruinsma & Davis Weisburd, eds., 2014).

29. See BARRY C. FELD, *THE EVOLUTION OF THE JUVENILE COURT: RACE, POLITICS, AND THE CRIMINALIZING OF JUVENILE JUSTICE* 2, 99 (2017); Beth Caldwell, *Shifting the Paradigm: An Abolitionist Analysis of the Recent Juvenile Justice “Revolution”*, 23 NEV. L.J. 115, 124–25, 136–37 (2022).

and another in the vein of Dorothy Roberts is focused on abolition.³⁰ This Article will primarily focus on the reform angle.³¹

Issues about the role of state actors and policing are not limited to the realm of juvenile probation, which is the focus of this Article.³² Rather, the question of whether JPOs should be more like cops or coaches is a subset of the broader question of who should be police in general.³³ For example, Kristin Henning's *The Rage of Innocence* details the massive increase in school resource officers (SROs) from 9,400 in 1997 to over 27,000 by 2016.³⁴ And, as Henning notes, the majority of those officers serve in schools with predominantly Black and Hispanic students.³⁵ National movements are forming in major cities, focusing on racial injustice and calling for a reduction in SROs with hashtags like #CounselorsNotCops to draw attention to the need for youth to receive support rather than punishment.³⁶ This Article contributes to that conversation with cognizable solutions for juvenile probation using the legislative process.³⁷

Institutional reformers such as those at the National Council of Juvenile and Family Court Judges (Council) are leading a campaign to reimagine the role of juvenile probation.³⁸ This includes the Council issuing a 2017 Resolution Regarding Juvenile Probation and Adolescent Development that encouraged “juvenile courts and juvenile probation departments to adopt a developmentally designed juvenile probation system” in which probation officers act more like

30. John R. Sutton, *Social Structure, Institutions, and the Legal Status of Children in the United States*, 88 AM. J. SOCIO. 915, 923 (1983); Dorothy Roberts, *Why Abolition*, 61 FAMILY CT. REV. 229, 231 (2023).

31. See *infra* Part III.

32. See *infra* Section II.A.

33. See Eric Miller, *The Concept of Police*, CRIM. L. & PHIL. (June 17, 2023), <https://doi.org/10.1007/s11572-023-09682-8> [<https://perma.cc/5U98-D2MS>]; ALEX S. VITALE, THE END OF POLICING 27–28 (2017).

34. See KRISTIN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 124 (2021).

35. See *id.* at 132.

36. See *id.* at 310.

37. See *infra* Part III.

38. See *About the National Council of Juvenile & Family Court Judges*, NAT'L COUNCIL JUV. & FAM. CT. JUDGES [hereinafter *About NCJFCJ*], <https://www.ncjfcj.org/about/> [<https://perma.cc/E2UL-7GUM>] (last visited Nov. 10, 2023) (“For those involved with juvenile, family, and domestic violence cases, the NCJFCJ provides the resources, knowledge, and training to improve the lives of families and children seeking justice.”).

youth counselors than police officers.³⁹ According to the Resolution, for example, probation officers should “[h]elp youth improve their decision-making” both “to experience success almost immediately” and “to learn from their noncompliant behaviors.”⁴⁰

More recently, in 2021, the Council published *The Role of the Juvenile Court Judge in Transforming Probation: A Toolkit for Leadership*, which provided instructions for judges who want to become leaders in changing the culture and practice of juvenile probation, while simultaneously addressing the problem of racial equity and the lack of it.⁴¹ These recommendations are based on a generic idea of a JPO who can be either trained or re-trained to implement a more developmentally attuned approach to working with youth and their families.⁴² Some examples of that approach include spending time with juveniles and their families to develop an individualized case plan, incentivizing behavior change, and reducing the use of confinement in response to technical violations.⁴³

The toolkit largely ignores the legislative process and does not consider whether the legal definition of JPOs needs to be updated.⁴⁴ It includes only four suggestions for legislative changes: “[r]epeal any laws or administrative rules that mandate specific conditions in juvenile probation cases,” eliminate “laws or policies that mandate judicial approval for creating or changing probation,” “[a]dvocate to change state laws that restrict judicial discretion by mandating incarceration for young people adjudicated for certain offenses,” and eliminate statutes that treat “legal history as a disqualifier in

39. *Resolution Regarding Juvenile Probation and Adolescent Development*, NAT'L COUNCIL JUV. & FAM. CT. JUDGES (July 15, 2017) [hereinafter *NCJFCJ Resolution*], <https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-juvenile-probation-and-adolescent-development.pdf> [<https://perma.cc/NS8C-RVLH>].

40. *Id.*

41. *See* NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *THE ROLE OF THE JUDGE IN TRANSFORMING JUVENILE PROBATION: A TOOLKIT FOR LEADERSHIP* 12 (2021), https://www.ncjfcj.org/wp-content/uploads/2022/04/NCJFCJ_AECF_Juvenile_Probation_0422_Final.pdf [<https://perma.cc/32E2-UUKU>].

42. *See generally id.* (discussing topics like “Goal-Oriented, Individualized Case Plan for Long-Term Behavior Change,” “Incentives and Rewards to Support Behavior Change,” “Minimal Court-Ordered Conditions,” and “Alternatives to Confinement in Response to Technical Violations.”).

43. *See generally id.* (advocating for alternatives to confinement and promoting case planning as well as behavior change practices).

44. *See generally id.* (discussing that change occurs primarily through judges implementing system changes based on new research).

employment and contracting.”⁴⁵ These four suggestions would help to remove laws that set up youth for failure, mandate incarceration, or block meaningful pathways to economic empowerment, but do not directly address the legal status of juvenile probation officers.⁴⁶

This Article asks two straightforward questions about the juvenile probation field, whose workforce includes between 15,000 and 20,000 professionals and likely costs more than two billion dollars per year.⁴⁷ First, can the role of JPOs be transformed without changing their legal status?⁴⁸ Second, should state legislatures review and perhaps revise their definitions of JPOs?⁴⁹ Juvenile courts are, of course, statutory creations.⁵⁰ The founders of the world’s first juvenile court in Chicago, who included leading Progressive Era reformers such as Jane Addams and Julia Lathrop, worked with members of the Chicago Bar Association to create and distribute model legislation that other states and nations could use to build their own court systems.⁵¹ And, as Julian Mack explained in his influential law review article about the juvenile court, “[p]robation is, in fact, the keynote of juvenile-court legislation.”⁵² By the end of the twentieth century, the juvenile court had become America’s most significant legal export.⁵³

If the time is ripe to reinvent the role of JPOs, then it is also time to redefine their legal status.⁵⁴ This Article examines the legal status of JPOs in all fifty states and the District of Columbia from a statutory perspective.⁵⁵ Notably, probation officers do not necessarily perform the same activities from one state to another.⁵⁶ Rather, the qualifications, level of authority, and scope of duties can vary

45. *Id.* at 25, 43, 72, 80.

46. *See generally id.* at 9–13 (discussing the judge’s role, rather than the juvenile probation officer’s role, in changing policies from detention centers to community programs fostering the growth of the juvenile socially and economically).

47. *See* Richard A. Mendel, *Transforming Juvenile Probation: A Vision for Getting It Right*, ANNIE E. CASEY FOUND. 6 (2018).

48. *See* discussion *infra* Part II.

49. *See* discussion *infra* Part III.

50. *See* Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 116 (1909).

51. *See* DAVID S. TANENHAUS, *JUVENILE JUSTICE IN THE MAKING* 3–22 (2004).

52. *See* Mack, *supra* note 50, at 116.

53. *See generally* JUVENILE JUSTICE IN GLOBAL PERSPECTIVE (Franklin E. Zimring et al., eds., 2015) (detailing examples of the diffusion of the U.S. juvenile court system abroad).

54. *See* discussion *supra* notes 3–53; *infra* Part II; Part III.

55. *See* discussion *infra* Part II.

56. *See infra* Section II.C; Section II.D.

drastically between jurisdictions.⁵⁷ Through this examination of the law on the books, we hope to add to a body of literature that seeks to parse the role of JPOs as more akin to either cops or coaches in each state.⁵⁸

Previous examinations in this field have sought to characterize these officers as social workers, community volunteers, juvenile confidants, counselors, investigators, and correctional officers.⁵⁹ These studies have largely focused on personal accounts, public policy considerations, and judicial proclamations.⁶⁰ In contrast, our Article examines the role considered for JPOs from a legislative perspective through statutory interpretation.⁶¹ We are not the first to do so, but we do offer the most comprehensive analysis to date.⁶²

57. See *infra* Part II.

58. See discussion *infra* Part II; Part III.

59. For an examination of officers as social workers, see Miriam Van Waters, *Force Versus Knowledge: Some of the Problems of Probation*, in NAT'L PROB. ASS'N, PROBATION AND THE PREVENTION OF DELINQUENCY 155, 164 (1923) (stating probation officers "should be social physicians and their attitude should be that of the social worker, he who builds up social relationships. . . . They should use knowledge, not force in the solution of their problems."). For an examination of officers as community volunteers, see

MARY S. JACKSON & PAUL KNEPPER, *DELINQUENCY AND JUSTICE: A CULTURAL PERSPECTIVE* 349 (Jennifer Jacobson ed. 2003) (discussing the first probation officer, John Augustus of Massachusetts in 1841, who became a model for many of the early juvenile probation officers both before and during the early days of formalized systems). For an examination of officers as juvenile confidants, see CYRIL BURT, *THE YOUNG DELINQUENT* 553–54 (1925) (urging probation officers to act as confidants but focus on weaning affection back to traditional parental figures). For an examination of officers as counselors, see DANIEL KATKIN ET AL., *JUVENILE DELINQUENCY AND THE JUVENILE JUSTICE SYSTEM* 341 (1976) (declaring the two primary functions of probation officers to be providing counseling and serving as a link to other community services). For an examination of officers as investigators, see MARK D. JACOBS, *SCREWING THE SYSTEM AND MAKING IT WORK: JUVENILE JUSTICE IN THE NO-FAULT SOCIETY* 268 (1990) (describing the role of probation officers to include investigation of the youth and their family and emphasizing the tremendous discretion they wield in limiting the scope of investigation and keeping irrelevant and delicate matters confidential). For an examination of officers as correctional officers, see Riane M. Bolin & Brandon K. Applegate, *Adultification in Juvenile Corrections: Examining the Orientations of Juvenile and Adult Probation and Parole Officers*, 41 AM. J. CRIM. JUST. 321, 324–26 (2016) (classifying juvenile probation officers as correctional officials).

60. See *supra* note 51 and accompanying text.

61. See *infra* notes 63–66 and accompanying text.

62. See Helen Page Bates, *Digest of Statutes Relating to Juvenile Courts and Probation Systems*, 13 CHARITIES 329, 329–37 (1905); GRACE ABBOTT, *A Topical Abstract of State Laws Governing the Trial and Disposition of Juvenile Offenders*, in *JUVENILE COURT LAWS IN THE UNITED STATES* 119, 137 (Hastings H. Hart ed., 1910);

This Article proceeds in three installments. Part I briefly traces the evolution of juvenile probation from before the creation of the juvenile court to the present.⁶³ Part II examines the statutory frameworks in place across the country to determine which jurisdictions consider probation officers to be “peace officers.” This parsing is reflective of the expectations a community places on probation officers as either enforcers or mentors to youth offenders. Our examination explores the contours of statutory authority to identify appropriate employing entities, whether these officers have the power of arrest, and to what extent they may carry firearms in the course of their duties.⁶⁴ Part III answers the question of whether the role of probation officers can be transformed without changing state law and addresses the normative question of whether legislative change should be prioritized.⁶⁵ This Article concludes by proposing a statutory definition for JPOs that aligns with the Council’s vision for how juvenile justice systems should supervise youth on probation in a transformative era informed by adolescent development research.⁶⁶

I. THE EVOLUTION OF THE JUVENILE PROBATION OFFICER

The practice of probation actually predated the creation of the modern juvenile justice system.⁶⁷ Scholars and public agencies generally credit John Augustus, who was born two years before the Constitution was written and died two years before the Civil War began, with the invention of probation.⁶⁸ He was a Boston shoemaker,

In 2021, the National Conference of State Legislatures (NCSL) established an online database of juvenile probation laws. See Michael Hartman, *Juvenile Probation Overview*, NAT’L CONF. STATE LEGISLATURES (Nov. 16, 2020), <https://www.ncsl.org/civil-and-criminal-justice/juvenile-probation-overview> [<https://perma.cc/4E9C-JPJ9>]. The NCSL discovered that “[m]any states rely on administrative or hiring practices, rather than statute, to define the authority of and qualifications for juvenile probation officers.” See *Database Analyzes Juvenile Probation Laws by State*, ANNIE E. CASEY FOUND. (Apr. 7, 2021), <https://www.aecf.org/blog/database-analyzes-juvenile-probation-laws-by-state> [<https://perma.cc/7PR3-TZ2S>].

63. See *infra* Part I.

64. See *infra* Part II.

65. See *infra* Part III.

66. See *infra* Part III.

67. See *The History of Probation*, CNTY. OF SAN MATEO, <https://www.smcgov.org/probation/history-probation> [<https://perma.cc/4PZV-T9CL>] (last visited Nov. 10, 2023).

68. For public tributes to John Augustus, the “Father of Probation,” see, for example, *Person: John Augustus*, NAT’L PARK SERV.,

teetotaler, and abolitionist.⁶⁹ He coined the term “probation,” which he based on the Latin verb *probare*: to prove or test.⁷⁰ From 1841 to his death in 1859, he posted bail for more than 1,000 prisoners.⁷¹ To commemorate his life and contributions, Massachusetts passed the nation’s first probation statutes, which included an 1869 law that enabled the Board of State Charities to place children in foster care.⁷² But as Grace Abbott noted, “Massachusetts’s example in providing for probation was not followed by other states until the juvenile-court laws revolutionized the treatment of juvenile offenders.”⁷³

Since the establishment of the world’s first juvenile court in Cook County (Chicago), Illinois in 1899, probation officers have been the essential workers in these separate justice systems for juveniles.⁷⁴ Illinois’s An Act to Regulate the Treatment and Control of Dependent Neglected and Delinquent Children defined the role of probation officers (Section 6) before defining who were “dependent and neglected children” (Section 7) or the procedures for the “disposition of delinquent children” (Section 9).⁷⁵ The juvenile court judge had the “authority to appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court.”⁷⁶ These officers were “to receive no compensation from the public treasury.”⁷⁷

In her 1905 analysis of the emerging statutory framework for juvenile court systems, Professor Helen Page Bates documented that nineteen states had formalized probation laws following the 1899 Illinois law.⁷⁸ In other words, since its inception, the juvenile probation system has always been of statutory origin, though the differences between states’ approaches to the mechanics of their respective systems have meant that there has never been uniformity.⁷⁹

<https://www.nps.gov/people/john-augustus.htm> [<https://perma.cc/JK7J-4CRB>] (last visited Nov. 10, 2023); *see also* CNTY. OF SAN MATEO, *supra* note 67 (describing Augustus as “the ‘Father of Probation’”).

69. *See* NAT’L PARK SERV., *supra* note 68.

70. *See* CNTY. OF SAN MATEO, *supra* note 67.

71. *See id.*

72. *See* GRACE ABBOTT, *THE CHILD AND THE STATE* 330 (1938).

73. *Id.*

74. *See* TANENHAUS, *supra* note 51, at 34–36.

75. 1899 Ill. Laws 131, 133–34.

76. *Id.* at 133.

77. *Id.*; *see also* BERNARD FLEXNER & ROGER N. BALDWIN, *JUVENILE COURT AND PROBATION* ix–x (1914) (recommending that courts pay a “sufficient number of probation officers” out of the public treasury and limit the usage of volunteers).

78. *See* Bates, *supra* note 62, at 329.

79. *See id.* at 329, 331.

As Professor Bates noted, “the [Illinois] statute both in form and contents [was] well adapted to local conditions.”⁸⁰ She added that most other states had copied either parts or the entirety of the Illinois provision into their own codes in the early years after its adoption but then adapted these juvenile laws to local conditions—a trend that extends beyond the scope of juvenile probation and has continued.⁸¹

Initially, volunteers served as probation officers for fledgling, cash-strapped juvenile court systems across the country.⁸² This began to change as the juvenile court became a fixture of local governance.⁸³ For example, the field’s first textbook, *Juvenile Courts and Probation*, stated, “There must be a sufficient number of probation officers, paid out of the public treasury, appointed on merit and because of peculiar qualifications.”⁸⁴ Its authors, Bernard Flexner and Roger Baldwin, stressed that “the probation office must be conducted in a systematic and business-like manner so as to insure efficient treatment of each individual case.”⁸⁵

Flexner and Baldwin also included a model statute that defined the duties of probation officers (Section XXVI).⁸⁶ These duties included investigating cases, presenting information in court and providing assistance to the judge, and to “take charge of any child before and after hearing as may be directed by the court.”⁸⁷ Their model act said that “[p]robation officers shall have all the powers of peace officers anywhere in the State for all purposes of this act.”⁸⁸ Probation officers required these powers because they would have to arrest and detain children “in cases of runaways, children so far beyond parents’ control that they are unable to bring them to court, and exceptionally serious offenses.”⁸⁹ Flexner and Baldwin, however, emphasized, “[t]he patrol wagon should never be used to take children into custody.”⁹⁰ Thus, JPOs should have the powers of peace officers but not act like police officers.⁹¹

80. *Id.* at 329.

81. *See id.*

82. *See* FLEXNER & BALDWIN, *supra* note 77, at 84.

83. *See id.* at vii–viii.

84. *Id.* at x.

85. *Id.*

86. *See id.* at 268.

87. *Id.*

88. *Id.*

89. *Id.* at 19.

90. *Id.*

91. *See id.*

Flexner and Baldwin's work had a significant impact on the creation and statutory underpinnings of JPOs, and the authors similarly continued to have an impact on the legal issues related to them.⁹² Baldwin, who served as the Chief Probation Officer of the St. Louis Juvenile Court, later founded the American Civil Liberties Union after World War I.⁹³ Flexner continued to work on juvenile law matters into the 1920s.⁹⁴ This included drafting the Washington, D.C. juvenile code and co-authoring an important study for the Federal Children's Bureau on the legal aspects of the juvenile court.⁹⁵

By the mid-1920s, juvenile probation had become a paid profession similar to social work and public-school teaching.⁹⁶ This change in status required amending legislation to make JPOs salaried.⁹⁷ Cities such as Chicago and Pittsburgh had pitched battles to use the civil service examination system, instead of political patronage, to hire qualified people to do this social work.⁹⁸ In smaller communities and rural areas, which had not established probation departments, a combination of police officers, social workers, relief agents, school attendance officers, and volunteers supervised children's cases.⁹⁹

In cities with large probation departments, the division of labor reflected gendered, racialized, and religious considerations.¹⁰⁰ For example, women supervised girls and younger boys, whereas men supervised adolescent boys.¹⁰¹ During the first half of the twentieth century and sometimes beyond, probation departments also enforced

92. See, e.g., Clark M. Peters, *Social Work and Juvenile Probation: Historical Tensions and Contemporary Convergences*, 56 *SOC. WORK* 355, 356–57 (2011).

93. See Patrick C. Brayer, *Roger Nash Baldwin and the St. Louis Civil Liberties Trial: Celebrating 100 Years of the ACLU with a Search for the Organization's Conceptual Founding*, 59 *WASH. UNIV. J.L. & POL'Y* 9, 10, 22 (2019).

94. See, e.g., CHILDREN'S BUREAU, U.S. DEP'T OF LAB., PUBL'N NO. 99, *THE LEGAL ASPECTS OF THE JUVENILE COURT* (1922) (showing Flexner had co-authored a piece related to juvenile law in 1922).

95. See, e.g., *id.*

96. See Elizabeth D. Katz, "Racial and Religious Democracy": *Identity and Equality in Midcentury Courts*, 72 *STAN. L. REV.* 1467, 1515 (2020).

97. See, e.g., 1905 Ill. Laws 151–52.

98. See TANENHAUS, *supra* note 51, at 82–83; see also A "New Deal" for the *Juvenile Court in Pittsburgh*, 8 *SOC. SERV. REV.* 547, 549 (1934).

99. See Evelina Belden, CHILDREN'S BUREAU, U.S. DEP'T OF LAB., PUBL'N NO. 5, *COURTS IN THE UNITED STATES HEARING CHILDREN'S CASES: RESULTS OF A QUESTIONNAIRE SURVEY COVERING THE YEAR 1918* 55 (1920).

100. See Peters, *supra* note 92, at 357.

101. See *id.*

the color line that permitted Black probation officers to work only with Black children and their families.¹⁰² Further, many probation departments made assignments based on religious considerations so that, for example, Catholic probation officers were responsible for Catholic wards of the court.¹⁰³

The designated role of the probation officer during adjudicatory hearings also changed profoundly.¹⁰⁴ For example, before the Supreme Court's Due Process Revolution of the 1960s, probation officers often played the contradictory roles of representing the interests of both the juvenile and the state before the court.¹⁰⁵ This changed after defense counsel and prosecutors became regular participants in juvenile court proceedings during the 1970s.¹⁰⁶

In the increasingly adversarial context of the 1970s, the Supreme Court assessed the legal status of a JPO.¹⁰⁷ Charles P. Christiansen, a probation officer in Los Angeles, had instructed sixteen-year-old probationer Michael C. to ask for his probation officer if he were ever taken into police custody.¹⁰⁸ During a subsequent police interrogation, Michael C. asked, "Can I have my probation officer here?"¹⁰⁹ The following exchange then took place:

"Q. Well I can't get a hold of your probation officer right now. You have the right to an attorney."

"A. How I know you guys won't pull no police officer in and tell me he's an attorney?"

"Q. Huh?"

"A. [How I know you guys won't pull no police officer in and tell me he's an attorney?]"

"Q. Your probation officer is Mr. Christiansen."

"A. Yeah."

"Q. Well I'm not going to call Mr. Christiansen tonight. There's a good chance we can talk to him later, but I'm not going to call him right now. If you want to talk to us without an attorney present, you can. If you don't

102. See Elizabeth D. Katz, "Racial and Religious Democracy": Identity and Equality in Midcentury Courts, 72 STAN. L. REV. 1467, 1472 (2020).

103. See *id.*

104. See H. TED RUBIN, JUVENILE JUSTICE: POLICY, PRACTICE, AND LAW 250 (2d ed. 1985).

105. See *id.* at 246–47.

106. See *id.* at 249–50.

107. See, e.g., *Fare v. Michael C.*, 442 U.S. 707, 709 (1979).

108. See *id.* at 712.

109. See *id.* at 710.

want to, you don't have to. But if you want to say something, you can, and if you don't want to say something you don't have to. That's your right. You understand that right?"

"A. Yeah."

"Q. Okay, will you talk to us without an attorney present?"

"A. Yeah I want to talk to you."¹¹⁰

Michael C. then made incriminating statements, which were used against him in court.¹¹¹ His attorney argued that the teenager had invoked his right to counsel by asking for his probation officer and sought to have the incriminating statements excluded.¹¹²

The California State Supreme Court held that a juvenile asking for his probation officer was analogous to a child asking for a parent, which was tantamount to an adult asking for a lawyer.¹¹³ As the court explained: "By so holding, we recognize the role of the probation officer as a trusted guardian figure who exercises the authority of the state as *parens patriae* and whose duty it is to implement the protective and rehabilitative powers of the juvenile court."¹¹⁴ Kenneth F. Fare, Acting Chief Probation Officer of the Los Angeles County, on behalf of the State of California, requested a stay and appealed the decision to the U.S. Supreme Court.¹¹⁵

In a 5–4 decision, written by Justice Harry Blackmun, the Supreme Court overturned the decision of the California Supreme Court.¹¹⁶ The justices factored the statutory classification of probation officers in California as peace officers into their determination that a juvenile requesting to speak with his probation officer is neither a *per se* request to remain silent nor tantamount to requesting an attorney.¹¹⁷ As the Court explained, the juvenile probation officer "is a peace officer, and as such is allied, to a greater or lesser extent, with his fellow peace officers."¹¹⁸ The Court added:

He owes an obligation to the State, notwithstanding the obligation he may also owe the juvenile under his supervision. In most cases, the probation officer is duty bound to report wrongdoing by the juvenile when it comes to his attention, even if by communication from the juvenile himself. Indeed,

110. *Id.* at 710–11.

111. *See id.* at 711.

112. *See id.* at 711–12.

113. *See Fare v. Michael C.*, 579 P.2d 7, 9 (1978).

114. *Id.* at 10.

115. *See Fare*, 442 U.S. at 709.

116. *See id.* at 728–29, 733.

117. *See id.* at 720.

118. *See id.*

when this case arose, the probation officer had the responsibility for filing the petition alleging wrongdoing by the juvenile and seeking to have him taken into the custody of the Juvenile Court. It was respondent's probation officer who filed the petition against him.¹¹⁹

From the perspective of the high court, California's statutes effectively made Mr. Christiansen into an agent of law enforcement, rather than a child's trusted guardian.¹²⁰

Since then, the role of JPOs has fluctuated between that of a social worker and a police officer.¹²¹ By the mid-1980s, for example, one study of juvenile probation officers revealed that the majority saw law enforcement as their primary responsibility.¹²² The California Youth Authority exemplified this mismatch between titles and duties around the 1980s in which their JPOs called themselves counselors despite acting like prison officers.¹²³ These JPOs were dues-paying members of the California Correctional Peace Officers Association, which actively lobbied at the time for the harsh sentencing laws that saw more than ten thousand youth housed in inhumane conditions.¹²⁴

This perspective on juvenile probation aligned with changes in political culture.¹²⁵ At the same time that the Reagan Administration was preparing to launch a new War on Drugs, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, Alfred Regnery, published an article titled *Getting Away with Murder: Why the Juvenile Justice Systems Need an Overhaul*.¹²⁶ Regnery argued that sixteen-year-olds who commit crimes are "criminals who happen to be young, not children who happen to commit crimes."¹²⁷ They needed to be held accountable, not rehabilitated.¹²⁸ This rhetoric about youth violence foreshadowed the wave of legislation during the 1990s to

119. *Id.* In 1976, California revised its Welfare and Institutions Code to remove the discretionary authority of a probation officer to file juvenile court petitions for alleged crime violations and placed that authority with the prosecuting attorney. This new law went into effect in 1977. *See* CAL. WELFARE & INST. CODE § 777(a) (West 2018).

120. *See* *Fare*, 442 U.S. at 720.

121. *See* Soung, *supra* note 26, at 553.

122. *See id.* at 581.

123. *See* NELL BERNSTEIN, *BURNING DOWN THE HOUSE: THE END OF JUVENILE PRISON* 236 (2014).

124. *See id.*

125. *See, e.g.*, DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 193 (2001).

126. *See* Alfred S. Regnery, *Getting Away with Murder: Why the Juvenile Justice System Needs an Overhaul*, 34 *POL'Y REV.* 65, 65–68 (1985).

127. *Id.* at 65.

128. *See id.* at 67–68.

prosecute more adolescents as adults and incarcerate them in adult prisons.¹²⁹

As we pointed out in the introduction, Patricia Soung and Jyoti Nanda have demonstrated how the law enforcement responsibilities of probation officers have made juvenile probation into one of many legal systems that contributes to the phenomenon of mass incarceration in the United States.¹³⁰ A consensus is now emerging among juvenile justice experts to substitute youth development-focused systems for law enforcement in the administration of juvenile law.¹³¹ But can and should this be done without changing the legal status of JPOs?¹³² The next Part examines the legal status of juvenile probation in all fifty states, beginning with the question of whether JPOs are considered peace officers.¹³³

II. ARE JUVENILE PROBATION OFFICERS CONSIDERED PEACE OFFICERS?

The following sections canvass the fifty states' probation officer-focused statutes to illuminate in which jurisdictions these cornerstones of the probation system are considered more like law enforcement or more like social service. This is not easy research, nor does it demonstrate the scope of a state's conceived role for juvenile probation. Rather, these components are just that—pieces of the puzzle that comprises the conceived role for probation workers as either cops or coaches for system-involved juveniles.¹³⁴ We have compiled a chart of the results in the Appendix, though it should not be considered without the context given in this Article.¹³⁵

What follows is the result of four separate fifty-state surveys delving into the topics of (a) peace officer classification,¹³⁶ (b) employing entities,¹³⁷ (c) the power of arrest,¹³⁸ and (d) authority

129. See FRANKLIN E. ZIMRING, *AMERICAN YOUTH VIOLENCE* xi, 11–12 (1998); see also DAVID ALAN SKLANSKY, *A PATTERN OF VIOLENCE: HOW THE LAW CLASSIFIES CRIMES AND WHAT IT MEANS FOR JUSTICE* 153 (2021).

130. See generally Soung, *supra* note 26; Nanda, *supra* note 26.

131. See Soung, *supra* note 26, at 588.

132. See *id.* at 570–71.

133. See *infra* Part II.

134. See Nanda, *supra* note 26, at 699.

135. See *infra* Appendix.

136. See *infra* Section II.A.

137. See *infra* Section II.B.

138. See *infra* Section II.C.

to carry firearms in the course of duty.¹³⁹ In many cases, the statutes are silent on the surveyed issues, leaving discretion to juvenile court judges, chief probation officers, and other officials. In rare cases, and only when statutory guidance was silent on an issue, court rules were used as data points. Nevertheless, this analysis serves as an exercise in democratic transparency. It reveals how legislatures and other decision makers have expressed the will of voters in formalizing official law enforcement powers and juvenile justice approaches.

As such, this Article first examines the standards and definitions commonly used to designate someone as a peace officer. While some states are explicit in labeling probation officers as such, others string together a series of references to “peace officer power” or “peace officer authority” in limited scenarios. The vagueness of these references complicates the analysis and leaves statutory schemes open to fragility if one or more statutes in the chain are modified without careful consideration of a revision’s scope.

Moreover, separate but not inseparable from the analysis are the issues of the specific powers granted to probation officers. In many states, the power to arrest and the authority to carry a firearm are granted (or denied) to probation officers. There are important limitations and exceptions that will be addressed, but oftentimes these considerations are tied to (or omitted from) the state’s definition of peace officers. In sum, these considerations help form a more complete picture of whether states view their juvenile officers truly as officers or rather as coaches, counselors, social workers, or other support-based professionals.

A. Peace Officer Status

A 2006 survey by the American Probation and Parole Association (APPA) looked closely at which states characterized JPOs as peace officers.¹⁴⁰ In its analysis, APPA used a combination of information-gathering techniques, including statutory examination, telephone inquiries, policy manual reviews, and other, less clearly defined, methods.¹⁴¹ APPA found that JPOs in fifteen states and the

139. See *infra* Section II.D.

140. See, e.g., *Adult and Juvenile Probation and Parole National Firearm Survey*, AM. PROBATION & PAROLE ASS’N, at 32 (2006) [hereinafter APPA], https://www.appa-net.org/eweb/Resources/Surveys/National_Firearms/docs/NFS_2006.pdf [<https://perma.cc/NJL4-MC5G>].

141. See *id.* at 4, 6.

District of Columbia held peace officer status.¹⁴² By comparison, in thirty-three states, JPOs were not considered peace officers.¹⁴³ APPA did not identify results for Ohio or Vermont.¹⁴⁴

There are two major limitations to the usefulness of the APPA survey.¹⁴⁵ First, it appears from the introductory section that this report was intended to be updated periodically, as this was the second edition.¹⁴⁶ At eighteen years of age, the survey remains useful for historical context, but in the meantime, there have been many advances in penological and rehabilitative theories, particularly in the juvenile justice space.¹⁴⁷ Combining those changes with the potential for rapidly changing policies and practices across three branches of each of the fifty states, it becomes clear that a fresh approach is required.¹⁴⁸

The second limitation of the report is that it provides neither citations nor access to the sources relied on.¹⁴⁹ Frequently the survey makes statements like the following: “There is a statewide policy prohibiting officers from carrying a firearm” or “[t]here are statutes in place that define law enforcement officers,” but curious researchers must either take those statements on faith or otherwise dig into a given state’s codes to uncover the statute(s).¹⁵⁰ Circling back to the first issue, there is great potential for those statutes to be either incorrect or repealed.¹⁵¹ Thus, in this Article, we made a commitment to maintaining extensive footnotes for the benefit of future researchers and/or the policymakers they support.¹⁵²

Turning to the issue of peace officer status, it should be noted that the states—and smaller subdivisions within them—have their

142. See *id.* at Table: Peace Officer Status of Probation and Parole Officers October 2006.

143. See *id.*

144. See *id.*

145. See *id.* at Introduction.

146. See *id.*

147. See generally *id.*

148. See discussion *supra* notes 146–147 and accompanying text.

149. See APPA, *supra* note 140, at 1–7.

150. *Id.* at 7, 21.

151. Compare *Casillas v. People*, 427 P.3d 804, 811 (Colo. 2018) (citing Colorado statute and stating “[a]s peace officers, juvenile probation officers have ‘authority to enforce all laws of the state of Colorado’ and may carry firearms while performing their duties”), with APPA, *supra* note 140, at 7.

152. See discussion *infra* Section II.D.

own criteria for defining the term “peace officer.”¹⁵³ Some do so explicitly while others rely on a common set of factors to infer such status.¹⁵⁴ Peace officers generally hold a badge as a physical representation of the authority they wield.¹⁵⁵ They are also required to undergo approved training programs on a wide variety of topics.¹⁵⁶ These programs are usually called “academies” and are often approved through state-backed Peace Officer Standards & Training (POST) commissions.¹⁵⁷

Regarding their functions, peace officers are granted bounded discretion in the use of force to effectuate their primary goals of investigation, arrest, and detention.¹⁵⁸ This may involve wielding a firearm, training and deploying K-9 units, and using riot gear during protests, among a wide range of other tools and tactics.¹⁵⁹ The most consistently included category of persons are police officers, though in many states, corrections officers and adult probation officers are also termed “peace officers.”¹⁶⁰ Notably, in many states, there are synonymous titles for the same role with the most prominent example being “law enforcement officer.”¹⁶¹

Although JPOs have the word “officer” in their title, it is not immediately clear whether they are considered peace officers in every jurisdiction.¹⁶² Relatedly, as with peace officers, there are alternate titles for workers in this profession, including “probation counselors,” “court services officers,” or “case management specialists.”¹⁶³

153. There is also theoretical literature about the role of the police in modern societies. *See, e.g.*, EGON BITTNER, *THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY* 39 (1970).

154. *See, e.g., id.*

155. *See Police Badge — Origins and Meaning*, D.C. METRO. POLICE MEM’L & MUSEUM, <https://www.dcpolicememorial.org/the-police-badge-origins-and-meaning/> [<https://perma.cc/CET3-VTFG>] (last visited Nov. 10, 2023).

156. *See, e.g., Peace Officer: Required Training*, CAL. COMM’N ON PEACE OFFICER STANDARDS & TRAINING, <https://post.ca.gov/Peace-Officer-Training> [<https://perma.cc/5XKE-4LWF>] (last visited Nov. 10, 2023).

157. *See, e.g.*, CAL. COMM’N ON PEACE OFFICER STANDARDS & TRAINING, <https://post.ca.gov/> [<https://perma.cc/9L27-F2TV>] (last visited Nov. 10, 2023); NEV. COMM’N ON PEACE OFFICER STANDARDS & TRAINING, <https://post.nv.gov/> [<https://perma.cc/M9KL-3TML>] (last visited Nov. 10, 2023).

158. *See discussion infra* Section II.C.

159. *See discussion infra* Section II.D.

160. *E.g.*, CAL. PENAL CODE § 830.5 (West 2020).

161. *E.g.*, IOWA CODE § 507E.8 (2023).

162. *See discussion infra* notes 246–255.

163. *E.g.*, WASH. REV. CODE § 13.04.040 (2023).

Reformers may wish to consider whether a particular title for JPOs best supports their vision.¹⁶⁴

One reason for the discrepancy in status between peace officers and JPOs may be that JPOs are less directly employed by law enforcement agencies than other officers.¹⁶⁵ Rather, JPOs may be court employees or serve within a department of corrections, or under some other unique agency.¹⁶⁶ Further complicating the analysis is the fact that many states clearly distinguish authority between adult and juvenile probation officers with the adult version generally occupying a more obvious role as a law enforcer.¹⁶⁷ This Article does not deeply explore the differences between adult and juvenile probation officers, but the authors recognize the many and significant differences in both statute and practice.¹⁶⁸

Of primary focus here is the fact that a large number of states omit discussion of peace officer status from their statutory definitions sections.¹⁶⁹ Nevertheless, several clues make it likely or not that JPOs are peace officers.¹⁷⁰ In many cases, a considerable amount of discretion is left to state officials outside the legislative process to determine the proper role of JPOs, subjecting minors to broad (but perhaps appropriate) discretion.¹⁷¹ Finally, many states narrowly define specific circumstances in which JPOs have some subset of peace officer powers, creating a hybrid option that further muddies attempts at parsing.¹⁷²

164. See APPA, *supra* note 140, at 31 (explaining that, in Mississippi, probation officers “are called counselors to eliminate confusion of officer status and whether or not to carry a firearm.”).

165. See, e.g., MASS. GEN. LAWS ANN. ch. 6E § 1 (West 2023) (defining law enforcement officers as those employed by an agency—presumably a law enforcement agency—of which JPOs are not as they are court employees); MISS. CODE ANN. § 45-6-3 (West 2023) (including, as law enforcement officers, probation officers from the Department of Corrections, but JPOs in Mississippi are employed by the Department of Youth Services and are thus impliedly exempted).

166. See discussion *supra* note 165.

167. See Pound, *supra* note 3, at xxv.

168. See APPA, *supra* note 140, at 1.

169. See, e.g., FLA. STAT. ANN. § 985.03 (West 2019) (labeling a JPO as one who “performs the intake, case management, or supervision functions” of the juvenile department without reference to peace officer powers or authority).

170. See *id.*

171. See, e.g., APPA, *supra* note 140, at 18–19.

172. See, e.g., ARIZ. REV. STAT. ANN. § 8-205 (2023) (“[A]n authorized juvenile court officer shall . . . [h]ave the authority of a peace officer in the performance of the court officer’s duties.”); MO. ANN. STAT. § 211.401 (West 2017) (“The juvenile officer is vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office.”).

The following chart is a breakdown of our findings for the fifty states on the question of whether a state defines JPOs as having peace officer status.¹⁷³ The results will be discussed in detail in the paragraphs that follow.¹⁷⁴

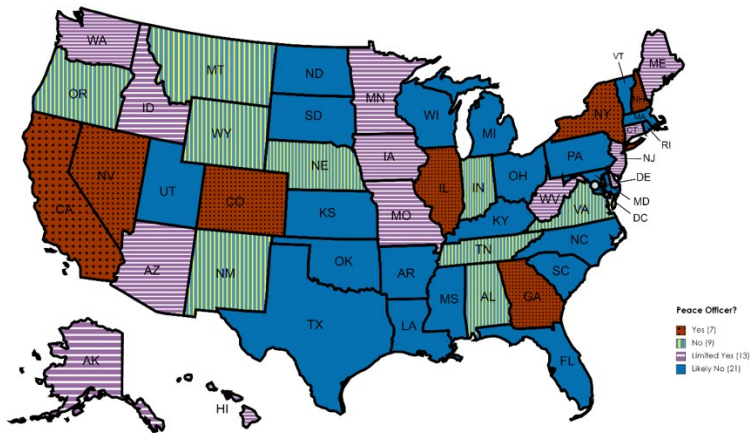


Figure 1

Our findings, drawn entirely from textual analysis, indicate that seven states clearly define JPOs as peace officers: California,¹⁷⁵ Colorado,¹⁷⁶ Georgia,¹⁷⁷ Illinois,¹⁷⁸ Nevada,¹⁷⁹ New Hampshire,¹⁸⁰ and

173. See *infra* Figure 1. All maps were created using MapChart. See MAPCHART, <https://www.mapchart.net/> [<https://perma.cc/XX9J-U57U>] (last visited Nov. 10, 2023).

174. See discussion *infra* notes 175–255.

175. CAL. PENAL CODE § 830.5 (West 2020) (defining juvenile probation officers as “peace officers,” but may only exercise the authority within the scope of enumerated duties).

176. COLO. REV. STAT. ANN. § 16-2.5-138 (West 2021); COLO. REV. STAT. ANN. § 16-2.5-101 (West 2023) (describing peace officers generally); COLO. REV. STAT. ANN. § 19-2.5-1107 (West 2021) (describing the powers and duties of juvenile probation officers).

177. GA. CODE ANN. § 35-8-2 (West 2021) (including JPOs in definitions of peace officers and also as members of law enforcement units).

178. 730 ILL. COMP. STAT. ANN. 110/15 (West 2022) (designating probation officers as peace officers for the purposes of carrying out their duties, including the power of arrest). Illinois does not make a distinction between adult and juvenile officers.

179. NEV. REV. STAT. ANN. § 289.010(5) (West 2023) (defining a peace officer as a “person upon whom . . . the powers of a peace officer are conferred.”); NEV. REV. STAT. ANN. § 289.180(2) (West 2023) (conferring peace officer powers on juvenile probation officers when performing their official duties).

180. N.H. REV. STAT. ANN. § 594:1 (2017) (describing how one definition of peace officer includes any person authorized to make arrests in a criminal case); N.H.

New York.¹⁸¹ While the outcome is the same in these seven states, the paths they take reflect different approaches.¹⁸² For example, California and Illinois specify that peace officer status is limited to the context of traditional probation duties while Georgia and New York grant that status without qualification.¹⁸³

Importantly, Illinois and New York make no distinctions between adult and juvenile probation officers.¹⁸⁴ Although this Article does not formally compare these two types of probation officers, our research consistently uncovered that adult probation officers are more likely to have law enforcement authority than their juvenile counterparts.¹⁸⁵ Thus, states that fail to designate separately defined powers and duties for all probation officers risk employing authority and practices that work better for children or only adults.¹⁸⁶

The grant of peace officer status without question gives JPOs more power to act in accordance with law enforcement tendencies (e.g., use of force and intimidation tactics), but it also coats these officers with mandated training requirements and protections against liability.¹⁸⁷ As such, there are important tradeoffs state officials should

REV. STAT. ANN. § 170-G:16 (2000) (granting JPOs the power to arrest any minor found violating any law).

181. N.Y. CRIM. PROC. LAW § 2.10 (McKinney 2023) (defining probation officers as peace officers); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 355.1 (2023). New York does not make a distinction between adult and juvenile officers.

182. *See* discussion *supra* notes 175–181 and accompanying text.

183. CAL. PENAL CODE § 830.5 (West 2020) (defining probation officers as “peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment”); 730 ILL. COMP. STAT. ANN. 110/9b (West 2022) (defining a probation officer as “a person employed full time in a probation or court services department providing services to a court under this Act or the Juvenile Court Act of 1987”); GA. CODE ANN. § 35-8-2 (West 2021) (defining peace officers as “[p]ersonnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections . . . county probation systems, and county correctional institutions”); N.Y. CRIM. PROC. LAW § 2.10 (McKinney 2023) (designating probation officers as peace officers).

184. 730 ILL. COMP. STAT. ANN. 110/9b (West 2022) (defining a probation officer as “a person employed full time in a probation or court services department providing services to a court under this Act or the Juvenile Court Act of 1987”); *see generally* N.Y. CRIM. PROC. LAW § 2.10 (McKinney 2023) (indicating that New York makes no distinction between adult and juvenile probation officers).

185. *See* Moana Hafoka et al., *What Legally Prescribed Functions Tell Us: Role Differences Between Adult and Juvenile Probation Officers*, 81 FED. PROB. 32, 37, 39–47 (2017).

186. *See id.* at 36–37.

187. *See* N.Y. CRIM. PROC. LAW § 2.30 (McKinney 2011). There are alternate accountability routes that avoid qualified immunity concerns. *See* Steven Puro et al.,

consider when determining whether to grant juvenile officers peace officer status.¹⁸⁸

If a state believes its JPOs should be classified as peace officers, it does not necessarily mean that the state considers the role of probation to be one of punitiveness.¹⁸⁹ However, it is an important data point to keep in mind in evaluating whether JPOs should have the discretion to act as law enforcement.¹⁹⁰ Some states have even decided upon a bifurcated approach by which most juvenile workers do not have peace officer status while creating a unit of officers that explicitly possesses powers of enforcement.¹⁹¹

Many states stop short of granting JPOs complete classification as peace officers, instead relying on limited delegations.¹⁹² For example, in Arizona and Missouri, JPOs are granted peace officer “authority” to perform their duties.¹⁹³ In Connecticut, they may act in the “capacity” of a peace officer.¹⁹⁴ In nine other states, the statutes give JPOs peace officer “powers” in the scope of their duties:

Police Decertification: Changing Patterns Among the States, 1985-1995, 20 POLICING: INT’L J. POLICE STRATEGIES & MGMT. 481, 481 (1997) (discussing a trend in the mid-1980s of decertifying officers through state POST commissions).

188. See *Training*, N.Y. DIV. CRIM. JUST. SERVS., <https://www.criminaljustice.ny.gov/opca/training.htm#qualifications> [<https://perma.cc/TFG4-9RDT>] (last visited Nov. 10, 2023).

189. See Hafoka, *supra* note 185, at 39–47.

190. See N.Y. DIV. CRIM. JUST. SERVS., *supra* note 188.

191. See DEL. CODE ANN. tit. 29, § 9005 (West 2023) (indicating that specialized juvenile probation officers—those who interact with high-risk juvenile offenders—are required to carry firearms and wear body armor and a uniform; the exclusion of typical juvenile probation officers from that list implies they are either permitted or forbidden but not mandatory in any event.).

192. See Hafoka, *supra* note 185, at 39–47.

193. ARIZ. REV. STAT. ANN. § 8-205 (2023) (“[A]n authorized juvenile court officer shall . . . [h]ave the authority of a peace officer in the performance of the court officer’s duties.”); MO. ANN. STAT. § 211.401 (West 2017) (“The juvenile officer is vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office.”).

194. CONN. GEN. STAT. ANN. § 46b-125 (West 2018) (indicating that, when executing orders of the juvenile court to arrest a juvenile, the JPO or their deputy shall act in the capacity of a peace officer).

Alaska,¹⁹⁵ Delaware,¹⁹⁶ Hawaii,¹⁹⁷ Iowa,¹⁹⁸ Maine,¹⁹⁹ Minnesota,²⁰⁰ New Jersey,²⁰¹ Washington,²⁰² and West Virginia.²⁰³ Finally, in Idaho, the POST Council has authority to create training programs for JPOs, though doing so is not mandatory under state law.²⁰⁴

These hybrid distinctions serve to draw boundaries between mandatory and discretionary power in interpreting the proper role of

195. ALASKA STAT. ANN. § 47.12.270 (West 2021) (delegating the powers of a peace officer to a JPO with respect to service of process and arresting of a minor when the court has issued an arrest warrant or there is probable cause to believe the minor has violated probation or placement conditions).

196. DEL. CODE ANN. tit. 11, § 4321(d) (West 2023) (indicating that, while performing their duties, JPOs have peace officer powers to search individuals on probation and execute lawful court orders, but only if they undergo required training and education programs).

197. HAW. REV. STAT. ANN. § 571-85 (West 2023) (“Within the scope of their duties, probation officers appointed under this chapter shall have the powers and privileges of a police officer.”).

198. IOWA CODE ANN. § 602.7202 (West 2023) (“A juvenile court officer has the powers of a peace officer while engaged in the discharge of duties.”).

199. ME. REV. STAT. ANN. tit. 34-A, § 5602 (West 2022) (“Juvenile community corrections officers have the same arrest powers as other law enforcement officers with respect to juveniles placed under their supervision.”).

200. MINN. STAT. ANN. § 244.19 (West 2023) (providing JPOs with the general powers of a peace officer in the performance of their duties).

201. N.J. STAT. ANN. § 2A:168-11 (West 2022) (granting probation officers the powers of constables and defining some of their duties). New Jersey law does not define the powers of constables, but other states generally consider them to be peace officers with limited powers of arrest to preserve the peace. *See generally* 80 C.J.S. *Sheriffs and Constables* § 75 (2023). New Jersey law also does not distinguish between adult and juvenile probation officers.

202. WASH. REV. CODE ANN. § 13.04.040 (West 2023) (granting probation counselors the powers of police officers to serve process and make arrests of juveniles under their supervision).

203. W. VA. CODE ANN. § 49-4-719 (West 2022) (“In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, . . .” JPOs are considered “qualified law-enforcement officers” under federal definitions for the purposes of carrying firearms).

204. IDAHO CODE ANN. § 19-5101 (West 2022) (defining peace officers as employees of a law enforcement agency who have also completed a POST academy); IDAHO CODE ANN. § 19-5109 (West 2022) (allowing the POST Council to implement basic training for JPOs upon recommendation of the juvenile training council). Most states have a method for certifying or decertifying peace officers, including mandated training, standards of practice, and rulemaking authority. In many of those states, the format is referred to as POST (Peace Officer Standards and Training commission, or similar). *See Puro, supra* note 187, at 483.

juvenile officers.²⁰⁵ It becomes necessary in assessing whether a JPO is acting in a peace officer role to first determine whether they were acting in the scope of their normal duties.²⁰⁶ This two-part analysis ensures that, to the extent it is appropriate for such officers to invoke police officer functions, they are doing so only with respect to juveniles subject to probation and not in other situations such as jaywalking, trespassing, and traffic scenarios.²⁰⁷

While some states are clear or implied in granting peace officer status, two remaining classifications in our analysis are worth discussing.²⁰⁸ The first group is the nine states that expressly (or through strong implication) do not convey peace officer designation to juvenile probation officers.²⁰⁹ Those states are Alabama,²¹⁰ Indiana,²¹¹ Montana,²¹² Nebraska,²¹³ New Mexico,²¹⁴ Oregon,²¹⁵

205. See BARBARA DANZIGER FLICKER, STANDARDS FOR JUVENILE JUSTICE: A SUMMARY AND ANALYSIS 1 (2d ed. 1982) (arguing that narrow tailoring is required in defining the roles of law enforcement officers and probation workers).

206. See discussion *supra* notes 186–204.

207. See discussion *supra* notes 186–204.

208. See, e.g., ALA. CODE § 12-15-107 (2022); IND. CODE § 31-31-5-5 (2022).

209. See *infra* notes 210–218; e.g., MONT. CODE ANN. § 41-5-1703 (2022) (stating explicitly that JPOs do not have the powers of law enforcement officers).

210. ALA. CODE § 12-15-107 (2022) (“A juvenile probation officer does not have the powers of a law enforcement officer.”).

211. IND. CODE § 31-31-5-5 (2022) (stating “a probation officer does not have the powers of a law enforcement officer”); IND. CODE § 11-13-1-3.5 (following certain conditions may allow a probation officer to “carry a handgun in any vehicle or on or about the probation officer’s body while acting in the scope of employment as a probation officer”).

212. MONT. CODE ANN. § 41-5-1703 (2022) (stating explicitly that JPOs do not have the powers of law enforcement officers).

213. See NEB. REV. STAT. § 81-1401 (2022) (excluding probation officers in defining law enforcement officers); see also NEB. REV. STAT. § 71-910 (2022) (failing to include any probation officer when defining a peace or law enforcement officer); NEB. REV. STAT. § 49-801 (2022) (failing to include any probation officer when defining a peace or law enforcement officer); NEB. REV. STAT. § 29-215 (2022) (failing to include any probation officer when defining a peace or law enforcement officer).

214. N.M. STAT. ANN. § 32A-2-5 (2021) (“A juvenile probation and parole officer does not have the powers of a law enforcement officer.”).

215. OR. REV. STAT. § 420.905 (2021) (defining juvenile community supervision officers and peace officers separately).

Tennessee,²¹⁶ Virginia,²¹⁷ and Wyoming.²¹⁸ Of those, six states explicitly deny law enforcement powers and authority to JPOs while the other three states seem to do so by implication.²¹⁹ For example, in both Oregon and Wyoming, the legislature included two definitions within the same statute: one each for peace officers and juvenile officers.²²⁰ Were juvenile officers to be considered peace officers, that indication would almost certainly be present in the statute.²²¹

However, from our perspective as researchers, proving a negative correlation is admittedly difficult when a clear pronouncement is absent from state law.²²² As such, there are necessarily shades of interpretation that future researchers, policymakers, and advocates will need to grapple with in deciding on the appropriateness of a particular definitional scheme for law enforcement and probation officers.²²³

The last group of states is quite large at twenty, encompassing states where JPOs are not likely considered peace officers.²²⁴ In these jurisdictions, statutes define peace officer duties with a decidedly non-enforcer cast (e.g., providing aid and encouragement, focusing on rehabilitation, etc.).²²⁵ They similarly do not make reference to peace officer powers, authority, or capacity in listing the duties of JPOs.²²⁶

216. TENN. CODE ANN. § 37-1-105 (2021) (A probation officer “does not have the powers of a law enforcement officer. Such probation officer . . . shall not conduct accusatory proceedings under this part against a child who is or may be under such officer’s care or supervision.”).

217. See VA. CODE ANN. § 9.1-101 (2022) (allowing the Department of Juvenile Justice to designate law-enforcement officers for internal investigations purposes, but otherwise failing to mention JPOs).

218. See WYO. STAT. ANN. § 14-6-301 (2022) (defining peace officers and juvenile probation officers within the same statute, implying they are distinct).

219. See *supra* notes 210–218.

220. See OR. REV. STAT. § 420.905 (2021); see WYO. STAT. ANN. § 14-6-301 (2022).

221. See *Are Probation Officers Peace Officers?*, CRIM. JUST. DEGREE HUB, <https://www.criminaljusticedegreehub.com/are-probation-officers-peace-officers/> [<https://perma.cc/WQ32-JN8M>] (last visited Nov. 10, 2023).

222. See discussion *supra* notes 219–221 and accompanying text.

223. See discussion *supra* notes 219–221 and accompanying text.

224. See discussion *infra* notes 231–237; discussion *infra* notes 242–255.

225. See, e.g., LA. STAT. ANN. § 40:2402 (2023) (defining peace officers as government employees whose permanent duties include making arrests, performing searches and seizures, executing criminal warrants, and preventing or detecting crime). While juvenile probation officers perform some of these duties upon judicial request and incident to their role, they are not primary focuses. See *id.*

226. See, e.g., KY. REV. STAT. ANN. § 605.060 (West 2023) (failing to mention any duties that touch on peace officer powers or authority—duties include such things

The officers implicated by this analysis often have alternative titles such as probation counselors, even where their adult counterparts retain the “officer” title.²²⁷ Finally, many of the states simply fail to discuss JPOs (and in some cases their adult counterparts as well) in defining peace officers or law enforcement within their state.²²⁸

For the sake of clarity, we’ve split this group into two.²²⁹ The first set is the states that fail to include JPOs in their definitions of peace officers.²³⁰ In this set, there are seven states, including Kansas,²³¹ Maryland,²³² Michigan,²³³ Ohio,²³⁴ Rhode Island,²³⁵ Texas,²³⁶ and Utah.²³⁷ No further analysis is needed as we are attempting to prove the absence of any reference to JPOs with this set.²³⁸

The second set are the thirteen miscellaneous states that, for a variety of reasons, make it more likely than not that JPOs lack peace officer status.²³⁹ The primary groupings within that set fall along the lines of a combination of duties that feel distant from conceptions of those assigned to law enforcement, such as investigation, apprehension, subjugation, arrest, and detention.²⁴⁰ Alternatively, we

as “[v]isit and supervise children placed on probation and as far as practicable, aid and encourage such children, by friendly advice and admonition, to keep terms of their probation, and provide for their rehabilitation”).

227. See, e.g., N.C. GEN. STAT. ANN. § 7B-1900 (West 2023) (defining the authority of a juvenile court counselor to take a juvenile into temporary custody while granting law enforcement officers arresting powers; the distinction implying that juvenile counselors are not law enforcement officers).

228. See, e.g., *id.*

229. See discussion *infra* notes 231–237; discussion *infra* notes 242–255.

230. See discussion *infra* notes 231–237; e.g., KAN. STAT. ANN. § 22-2202 (2022) (stating that court service officers are law enforcement officers).

231. See KAN. STAT. ANN. § 22-2202 (2022) (stating that court service officers are law enforcement officers).

232. See MD. CODE ANN., PUB. SAFETY § 3-201 (West 2023) (stating JPOs in Maryland are Case Management Specialists).

233. See MICH. COMP. LAWS ANN. § 750.215 (West 2023).

234. See OHIO REV. CODE ANN. § 2935.01 (West 2023) (failing to include probation officers in the definition of peace officer); OHIO REV. CODE ANN. § 2151.14 (West 2023) (allowing juvenile probation officers to request the aid of peace officers in the performance of their duties, implying they are distinct).

235. See 12 R.I. GEN. LAWS ANN. § 12-7-21 (West 2023).

236. See TEX. CODE CRIM. PROC. ANN. art. 2.12 (West 2023).

237. See UTAH CODE ANN. § 53-13-102 (West 2023).

238. See discussion *supra* notes 231–237 and accompanying text.

239. See discussion *infra* notes 242–255 and accompanying text.

240. See discussion *infra* notes 242–255 and accompanying text; e.g., FLA. STAT. ANN. § 985.03 (West 2023) (labeling a JPO as one who “performs the intake, case management, or supervision functions” of the juvenile department without reference to peace officer powers or authority).

have used an analysis of their employing entity to imply probation officers are not peace officers.²⁴¹ Those states include Arkansas,²⁴² Florida,²⁴³ Kentucky,²⁴⁴ Louisiana,²⁴⁵ Massachusetts,²⁴⁶ Mississippi,²⁴⁷ North Carolina,²⁴⁸ North Dakota,²⁴⁹ Oklahoma,²⁵⁰ Pennsylvania,²⁵¹

241. See discussion *infra* Section II.B.

242. See ARK. CODE ANN. § 9-27-308 (West 2023) (listing the duties of intake and probation officers without reference to peace officer classification, authority, or powers).

243. See FLA. STAT. ANN. § 985.03 (West 2023) (labeling a JPO as one who “performs the intake, case management, or supervision functions” of the juvenile department without reference to peace officer powers or authority).

244. See KY. REV. STAT. ANN. § 605.060 (West 2023) (failing to mention any duties that touch on peace officer powers or authority—duties include such things as “[v]isit and supervise children placed on probation and as far as practicable, aid and encourage such children, by friendly advice and admonition, to keep terms of their probation, and provide for their rehabilitation”).

245. See LA. STAT. ANN. § 40:2402 (2023) (defining peace officers as government employees whose permanent duties include making arrests, performing searches and seizures, executing criminal warrants, and preventing or detecting crime). While juvenile probation officers perform some of these duties upon judicial request and incident to their role, they are not primary focuses. See *id.*; see also LA. CHILD. CODE ANN. art. 421 (2023).

246. See MASS. GEN. LAWS ANN. ch. 6E, § 1 (West 2023) (defining law enforcement officers as those employed by an agency—presumably a law enforcement agency—of which JPOs are not as they are court employees); see also MASS. GEN. LAWS ANN. ch. 119, § 58 (West 2023).

247. See MISS. CODE ANN. § 45-6-3 (West 2023) (including, as law enforcement officers, probation officers from the department of corrections, but JPOs in Mississippi are employed by the department of youth services and are thus impliedly exempted); see also MISS. CODE ANN. § 43-27-20 (West 2023).

248. See N.C. GEN. STAT. ANN. § 7B-1900 (West 2023) (defining the authority of a juvenile court counselor to take a juvenile into temporary custody while granting law enforcement officers arresting powers; the distinction implying that juvenile counselors are not law enforcement officers).

249. See N.D. ADMIN. CODE 109-02-01-01 (2023) (stating that peace officers are employees of criminal justice agencies, that juvenile court officers are court employees, and are, therefore, unlikely to be peace officers.); see also N.D. CENT. CODE ANN. § 27-20.2-04 (West 2023).

250. See OKLA. STAT. ANN. tit. 57, § 515 (West 2023) (defining “[a]ll probation-parole officers” as peace officers, but this section of the code refers to corrections/prisons rather than juvenile justice. Adult probation officers in Oklahoma are employed by the Department of Corrections while JPOs are court employees.); see also OKLA. STAT. ANN. tit. 10A, § 2-7-902 (West 2023).

251. See 18 PA. STAT. AND CONS. STAT. ANN. § 501 (West 2023) (defining peace officers as those authorized to make arrests for offenses); 42 PA. STAT. AND CONS. STAT. ANN. § 6304 (West 2023) (authorizing JPOs to take juveniles into custody, but the committee comments reflect that the power to arrest is excluded as incompatible with the JPOs’ role of protecting children.).

South Carolina,²⁵² South Dakota,²⁵³ Vermont,²⁵⁴ and Wisconsin.²⁵⁵ There is some necessary overlap between this group in particular and future sections of this Article that discuss employment of JPOs and whether they have the power of arrest and/or the authority to carry firearms on duty.²⁵⁶

The next section will survey statutes related to employment of JPOs.²⁵⁷ Some considerations include the branch of government responsible for probation services, appointing authority within that branch, and a discussion of whether hiring by those entities carries a presumption of the role of law enforcement or mentor/advocate (i.e., cops or coaches).²⁵⁸ These factors will better shape our understanding of the proper role for JPOs.²⁵⁹

B. Employment

The National Conference of State Legislatures (NCSL) recently conducted a nuanced survey of juvenile probation laws.²⁶⁰ Speaking to two separate issues—that of state vs. local jurisdiction, and also of executive vs. judicial organization—the NCSL’s findings are largely

252. See S.C. CODE ANN. § 23-23-10 (2014) (defining law enforcement officers as those authorized to make arrests); see also S.C. CODE ANN. § 24-21-280 (2014) (granting adult probation officers the power to arrest); S.C. CODE ANN. § 63-19-1880 (2014) (allowing juvenile “probation counselors” to take juveniles into custody following training and when authorized by the family court judge).

253. See S.D. CODIFIED LAWS § 26-9-4 (1937) (granting adult probation officers peace officer powers); S.D. CODIFIED LAWS § 26-7A-8 (1991) (stating juvenile probation is handled by court services officers—the title difference likely exists to delineate enforcement roles).

254. See VT. STAT. ANN. tit. 33, § 5101 (2009) (requiring the juvenile justice section be interpreted in line with the purposes in this section, which appear focused on rehabilitating minors without explicitly granting peace officers powers or authority).

255. See WIS. STAT. § 165.85 (2023) (defining law enforcement officers as those persons employed to detect and prevent crimes, and enforce laws, who are authorized to make arrests).

256. See discussion *infra* Section II.B; Section II.C; Section II.D.

257. See discussion *infra* Section II.B.

258. See discussion *infra* Section II.B; e.g., OR. REV. STAT. § 420.905 (2015) (“‘Juvenile community supervision officer’ means an employee of the Oregon Youth Authority who is classified as a juvenile parole and probation officer.”).

259. See discussion *infra* Section II.B.

260. See Michael Hartman, *Juvenile Probation Overview*, NAT’L CONF. STATE LEGISLATURES, 1–2 (2020), <https://www.ncsl.org/civil-and-criminal-justice/juvenile-probation-overview> [<https://perma.cc/GH47-B26N>].

consistent with earlier analyses.²⁶¹ Specifically, the NCSL survey identified twenty-one states and the District of Columbia that locate their JPOs within the judicial branch.²⁶² This compares with twenty-one states that allocate responsibility to the executive branch and eight states that share authority.²⁶³

When examining the NCSL data on organization of probation services at various levels of state and local government, the analysis skews more in favor of hybrid operations.²⁶⁴ Only twelve jurisdictions organize probation services at the state level compared with eighteen at the local level.²⁶⁵ Nearly half of states operate in a mixed environment with twenty states and the District of Columbia labeled as hybrid systems.²⁶⁶ The chart on their website shows a prominent focus on local organization in western states, which are geographically larger and typically have concentrated metropolitan areas separated by large swaths of less inhabited land pocked with rural communities, while many northeastern states operate statewide systems.²⁶⁷

Turning to our own analysis, many states recognize peace officers, or an equivalent term in that jurisdiction, as those persons employed by a law enforcement agency.²⁶⁸ As this section shows, however, JPOs are most often employees of the judicial branch and seemingly never of police departments.²⁶⁹ While not police employees directly, JPOs are frequently employed in other executive branch agencies such as those dealing with corrections, juvenile justice, and family services.²⁷⁰ Within the judicial branch, there is often

261. *See id.* at 26–27; *see also* HUNTER HURST IV & PATRICIA MCFALL TORBET, ORGANIZATION AND ADMINISTRATION OF JUVENILE SERVICES: PROBATION, AFTERCARE, AND STATE DELINQUENT INSTITUTIONS FOR DELINQUENT YOUTH 4, 6–7 (rev. ed. 1993) (finding that juvenile probation officers are employees of different branches of government depending on the state in question, and within those branches, their departments may be organized at different levels altogether).

262. *See* Hartman, *supra* note 260, at 26–27.

263. *See id.*

264. *See id.*

265. *See id.* at 26.

266. *See id.*

267. *See id.*

268. *See supra* Section II.A.

269. *See, e.g.,* Hartman, *supra* note 260, at 26–27.

270. *See, e.g.,* DEL. CODE ANN. tit. 31, § 5102 (1953) (allocating responsibility to the Department of Services for Children, Youth and Their Families for the “after-care supervision of juvenile delinquents”).

considerable ambiguity as to whether individual judges, a committee of judges, or administrative arms of the court appoint JPOs.²⁷¹

The following chart is a breakdown of our findings for the fifty states on the question of whether a state makes JPOs employees of either the judicial or executive branch.²⁷² The results will be discussed in detail in the paragraphs that follow.²⁷³

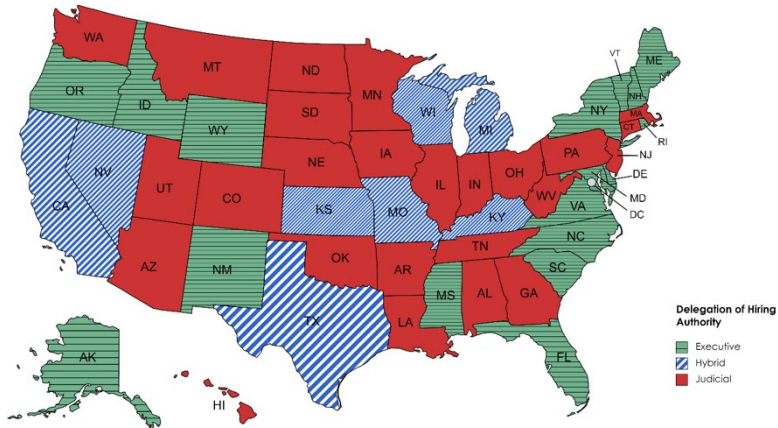


Figure 2

In total, seventeen states clearly allocate hiring authority to executive branch agencies.²⁷⁴ In the first three of those states—Idaho,²⁷⁵ Maine,²⁷⁶ and Oregon²⁷⁷—JPOs are employees of corrections departments. In Idaho and Maine, these correctional officers are part

271. See, e.g., IOWA CODE ANN. § 602.7201 (West 2022) (allocating responsibility for hiring and supervision of juvenile probation staff to the Chief Juvenile Court Officer, who is appointed by the Chief Judge of the juvenile court).

272. See *infra* Figure 2.

273. See discussion *infra* notes 274–348.

274. See discussion *infra* notes 275–277; discussion *infra* notes 280–286; discussion *infra* notes 292–298.

275. IDAHO CODE § 20-504 (2012) (authorizing the Department of Juvenile Corrections to hire probation officers); IDAHO CODE § 20-529 (2019) (requiring juvenile courts to contract with counties for juvenile probation services or to appoint one or more probation officers at the county’s expense).

276. ME. STAT. tit. 34-A, § 5602 (1999) (“A juvenile community corrections officer is an employee of the Department of Corrections.”).

277. OR. REV. STAT. § 420.905 (2015) (“‘Juvenile community supervision officer’ means an employee of the Oregon Youth Authority who is classified as a juvenile parole and probation officer . . .”).

of the group likely identified as peace officers while those in Oregon are likely not.²⁷⁸

The next groups of executive agencies are those in family or social service departments.²⁷⁹ Statutes indicate that seven states assign hiring authority to such entities, including Alaska,²⁸⁰ Delaware,²⁸¹ Mississippi,²⁸² New Hampshire,²⁸³ New Mexico,²⁸⁴ Vermont,²⁸⁵ and Wyoming.²⁸⁶ Typically, family and social services departments are primarily concerned with providing support to juveniles and their families rather than with law enforcement and correctional housing duties.²⁸⁷ However, in comparing these states to their peace officer designation statutes, no clear pattern emerges linking such status to particular employers.²⁸⁸ Specifically, in Alaska, Delaware, and New Hampshire, JPOs are either peace officers or likely so.²⁸⁹ Meanwhile, in the remainder of states in this paragraph, those officers are either expressly not peace officers or unlikely considered so.²⁹⁰

In the final group of executive branch employers, seven states allow criminal or juvenile justice departments to hire JPOs.²⁹¹ Those

278. See discussion *supra* notes 275–277.

279. See discussion *infra* notes 280–286.

280. ALASKA STAT. § 47.12.270 (2022) (designating juvenile probation officers as employees of the Department of Health and Social Services).

281. DEL. CODE ANN. tit. 31, § 5102 (1953) (allocating responsibility to the Department of Services for Children, Youth and Their Families for the “after-care supervision of juvenile delinquents”).

282. MISS. CODE ANN. § 43-27-20 (2023) (granting authority over the hiring of juvenile probation officers to the Department of Youth Services).

283. N.H. REV. STAT. ANN. § 170-G:15 (West 2023) (authorizing the commissioner of the Juvenile Justice Services, a branch of the Department of Health and Human Services, to appoint probation officers).

284. N.M. STAT. ANN. § 10-11-2 (West 2023) (noting that juvenile probation officers are employees of the Children, Youth and Families Department and any successor agencies).

285. VT. STAT. ANN. tit. 33, § 5106 (2015) (granting authority to supervise juveniles on probation to the Commissioner of the Family Services Division within Department for Children & Families).

286. WYO. STAT. ANN. § 14-6-301 (2008) (defining a probation officer as an employee of the Department of Family Services).

287. See *How the Child Welfare System Works*, CHILD WELFARE INFO. GATEWAY, 1 (2020), <https://www.childwelfare.gov/pubpdfs/cpswork.pdf> [<https://perma.cc/DU2Z-ZWF6>].

288. See discussion *supra* notes 280–286.

289. See discussion *supra* notes 280–281; discussion *supra* note 283.

290. See discussion *supra* note 282; discussion *supra* notes 284–286.

291. See discussion *infra* notes 292–298.

states include Florida,²⁹² Maryland,²⁹³ New York,²⁹⁴ North Carolina,²⁹⁵ Rhode Island,²⁹⁶ South Carolina,²⁹⁷ and Virginia.²⁹⁸ Such departments may wield a variety of duties, including investigation, arrest, detention, and aftercare services.²⁹⁹ Interestingly, of this set, only New York employs probation officers who are clearly defined as peace officers while the other states fall into one of the “no” categories from the previous section.³⁰⁰

Turning to the judicial branch, hiring authority is often considerably more vague than with executive agencies.³⁰¹ Statutes generally distinguish between court administrators, the court broadly, or specific judges (or combinations of them) as being in charge of hiring JPOs.³⁰² In many cases, the statutes speak only to hiring the chief probation officer and are silent as to hiring of subordinate officers.³⁰³

292. FLA. STAT. ANN. § 985.66 (West 2014) (listing the hiring and training requirements for staff of the Department of Juvenile Justice, including juvenile probation officers).

293. MD. CODE ANN., HUM. SERVS. § 9-216 (West 2009) (listing many functions of the Department of Juvenile Services to include community detention and juvenile probation).

294. N.Y. EXEC. LAW § 257 (McKinney 2015) (declaring all probation officers employees of the Office of Probation and Correctional Alternatives, which falls under the Division of Criminal Justice Services).

295. N.C. GEN. STAT. ANN. § 143B-806 (West 2023) (granting the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice responsibility for juvenile probation statewide).

296. 42 R.I. GEN. LAWS ANN. § 42-72-17 (West 1988) (transferring staff and functions related to juvenile probation from the Department of Corrections to the Department of Children, Youth, and Families).

297. S.C. CODE ANN. § 63-19-1880 (2014) (referring to JPOs as probation counselors under the direction of the state’s Department of Juvenile Justice).

298. VA. CODE ANN. § 16.1-233 (West 2023) (requiring the Department of Juvenile Justice to appoint employees to carry out the supervision and operation of probation services).

299. *E.g.*, MD. CODE ANN., HUM. SERVS. § 9-216 (West 2009) (listing the variety of duties executive departments may yield).

300. *E.g.*, N.Y. EXEC. LAW § 257 (McKinney 2015).

301. *Compare* N.Y. EXEC. LAW § 257 (McKinney 2015) (declaring all probation officer employees of the Office of Probation and Correctional Alternatives, which falls under the Division of Criminal Justice Services), *with* ALA. CODE § 12-5A-1 (West 2022) (allocating authority to the Administrative Office of the Courts to implement a comprehensive juvenile probation system).

302. *See, e.g.*, ALA. CODE § 12-5A-1 (West 2022); KAN. STAT. ANN. § 20-346a (West 2014); ARIZ. REV. STAT. ANN. § 8-203(B) (2022).

303. *See, e.g.*, IND. CODE ANN. § 31-31-5-1 (West 2022) (requiring the judge of the juvenile court to appoint a chief probation officer and allowing discretion to appoint other officers).

Five states specifically delegate hiring authority to court administrators, including Alabama,³⁰⁴ Iowa,³⁰⁵ Nebraska,³⁰⁶ Utah,³⁰⁷ and Washington.³⁰⁸ In reality, that number is likely much higher when factoring in states that leave employment decisions up to courts generally.³⁰⁹ This includes the following eight states: Kansas,³¹⁰ Massachusetts,³¹¹ Minnesota,³¹² Montana,³¹³ North Dakota,³¹⁴ Ohio,³¹⁵

304. See ALA. CODE § 12-5A-1 (West 2022) (allocating authority to the Administrative Office of the Courts to implement a comprehensive juvenile probation system).

305. See IOWA CODE ANN. § 602.7201 (West 2022) (allocating responsibility for hiring and supervision of juvenile probation staff to the Chief Juvenile Court Officer, who is appointed by the Chief Judge of the juvenile court).

306. Prior to 1985, individual juvenile courts appointed probation officers in Nebraska. See NEB. REV. STAT. ANN. § 43-2,123.01 (West 2022) (specifying that juvenile probation officers are now employed by the Juvenile Services Division of the state's judicial branch and assigned to courts as needed).

307. See UTAH CODE ANN. § 78A-6-205 (West 2021) (requiring the court executive of the juvenile court to appoint juvenile probation officers).

308. See WASH. REV. CODE ANN. § 13.04.040 (West 2022) (designating the juvenile court administrator as the appointing authority for probation counselors).

309. See, e.g., MASS. GEN. LAWS ch. 119, § 54A (West 2018) (granting the juvenile court authority over community supervision of delinquent children and requiring a probation officer to make recommendations to the court about the likely benefits of a diversion program).

310. See KAN. STAT. ANN. § 20-346a (West 2014) (providing that, while this law was found unconstitutional as part of non-severable legislation, it merely codifies existing practice in which the district court is responsible for hiring juvenile probation officers).

311. See MASS. GEN. LAWS ch. 119, § 54A (West 2023) (granting the juvenile court authority over community supervision of delinquent children and requiring a probation officer to make recommendations to the court about the likely benefits of a diversion program).

312. See MINN. STAT. ANN. § 244.19 (West 2023) (designating the district court as the appointing authority for juvenile probation officers but leaving room for the involvement of county boards, human services boards, and correctional departments).

313. See MONT. CODE ANN. § 41-5-1701 (2023) (providing that all juvenile probation officers are employees of the judicial branch).

314. See N.D. CENT. CODE ANN. § 27-20.2-04 (West 2023) (granting the state supreme court authority to establish personnel rules to assist the juvenile court in carrying out its probation functions).

315. See OHIO REV. CODE ANN. § 2301.27 (West 2023) (allowing the court of common pleas to establish a county probation department headed by a chief probation officer).

Oklahoma,³¹⁶ and West Virginia.³¹⁷ Each of these states allocates responsibility differently—some provide that juvenile courts are responsible for hiring while others designate the district or superior courts as having such authority.³¹⁸ One odd example among the list is North Dakota, which allows the state supreme court to establish personnel rules for JPOs but ultimately leaves probation functions (presumably including hiring) to the juvenile court.³¹⁹ The odd part, of course, is that it was the only state we came across that made such a bifurcation, though in all likelihood other state-level supreme courts have personnel rules for subordinate courts as well.³²⁰

The next large group of statutes allocate hiring authority to judges.³²¹ These twelve states include: Arizona,³²² Arkansas,³²³ Colorado,³²⁴ Connecticut,³²⁵ Georgia,³²⁶ Hawaii,³²⁷ Illinois,³²⁸

316. See OKLA. STAT. ANN. tit. 10, § 116a (West 2023) (requiring a majority of county courts to appoint a person with training and experience in probation).

317. See W. VA. CODE ANN. § 49-4-719 (West 2022) (mandating each circuit court to appoint one or more juvenile probation officers).

318. See discussion *supra* notes 274–317.

319. See N.D. CENT. CODE ANN. § 27-20.2-04 (West 2023) (granting the state supreme court authority to establish personnel rules to assist the juvenile court in carrying out its probation functions).

320. See *id.*

321. See, e.g., HAW. REV. STAT. ANN. § 571-6(b) (West 2022) (authorizing the most senior family court judge to appoint probation officers).

322. See ARIZ. REV. STAT. ANN. § 8-203(A)–(B) (2022) (authorizing the presiding judge of the juvenile court to appoint a director of juvenile court services, tasked with making recommendations to the presiding judge for the hiring of juvenile probation officers and affiliated staff).

323. See ARK. CODE ANN. § 9-27-308(b)(1) (West 2022) (requiring the judge(s) of the circuit court hearing juvenile cases to designate at least one person as a probation officer).

324. See COLO. REV. STAT. ANN. § 19-2.5-1406 (West 2021) (authorizing the juvenile court to establish juvenile probation departments or contract those services to a county executive agency upon agreement with the juvenile court judges).

325. See CONN. GEN. STAT. ANN. § 46b-123 (West 2022) (establishing that JPOs are appointed by the judges of the Superior Court or a committee of said judges designated by the Chief Court Administrator).

326. See GA. CODE ANN. § 15-11-66(a) (West 2014) (granting authority to juvenile court judges for the appointment of JPOs).

327. See HAW. REV. STAT. ANN. § 571-6(b) (West 2022) (authorizing the most senior family court judge to appoint probation officers).

328. See 730 ILL. COMP. STAT. ANN. 110/15(2)(b) (West 2022) (mandating each circuit's chief judge to appoint a chief probation officer and subordinate officers pre-approved by the Supreme Court of Illinois).

Indiana,³²⁹ Louisiana,³³⁰ New Jersey,³³¹ South Dakota,³³² and Tennessee.³³³ Much like delegations to the courts generally, some of these jurisdictions are specific about which judge, or combination of judges, is responsible for hiring, while others are less clear.³³⁴ In reality, regardless of what statutes say, it seems likely that judges will allow court administrators or otherwise their own judicial staff to take charge of the hiring process.³³⁵ Judges in those situations may wish to recommend candidates or participate in the interview stage but likely do not care to post job openings and engage in other bureaucratic necessities.³³⁶

The final eight states, which share hiring authority between the executive and judicial branches, are California,³³⁷ Kentucky,³³⁸

329. See IND. CODE ANN. § 31-31-5-1 (West 2022) (requiring the judge of the juvenile court to appoint a chief probation officer and allowing discretion to appoint other officers).

330. See LA. CHILD. CODE ANN. art. 421(A) (2022) (designating the judge of the juvenile court authority to commission probation officers).

331. See N.J. STAT. ANN. § 2A:168-5 (West 2022) (authorizing the assignment judge of the county superior court to appoint a chief probation officer and approve recommendations for additional officers as requested by the chief).

332. See S.D. CODIFIED LAWS § 26-7A-8 (2022) (allowing the presiding judge in each circuit to appoint court services officers to the juvenile court).

333. See TENN. CODE ANN. § 37-1-105(a) (West 2018) (granting authority to juvenile court judges to appoint probation officers).

334. Compare GA. CODE ANN. § 15-11-66(a) (West 2014) (granting authority to juvenile court judges for the appointment of JPOs), with COLO. REV. STAT. ANN. § 19-2.5-1406 (West 2021) (authorizing the juvenile court to establish juvenile probation departments or contract those services to a county executive agency upon agreement with the juvenile court judges).

335. See N.D. CENT. CODE ANN. § 27-20.2-04 (West 2023) (granting the *state supreme court authority* to establish personnel rules to assist the juvenile court in carrying out its probation functions) (emphasis added).

336. See *id.*

337. Compare CAL. PENAL CODE § 830.5 (West 2020) (indicating juvenile probation officers are employees of the Department of Corrections and Rehabilitation, Division of Juvenile Justice), and CAL. GOV'T CODE § 27770 (West 2017) (requiring a county's Juvenile Justice Commission or Regional Juvenile Justice Commission to appoint a chief probation officer), with CAL. WELF. & INST. CODE § 225 (West 1980) (providing that appointments to the Juvenile Justice Commission must be made by the presiding judge of the superior court for the county in concurrence with the judge of the juvenile court), and CAL. WELF. & INST. CODE § 240 (West 1987) (allocating authority to appoint a probation officer in counties with more than 6,000,000 people to a probation commission instead of one for juvenile justice).

338. See KY. REV. STAT. ANN. § 605.050 (West 2015) (delegating hiring authority for juvenile probation officers to the county judge, mayor, or chief district judge depending on the population size of the county).

Michigan,³³⁹ Missouri,³⁴⁰ Nevada,³⁴¹ Pennsylvania,³⁴² Texas,³⁴³ and Wisconsin.³⁴⁴

While this information has undeniable value in determining the starting role of JPOs, there is often significant variety among smaller political subdivisions—i.e., counties, cities, towns, and the like.³⁴⁵ Even in states with relatively uniform application across jurisdictions, juvenile justice is rapidly changing, and a considerable chunk of the system is informal in nature, giving large discretion to the actors in each locale.³⁴⁶ Researching the precise differences therefore is both infeasible and of questionable usefulness.³⁴⁷ Such analyses would require thousands of hours of empirical research, producing a body of work that seems likely to be outdated even before it is completed, given changing laws and practices in the interim.³⁴⁸

339. See MICH. COMP. LAWS § 400.116 (2023) (detailing coordination between the state’s Department of Social Services and county courts for the hiring and transfer of probation staff).

340. See MO. REV. STAT. § 211.351 (2017) (providing that the court or the family court administrator shall appoint juvenile officers to serve the court, or in the case of two or more adjoining circuits, multiple circuit judges may make such an appointment).

341. See NEV. REV. STAT. § 62B.100 (2003) (listing probation officers as employees of the juvenile court unless the county has established a department of juvenile justice services, in which case they are executive employees).

342. See 237 PA. CONS. STAT. § 120 (2016) (defining a juvenile probation officer as a person appointed by a court or employed by a county’s juvenile probation office).

343. See TEX. HUM. RES. CODE ANN. § 142.002 (West 2015) (allowing a juvenile board to employ probation officers for the county’s Juvenile Probation Department under the executive branch); see also TEX. HUM. RES. CODE ANN. § 152.0032 (West 2007) (requiring juvenile boards to be composed of judges); TEX. HUM. RES. CODE ANN. § 152.0051 (West 1989) (requiring juvenile boards to be composed of judges).

344. See WIS. STAT. § 938.06 (2015) (stating that in larger counties, probation officers are appointed by an executive department, but in smaller counties, the county department or court may make such hiring decisions).

345. Compare KAN. 16TH JUD. DIST. R. 5 (2019) (allowing only law enforcement officers to carry firearms in court within the Sixteenth Judicial District), with KAN. 17TH JUD. DIST. R. 210 (2019) (allowing court services officers to carry firearms in court within the Seventeenth Judicial District).

346. See NAT’L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 12.

347. See generally U.S. CENSUS BUREAU, POPULATION DIVISION, CO-EST2022-POP, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR COUNTIES IN THE UNITED STATES: APRIL 1, 2020 TO JULY 1, 2022 (2023) (stating that as of the 2022 Census, there are 3,143 counties in the United States, not to mention the smaller divisions and amalgamations of jurisdictions, which are statistically equivalent entities, and metropolitan statistical areas).

348. See, e.g., *id.*

C. Power to Arrest

Many states allow JPOs to take juveniles into temporary custody—secure or nonsecure—but fall short of granting the full power of arrest.³⁴⁹ Some states allow courts to grant JPOs temporary powers, often with requirements for additional training on topics such as making arrests, using firearms, and conducting investigations.³⁵⁰ The power to arrest in some jurisdictions is limited to juveniles, and oftentimes even more particularly to the specific juveniles supervised by individual officers.³⁵¹

The following chart is a breakdown of our findings for the fifty states on the question of whether JPOs have the power to arrest.³⁵² The results will be discussed in detail in the paragraphs that follow.³⁵³

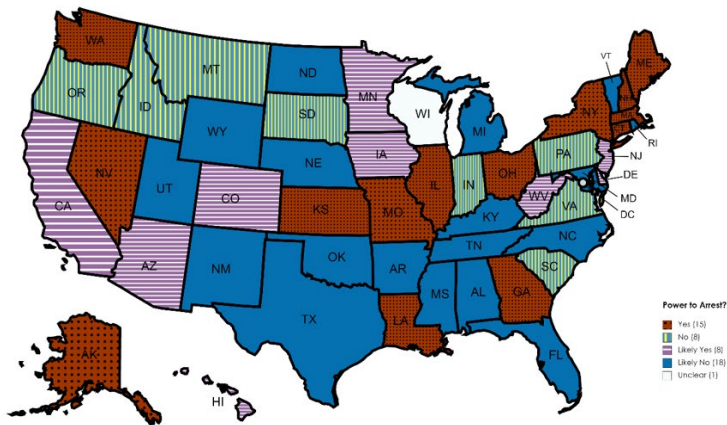


Figure 3

349. See, e.g., TEX. FAM. CODE ANN. § 52.01 (West 2007) (limiting JPOs from complete arrest power).

350. See, e.g., CONN. GEN. STAT. § 46b-125 (West 2018) (authorizing that when executing orders of the juvenile court to arrest a juvenile, the JPO or their deputy shall act in the capacity of a peace officer).

351. See, e.g., *id.* (providing that Connecticut just happened to apply for both and that any other state that applies to this sentence would also work).

352. See *infra* Figure 3.

353. See discussion *infra* notes 354–368; discussion *infra* notes 371–378; discussion *infra* 384–391; discussion *infra* 400–417.

Fifteen states clearly grant an express power of arrest to juvenile probation officers: Alaska,³⁵⁴ Connecticut,³⁵⁵ Georgia,³⁵⁶ Illinois,³⁵⁷ Kansas,³⁵⁸ Louisiana,³⁵⁹ Maine,³⁶⁰ Massachusetts,³⁶¹ Missouri,³⁶² Nevada,³⁶³ New Hampshire,³⁶⁴ New York,³⁶⁵ Ohio,³⁶⁶ Washington,³⁶⁷

354. ALASKA STAT. ANN. § 47.12.270 (West 2021) (allowing juvenile probation officers to arrest minors, whether under their supervision or not, if they have probable cause to believe the minor has violated a condition of probation).

355. CONN. GEN. STAT. § 46b-125 (West 2018) (authorizing that when executing orders of the juvenile court to arrest a juvenile, the JPO or their deputy shall act in the capacity of a peace officer).

356. GA. COMP. R. & REGS. 464-5-.03.1 (2005) (requiring peace officers, such as JPOs, to undergo POST certification to wield the power of arrest); *see also* GA. CODE ANN. § 35-8-13.1 (West 2017) (requiring probation officers to have received certification to be authorized to arrest).

357. 730 ILL. COMP. STAT. ANN. 110/15 (West 2022) (granting probation officers the power to arrest probationers in violation of their conditions).

358. KAN. STAT. ANN. § 22-3716 (West 2019) (authorizing a court services officer to arrest a defendant for violating probation conditions without a warrant and requiring such an officer to provide a statement of the conditions violated to detention officials and the supervising court).

359. LA. CHILD. CODE ANN. art. 421 (1992) (granting juvenile probation officers the power and authority to make arrests).

360. ME. REV. STAT. ANN. tit. 34-A, § 5602 (West 2022) (“Juvenile community corrections officers have the same arrest powers as other law enforcement officers with respect to juveniles placed under their supervision.”).

361. MASS. GEN. LAWS ANN ch. 119, § 59 (West 2023) (allowing the probation officer assigned to a juvenile to arrest that minor for violation of the terms of probation).

362. MO. ANN. STAT. § 211.401 (West 2017) (“The juvenile officer is vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office.”).

363. NEV. REV. STAT. ANN. § 289.180 (West 2021) (allowing probation officers to make arrests); *see also* NEV. REV. STAT. ANN. § 289.040 (West 2023) (allowing peace officers to make arrests, but previously also defined juvenile probation officers in Nevada as peace officers).

364. N.H. REV. STAT. ANN. § 170-G:16 (2000) (granting juvenile probation officers the power to arrest minors found violating the law, among other circumstances).

365. N.Y. CRIM. PROC. LAW § 2.10 (McKinney 2023) (designating probation officers as peace officers); *see also* N.Y. CRIM. PROC. LAW § 2.20 (McKinney 2005) (granting peace officers power of arrest).

366. OHIO REV. CODE ANN. § 2151.14 (West 2023) (authorizing probation officers to make arrests without warrants upon reasonable information or for violations of the juvenile criminal code directly observed).

367. WASH. REV. CODE ANN. § 13.04.040 (2023) (granting probation counselors the powers of police officers to make arrests of juveniles under their supervision).

and West Virginia.³⁶⁸ Of those fifteen, five states grant clear peace officer status (Georgia, Illinois, Nevada, New Hampshire, and New York), four more fall into the “likely no” category (Kansas, Louisiana, Massachusetts, and Ohio), and the remaining six grant a limited delegation of peace officer status (powers, capacity, or authority in the scope of duties).³⁶⁹

The next group of eight states constitute those jurisdictions in which JPOs are likely to have the power of arrest.³⁷⁰ Those states are Arizona,³⁷¹ California,³⁷² Colorado,³⁷³ Delaware,³⁷⁴ Hawaii,³⁷⁵ Iowa,³⁷⁶ Minnesota,³⁷⁷ and New Jersey.³⁷⁸ The common thread among all eight

368. W. VA. CODE ANN. § 49-4-719 (2022) (recognizing the inherent arrest powers of JPOs in relation to their duties).

369. See discussion *supra* notes 354–368.

370. See discussion *infra* notes 371–378 and accompanying text.

371. See ARIZ. REV. STAT. ANN. § 9-500.47 (2019) (indicating that peace officers have the power to make arrests); see also *Juvenile Probation Officer*, GOVERNMENT JOBS: ARIZONA SUPERIOR COURT IN PIMA COUNTY JOB OPPORTUNITIES, <https://www.governmentjobs.com/careers/scpima/jobs/4260486/juvenile-probation-officer> [<https://perma.cc/LDG8-E34G>] (last visited Nov. 10, 2023) (indicating that juvenile probation officers are granted the authority of peace officers in carrying out their duties).

372. See CAL WELF. & INST. CODE § 283 (West 2023) (“Every probation officer, assistant probation officer, and deputy probation officer shall have the powers and authority conferred by law upon peace officers listed in Section 830.5 of the Penal Code.”); CAL. PENAL CODE § 830.5 (West 2020) (referring largely to firearms and failing to mention arrest specifically). Nevertheless, peace officer functions require the power to arrest, and so juvenile probation officers are likely able to do so). See *id.*

373. See COLO. REV. STAT. ANN. § 19-2.5-1107 (West 2021) (granting juvenile probation officers the powers of a peace officer in the performance of their duties); see also COLO. REV. STAT. ANN. § 16-2.5-101 (West 2023) (stating peace officers have the authority to enforce laws within the scope of their duties—the power to arrest seems like a proper mechanism of enforcement).

374. See DEL. CODE ANN. tit. 11, § 4321 (West 2021) (providing that probation officers have the powers of constables in the performance of their duties after completing required training and education in such uses); see also DEL. CODE ANN. tit. 10, § 2705 (West 2022) (providing that constables exercise the powers of peace officers); DEL. CODE ANN. tit. 11, § 1901 (West 2012) (authorizing peace officers to make arrests in criminal cases).

375. See HAW. REV. STAT. ANN. § 571-85 (West 2022) (granting probation officers the power of police officers in effectuating their duties).

376. See IOWA CODE ANN. § 602.7202 (West 2023) (providing that juvenile court officers have the powers of peace officers while engaged in their duties).

377. See MINN. STAT. ANN. § 244.19 (West 2023) (providing that juvenile court officers have the powers of peace officers while engaged in their duties).

378. This Article has previously shown that probation officers in New Jersey have the powers of constables, which are undefined, but in other states, includes a limited power of arrest. See N.J. STAT. ANN. § 2A:168-11 (West 2023) (providing that

states is a grant of peace officer authority in effectuating their duties.³⁷⁹ Unsurprisingly, all of these states fall into the “likely yes” category on peace officer status with California and Colorado explicitly granting that status.³⁸⁰ Thus, there seems to be a strong correlation between having both the power of arrest and the authority to act as a peace officer.³⁸¹

The final two categories are those denying JPOs the power of arrest.³⁸² In the first group, consisting of eight states, these officers clearly do not possess the power of arrest, either by legislative proscription or by strong implication.³⁸³ Those states include Idaho,³⁸⁴

the defined duties in New Jersey largely speak to filing reports and collecting payments, but hint at other powers in their supervisory role).

379. See *supra* notes 371–378.

380. See *supra* notes 371–378; e.g., CAL WELF. & INST. CODE § 283 (West 2023) (“Every probation officer, assistant probation officer, and deputy probation officer shall have the powers and authority conferred by law upon peace officers listed in Section 830.5 of the Penal Code.”); COLO. REV. STAT. ANN. § 19-2.5-1107 (West 2021) (granting juvenile probation officers the powers of a peace officer in the performance of their duties).

381. See discussion *supra* notes 371–380 and accompanying text.

382. See discussion *infra* notes 384–391 and accompanying text; discussion *infra* notes 400–417 and accompanying text.

383. See discussion *infra* notes 384–391 and accompanying text; e.g., IND. CODE ANN. § 31-31-5-5 (West 2023) (denying juvenile probation officers the powers of a law enforcement officer, which logically includes the power of arrest).

384. IDAHO CODE ANN. § 20-516 (West 2021) (allowing peace officers to take minors into custody upon judicial order but may not consider it an arrest. Logically, probation officers would have the same limitation).

Indiana,³⁸⁵ Montana,³⁸⁶ Oregon,³⁸⁷ Pennsylvania,³⁸⁸ South Carolina,³⁸⁹ South Dakota,³⁹⁰ and Virginia.³⁹¹

Of particular interest are the means by which states regulate the power of arrest.³⁹² For example, Idaho expressly states that when peace officers take minors into custody, it may not be considered an arrest.³⁹³ Logically, therefore, regardless of whether JPOs have peace officer status, they do not hold the power of arrest.³⁹⁴ In Pennsylvania, the drafting committee noted that the power of arrest is incompatible with the JPO's role of protecting children.³⁹⁵ While not clearly explained, arrests are typically reported (either by agencies or arrestees themselves) in determinations about employment, government benefits, and justice settings, which may cause financial or other harms.³⁹⁶

385. IND. CODE ANN. § 31-31-5-5 (West 2023) (denying juvenile probation officers the powers of a law enforcement officer, which logically includes the power of arrest).

386. MONT. CODE ANN. § 41-5-1703 (2019) (“A juvenile probation officer does not have power to make arrests . . . in carrying out the juvenile probation officer’s duties except that a juvenile probation officer may take into custody any youth who violates either the youth’s probation, terms and conditions of the youth’s conditional release agreement, or a lawful order of the court.”).

387. OR. REV. STAT. ANN. § 420.910 (West 2022) (describing two scenarios in which an adjudicated youth who escapes can be apprehended: (1) a peace officer may arrest the minor, or (2) a juvenile supervision officer may take the youth into custody. The distinction is certainly intentional given that both scenarios are in the same statute, meaning JPOs in Oregon do not have the power of arrest).

388. 42 PA. STAT. AND CONS. STAT. ANN. § 6304 (West 2023) (allowing JPOs to have authority to take juveniles into custody, but the committee comments reflect that the power to arrest is excluded as incompatible with the JPOs’ role of protecting children).

389. S.C. CODE ANN. § 63-19-1880 (West 2022) (allowing juvenile probation counselors to take juveniles into custody following training and when authorized by the family court judge, strongly implying they do not normally have such authority).

390. S.D. CODIFIED LAWS § 26-7A-12 (2023) (allowing a court services officer to take a minor into custody if they are subject to the court’s jurisdiction, and also granting more powers to law enforcement officers).

391. VA. CODE ANN. § 16.1-237 (West 2022) (allowing the court to grant a JPO with the power to arrest, strongly implying they do not normally have such authority).

392. *See, e.g.*, IDAHO CODE ANN. § 20-516 (West 2021) (allowing peace officers to take minors into custody upon judicial order but may not consider it an arrest. Logically, probation officers would have the same limitation).

393. *See id.*

394. *See, e.g.*, PA. R. JUV. CT. PRO. 195(A).

395. *See* PA. R. JUV. CT. PRO. 120.

396. *See Arrest and Conviction Records: Resources for Job Seekers, Workers and Employers*, U.S. EQUAL EMP. OPPORTUNITY

In the final category, we find ambiguity.³⁹⁷ While we have labeled this category as the “likely no” group, there remains enough gray area that some JPOs in these states may, in fact, have the power of arrest.³⁹⁸ In these eighteen states, we have analyzed duties, powers granted to adult probation officers, and permissions to take minors into custody that lack a specific prohibition on making arrests.³⁹⁹ These states that likely deny arrest power are Alabama,⁴⁰⁰ Arkansas,⁴⁰¹ Florida,⁴⁰² Kentucky,⁴⁰³ Maryland,⁴⁰⁴ Michigan,⁴⁰⁵ Mississippi,⁴⁰⁶

COMM’N, <https://www.eeoc.gov/arrestandconviction> [<https://perma.cc/KT2E-3MHM>] (last visited Nov. 10, 2023); *Benefits After Incarceration: What You Need to Know*, U.S. SOC. SEC. ADMIN., <https://www.ssa.gov/reentry/benefits.htm> [<https://perma.cc/TGF7-XEAJ>] (last visited Nov. 10, 2023).

397. See discussion *infra* notes 400–417 and accompanying text; e.g., FLA. STAT. ANN. § 985.03(27) (LexisNexis 2023) (including ambiguity as to whether juvenile probation officers have power to arrest in Florida).

398. See discussion *infra* notes 400–417 and accompanying text; e.g., MD. CODE ANN., CRIM. PROC. § 2–207(b) (LexisNexis 2023) (showing adult probation officers can arrest, yet remaining unclear as to whether juvenile probation officers can arrest).

399. See discussion *infra* notes 400–417 and accompanying text; e.g., KY. REV. STAT. ANN. § 605.060 (LexisNexis 2023) (including ambiguity as to whether juvenile probation officers have the power to arrest).

400. See ALA. CODE § 12-15-107(b) (LexisNexis 2023) (granting JPOs the power to take a child under their supervision into custody but explicitly denying them powers of a law enforcement officer); ALA. CODE § 15-22-54(d) (LexisNexis 2023) (“[A]ny probation officer . . . may arrest a probationer without a warrant.”). Alabama separately defines the duties of adult and juvenile probation officers and this section appears in the criminal procedure, rather than juvenile, chapter of state law. *Compare id.*, with ALA. CODE § 12-15-107(b) (LexisNexis 2023).

401. See ARK. CODE ANN. § 9-27-308(b)(2) (2023) (enumerating the duties of juvenile probation officers to include investigations, as well as providing “aid and counsel to juveniles” and “appropriate aid . . . to the court.”); ARK. CODE ANN. § 16-93-103(a) (2023) (excluding juvenile probation officers in granting other probation officers authority to make lawful arrests).

402. See FLA. STAT. ANN. § 985.03(27) (LexisNexis 2023) (defining a juvenile probation officer as an “authorized agent of the department who performs the intake, case management, or supervision functions.”).

403. See KY. REV. STAT. ANN. § 605.060 (LexisNexis 2023) (failing to mention duties involving taking a minor into custody or arresting them).

404. See MD. CODE ANN., CRIM. PROC. § 2–207 (LexisNexis 2023) (explaining Maryland allows adult probation officers to arrest offenders they supervise, but makes no mention of the power of juvenile probation officers to do the same. These officers are employees of separate executive departments, and thus, subject to different codes).

405. See APPA, *supra* note 140, at 29 (indicating that Michigan juvenile probation officers do not have law enforcement powers, logically including the power of arrest).

406. See *Probation and Parole Officer Career in Mississippi*, PROB. OFFICER EDU, <https://www.probatiorofficeredu.org/mississippi/> [<https://perma.cc/XS8R->

Nebraska,⁴⁰⁷ New Mexico,⁴⁰⁸ North Carolina,⁴⁰⁹ North Dakota,⁴¹⁰ Oklahoma,⁴¹¹ Rhode Island,⁴¹² Tennessee,⁴¹³ Texas,⁴¹⁴ Utah,⁴¹⁵ Vermont,⁴¹⁶ and Wyoming.⁴¹⁷

On a final note, Wisconsin provides less guidance than other states regarding the proper role and powers of JPOs.⁴¹⁸ It is not clear whether they have the power of arrest, and we did not feel comfortable lumping them in any other category as a result.⁴¹⁹ The next section will analyze our final research topic: the authority of JPOs to carry firearms on duty.⁴²⁰

FPCK] (last visited Nov. 10, 2023) (explaining that Mississippi juvenile probation officers do not have peace officer powers, though adult probation officers do).

407. See NEB. REV. STAT. § 43.286(c) (2023) (demonstrating that Nebraska juvenile probation officers do not expressly have peace officer powers, and thus, are unlikely to be able to arrest).

408. See N.M. STAT. ANN. § 32A-2-5(C) (2019) (allowing juvenile probation officers to take minors into custody but denying them the powers of law enforcement).

409. See N.C. GEN. STAT. § 7B-1900 (2011) (granting law enforcement officers the right to take a juvenile into temporary custody if grounds exist for the arrest of an adult in identical circumstances, but specifically separating out juvenile court counselors to the different standard of “reasonable grounds to believe that the juvenile is an undisciplined juvenile”).

410. See N.D. CENT. CODE § 27-21-02 (2023) (defining the duties of the juvenile services division without reference to the power of arrest or other characteristics of law enforcement officers).

411. See OKLA. STAT. tit. 10A, § 2-7-501(A) (2013) (failing to mention a power to arrest or take juveniles into custody in describing the intake and probation services of the Office of Juvenile Affairs).

412. See 14 R.I. GEN. LAWS § 14-1-33(a) (2013) (outlining the powers of probation counselors in Rhode Island and demonstrating that they do not appear to have peace officer powers nor do their duties mention those meshing with an enforcer role).

413. See TENN. CODE ANN. § 37-1-105(b)(6) (2018) (allowing juvenile probation officers to take minors into custody but denying them the powers of law enforcement).

414. See TEX. FAM. CODE ANN. § 52.01(b) (West 2021) (authorizing a probation officer to take a child into custody for a probation violation).

415. See UTAH CODE ANN. § 80-6-201(3) (LexisNexis 2022) (demonstrating that Utah juvenile probation officers do not expressly have peace officer powers, and thus, are unlikely to be able to arrest).

416. See VT. STAT. ANN. tit. 33, § 5266(2) (2011) (allowing a JPO to apprehend a juvenile probationer following probation violation finding).

417. See WYO. STAT. ANN. § 14-6-304 (2023) (defining the duties of juvenile probation officers to include investigation, supervision, and rehabilitative tasks, but failing to mention taking the minor into custody or arrest).

418. See WIS. STAT. § 938.19 (2015).

419. See *id.*

420. See discussion *infra* Section II.D.

D. Authority to Carry Firearms

The following statement from the U.S. Probation and Pretrial Services Department is illustrative of the variety of approaches to whether JPOs carry firearms:

Federal probation officers are authorized by law to carry firearms. Each individual district court decides whether its officers will be armed or not. If a district permits carrying firearms, it's each officer's choice whether to do so or not. Therefore, some federal probation officers do carry firearms, and some do not. For some officers at the state/local level, carrying firearms is optional; for others, it's mandatory; and for still others, it's not allowed. In some state/local agencies, only officers in specific positions—such as officers who deal with violent offenders—are permitted to carry firearms.⁴²¹

This Article has previously referenced the National Firearm Survey conducted by the American Probation and Parole Association (APPA) in 2006 in the context of whether JPOs hold peace officer status.⁴²² The APPA survey relied on a combination of primary source research and requests for responses from state entities, unlike our research, which was almost-entirely grounded in statutory proclamations.⁴²³ In their findings, APPA reported eleven states where JPOs may carry firearms with seven markers of distinction including: optional, mandatory, based on job, based on offender, based on county, subject to judicial approval, and specific units only.⁴²⁴ In forty states and the District of Columbia, JPOs are not permitted to carry firearms.⁴²⁵

The following chart is a breakdown of our findings for the fifty states on the question of whether JPOs are permitted to carry firearms.⁴²⁶ The results will be discussed in detail in the paragraphs that follow.⁴²⁷

421. *Probation and Pretrial Services—Mission*, U.S. CTS, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-mission> [<https://perma.cc/8MES-BXQE>] (last visited Nov. 10, 2023).

422. See APPA, *supra* note 140, at intro.

423. See APPA, *supra* note 140, at Table: Peace Officer Status of Probation and Parole Officers October 2006; APPA, *supra* note 140, at Table: Arming of Probation and Parole Officers October 2006.

424. See APPA, *supra* note 140, at Table: Arming of Probation and Parole Officers October 2006.

425. See *id.*

426. See *infra* Figure 4.

427. See discussion *infra* notes 428–502 and accompanying text.

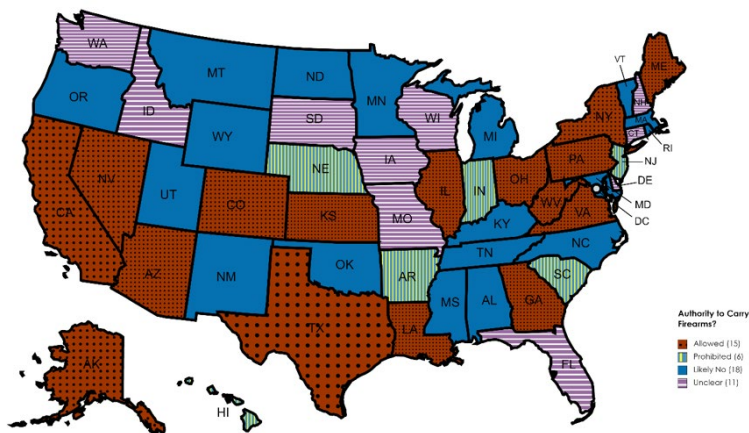


Figure 4

Our research did not reveal any states that mandate or require JPOs to carry firearms while on duty.⁴²⁸ By statute in fifteen states, however, JPOs—either expressly or by implication—are permitted to do so.⁴²⁹ Each of these states has a slightly different approach, so we’ve broken that category into smaller, sometimes-overlapping comparison groups.⁴³⁰ In the first and largest group, seven states explicitly list training requirements: Alaska,⁴³¹ Colorado,⁴³² Georgia,⁴³³

428. See APPA, *supra* note 140, at Table: Arming of Probation and Parole Officers October 2006.

429. See *infra* notes 431–439; *infra* notes 444–448; e.g., N.Y. CRIM. PROC. LAW § 2.30(3) (Consol. 2023) (allowing peace officers to carry firearms on duty upon completion of an approved training course).

430. See *infra* notes 431–439; *infra* notes 444–448.

431. ALASKA ADMIN. CODE tit. 13, § 87.060(a)(2) (2023) (requiring probation officers to undergo academy training on firearms familiarity and safety as well as use of force, including lethal weapons).

432. COLO. REV. STAT. § 16-2.5-101(2) (2023) (granting JPOs the authority to carry firearms, concealed or otherwise, while performing their duties unless modified by their employing agency).

433. GA. CODE ANN. § 49-4A-8(d)(2) (West 2015) (describing how JPOs may request authorization to carry a firearm upon completion of their POST training).

Maine,⁴³⁴ Nevada,⁴³⁵ New York,⁴³⁶ Ohio,⁴³⁷ Pennsylvania,⁴³⁸ and Texas.⁴³⁹ In this set, some states require approved firearms training while others mandate participation in a POST program, often taking the form of a police academy, depending on the jurisdiction.⁴⁴⁰

In some states, the authority to carry firearms is merely implied by statute, relying on department policy or judicial approval.⁴⁴¹ In these jurisdictions, whether JPOs carry firearms is an issue with the potential to change rapidly with new leadership.⁴⁴² Certainly, the presence of a pathway to training and permission-seeking does not itself grant JPOs the mandate to carry firearms on duty.⁴⁴³ However, where officers seek to carry firearms, it is appropriate that they should undergo the same or substantially similar training as their peace officer colleagues.

434. ME. REV. STAT. ANN. tit. 25, § 2804-B(1), (3) (West 2013). Juvenile community corrections officers have the powers of law enforcement officers, including a limited power of arrest, in the fulfillment of their duties. *See id.* Maine requires law enforcement officers to undergo training on the making of arrests and carrying of a firearm on duty prior to serving. *See id.* It would be an odd loophole in the statutory framework for JCCOs to be able to act as law enforcement officers without training when permanent hires cannot. *See id.* Therefore, it seems likely that statute authorizes JCCOs to carry firearms. *See id.*

435. NEV. REV. STAT. ANN. § 289.510(c)(3) (West 2023) (requiring peace officers to undergo firearms training).

436. N.Y. CRIM. PROC. LAW § 2.30(3) (Consol. 2023) (allowing peace officers to carry firearms on duty upon completion of an approved training course).

437. OHIO REV. CODE ANN. § 2301.27(C) (West 2023) (authorizing chief probation officers in counties to permit subordinate officers the use of a firearm on duty following a basic training program).

438. 61 PA. STAT. AND CONS. STAT. ANN. § 6306 (West 2023) (declaring firearms education mandatory for any probation officer who carries a firearm on duty, but failing to require that officers carry while on duty).

439. TEX. HUM. RES. CODE ANN. § 142.006 (West 2015) (authorizing juvenile probation officers specifically to carry firearms in the course of duties upon completion of training requirements and a minimum term of employment).

440. *See generally* APPA, *supra* note 140.

441. *See id.* at 58 (illustrating one example of a state, West Virginia, that implies the authority to carry firearms in their statute but leaves the ultimate decision up to the department).

442. *See generally id.*

443. *See* APPA, *supra* note 140, at Table: Peace Officer Status of Probation and Parole Officers October 2006; APPA, *supra* note 140, at Table: Arming of Probation and Parole Officers October 2006.

In another subset of five states, JPOs must receive permission before carrying firearms on duty: California,⁴⁴⁴ Illinois,⁴⁴⁵ Ohio,⁴⁴⁶ Virginia,⁴⁴⁷ and West Virginia.⁴⁴⁸ In practice, many states often leave considerable discretion to employing officials about whether firearms are permitted within their jurisdiction, but few have a statutory statement to that effect.⁴⁴⁹ Notably, in California, the legislature thought it was prudent to require permission for JPOs on duty but separately clarified that permission is not required when an officer is off duty.⁴⁵⁰ This specification is responsive to Second Amendment concerns about the right to bear arms in officers' capacities as private citizens, though whether it's necessary to incorporate in a statute is purely a legislative decision.⁴⁵¹

In two additional states, statutes set out that JPOs must request permission (rather than the passive acceptance of dictated permission), including officers in Arizona⁴⁵² and Georgia.⁴⁵³ This shifting of the burden from employer to employee is intriguing, and we as researchers would love to know whether there is any quantifiable difference in the number of JPOs carrying firearms on duty as a result.

444. See CAL. PENAL CODE § 830.5 (West 2023) (requiring employers of JPOs to authorize the carrying of firearms on duty).

445. See 730 ILL. COMP. STAT. ANN. 110/17 (West 2023) (granting probation officers the authority to carry weapons in the performance of their duties with approval from the Chief Judge of the Circuit Court).

446. See Ohio Rev. Code Ann. § 2301.27(C) (West 2023) (indicating that a "chief probation officer may grant permission to a [JPO] to carry firearms when required in the discharge of official duties").

447. See VA. CODE ANN. § 16.1-237 (West 2022) (allowing the court to authorize a JPO to carry a concealed weapon, strongly implying they do not normally have that authority).

448. See W. VA. CODE ANN. § 49-4-719(c)-(g) (West 2022) (authorizing a JPO to carry a concealed firearm for self-defense purposes subject to approval by the Supreme Court of Appeals and completion of training and identification requirements).

449. See, e.g., CAL. PENAL CODE § 830.5 (West 2023) (requiring employers of JPOs to authorize the carrying of firearms, but distinguishing between permission requirements when the officer is on duty versus off duty).

450. See *id.*

451. See, e.g., APPA, *supra* note 140.

452. See ARIZ. REV. STAT. ANN. § 6-106(K)(1) (2021) (authorizing juvenile probation officers to request to carry a firearm on duty, subject to psychological testing and approval).

453. See GA. COMP. R. & REGS. 125-2-1.06 (2023) (indicating that parole officers "must successfully complete . . . firearms training and have authorization . . . prior to carrying a weapon in the performance of duties.").

Finally, in Kansas, there are court rules for at least two judicial districts with potentially conflicting preferences on firearms.⁴⁵⁴ Specifically, in the 17th district, JPOs are authorized to carry firearms, but in the 16th district, only law enforcement officers may do so—Kansas does not clearly specify whether its probation officers are law enforcement.⁴⁵⁵ Our exposure to this field indicates this discrepancy made clear by Kansas’ statutes plays out across the country in less visible ways because decisions about arming JPOs is perhaps more of an exercise in county- and city-level decision making than that of the state.⁴⁵⁶

Nevertheless, six states expressly or by strong implication forbid JPOs from carrying firearms on duty: Arkansas,⁴⁵⁷ Hawaii,⁴⁵⁸ Indiana,⁴⁵⁹ Nebraska,⁴⁶⁰ New Jersey,⁴⁶¹ and South Carolina.⁴⁶² While not entirely legislative, as both Nebraska’s and New Jersey’s prohibitions are rules of court, the states’ written, express prohibition on firearms sets a traceable precedent for future researchers, and presumably makes it more difficult to alter course than an internal policy, largely inaccessible to the public.⁴⁶³

454. Compare KAN. 17TH JUD. DIST. R. 210 (2019) (allowing court services officers to carry firearms in court within the Seventeenth Judicial District), with KAN. 16TH JUD. DIST. R. 5 (2016) (allowing only law enforcement officers to carry firearms in court within the Sixteenth Judicial District).

455. See comparison *supra* note 454.

456. See, e.g., *Probation and Pretrial Services*, *supra* note 421.

457. See ARK. CODE ANN. § 16-93-103(a) (2017) (excluding juvenile probation officers in granting other probation officers’ authority to carry a firearm).

458. See S. 2955, 26th Leg., Reg. Sess. (Haw. 2012) (documenting an ultimately failed legislative effort to give probation officers the authority to carry electric guns as those officers are not armed in the course of their duties).

459. See IND. CODE ANN. § 11-13-1-3.5 (West 2020) (stating a probation officer may not carry a handgun while acting in the scope of their employment unless ordered by the appointing court to do so, and after completing a training course provided by the law enforcement training board).

460. See NEB. SUP. CT. PERS. POL’YS & PROCS. MANUAL R. 46 (“Employees including probation officers and constables are not allowed to carry firearms in the performance of their duties, and no firearms will be kept in court or probation offices or in state cars.”).

461. See N.J. CT. DIR. 10-73 (outlining the New Jersey supreme court’s rule forbidding probation officers in the state from carrying firearms while on duty).

462. See S.C. CODE ANN. § 23-23-40(A) (2022) (describing a process for firearms qualification that applies to law enforcement officers, of which juvenile probation officers are not).

463. Compare NEB. SUP. CT. PERS. POL’YS & PROCS. MANUAL R. 46, with ARK. CODE ANN. § 16-93-103(a) (2017).

The next bloc of states is large but only of minimal usefulness.⁴⁶⁴ In these eighteen states, the proficient lack of statutory guidance about the contours of a JPO's expected role, duties, and powers makes it difficult to determine their ability to carry firearms on duty.⁴⁶⁵ We have relied more heavily on the APPA survey in this section than others due to the lack of statutory guidance, offering up more commentary than normal and attempting to rationalize competing factors.⁴⁶⁶

The eighteen states where JPOs are likely not permitted to carry firearms are Alabama,⁴⁶⁷ Kentucky,⁴⁶⁸ Maryland,⁴⁶⁹ Massachusetts,⁴⁷⁰

464. See discussion *infra* notes 467–484 and accompanying text.

465. Compare OHIO REV. CODE ANN. § 2301.27 (West 2023) (granting explicit permission via statute for the Chief Parole Officer to permit JPOs to carry firearms), with WYO. STAT. ANN. § 6-1-104 (2023) (defining peace officers by statute, but not mentioning probation officers).

466. See discussion *infra* notes 467–484 and accompanying text.

467. See APPA, *supra* note 140, at 1 (noting that, in Alabama, adult probation officers are both considered peace officers and explicitly authorized to carry firearms. Neither statement is true for juvenile probation officers).

468. See *id.* at 23 (noting that, in Kentucky, adult probation officers are both considered peace officers and explicitly authorized to carry firearms. Neither statement is true for juvenile probation officers).

469. See *id.* at 26–27 (arguing that, in Maryland, case management specialists are forbidden by department policy from carrying a firearm on duty, but not by statute, which is the focus of this Article. Even setting the policy aside, however, these employees are not classified as peace officers and do not have the power of arrest—to say nothing of their title excluding the word “officer” altogether. Therefore, it seems unlikely any argument could be made that Maryland law allows them to carry a firearm on duty).

470. See *id.* at 28 (noting a Massachusetts probation standard that prohibits JPOs from carrying firearms).

Michigan,⁴⁷¹ Minnesota,⁴⁷² Mississippi,⁴⁷³ Montana,⁴⁷⁴ New Mexico,⁴⁷⁵ North Carolina,⁴⁷⁶ North Dakota,⁴⁷⁷ Oklahoma,⁴⁷⁸ Oregon,⁴⁷⁹ Rhode Island,⁴⁸⁰ Tennessee,⁴⁸¹ Utah,⁴⁸² Vermont,⁴⁸³ and Wyoming.⁴⁸⁴ Our analysis is unfortunately limited here by the available information, but there does seem to be a strong correlation between states that lack

471. *See id.* at 29 (stating that, in Michigan, while there is a policy indicating the powers of JPOs, the policy does not explicitly prohibit the carrying of firearms. However, JPOs in Michigan are not considered peace officers and do not carry firearms).

472. *See id.* at 30 (noting that, while probation officers in Minnesota have the general powers of a peace officer, they are not formally peace officers). Minnesota law requires peace officers to undergo training on firearms and deadly force prior to issuing a firearm. *See* MINN. STAT. ANN. § 626.8452(2) (West 2023). Further, the department of corrections, which employs probation officers, separately hires a fugitive unit comprised of peace officers. *See id.* Thus, it seems unlikely that probation officers are authorized to carry firearms on duty. *See id.*

473. *See* APPA, *supra* note 140, at 31 (stating that, in Mississippi, probation officers are called counselors by statute to distinguish them from other peace officers who may carry firearms).

474. *See id.* at 33 (noting that, in Montana, juvenile probation officers are prohibited by statute from carrying firearms).

475. *See id.* at 38–39 (stating that the New Mexico Children, Youth and Families Department, which oversees JPOs, prohibits officers from carrying firearms in the workplace).

476. *See id.* at 41 (noting that, in North Carolina, juvenile probation officers are classified as Court Counselors and follow an internal policy that prohibits them from carrying firearms).

477. *See id.* at 42 (noting that a North Dakota Division of Juvenile Services internal policy prohibits juvenile probation officers from carrying firearms).

478. *See id.* at 44 (stating that juvenile probation officers in Oklahoma are not considered peace officers and do not carry firearms).

479. *See id.* at 45–46 (noting that the Oregon Youth Authority oversees juvenile probation services and has an internal policy prohibiting JPOs from carrying firearms).

480. *See id.* at 48–49 (stating that, although there is no policy or statute prohibiting JPOs from carrying firearms, juvenile probation officers in Rhode Island do not carry firearms. Further, the issue is occasionally raised, implying that there is a general prohibition on carrying firearms).

481. *See id.* at 51 (stating that there is a Tennessee state law prohibiting probation officers from carrying firearms).

482. *See id.* at 54 (noting that, in Utah, juvenile probation officers are considered peace officers and undergo firearms training, but do not carry firearms, implying that there is a prohibition on juvenile probation officers carrying firearms).

483. *See id.* at 57 (stating that the majority of juvenile probation officers in Vermont are social workers who are prohibited from carrying firearms).

484. *See* WYO. STAT. ANN. § 6-8-104(a) (2023) (defining categories of persons who may carry concealed weapons, including peace officers, but not mentioning probation officers who are likely not considered peace officers).

firearms guidance and those that either expressly or by implication do not consider their JPOs to be peace officers.⁴⁸⁵ This correlation reinforces our assumptions that a lack of guidance lends itself to a lack of permission.

Eleven states remain to be analyzed, leaving a group we are even less certain about.⁴⁸⁶ The first is Delaware, which employs both JPOs and a separate category known as “specialized” JPOs who work with the highest risk offenders.⁴⁸⁷ This second group has fairly delineated characteristics including the only mandate to carry firearms uncovered by our statutory analysis, body armor, and a law enforcement uniform.⁴⁸⁸ Unfortunately, the typical officer is not discussed separately or by comparison, leaving up for speculation whether most JPOs are permitted (or forbidden, for that matter) to carry firearms on duty.⁴⁸⁹

The last ten states are those in which we are so uncertain that we could not categorize them at all because of a combination of contributing factors.⁴⁹⁰ In many cases, the statutes were silent on whether only adult or JPOs were included in the firearms conversation.⁴⁹¹ Looking at the footnotes, readers will find that we drew other comparisons to peace officer status, employing agency, duties and responsibilities, the power of arrest, and section(s) of the state’s criminal or juvenile codes.⁴⁹² Nevertheless, the following ten states sit too comfortably in the gray area for our purposes:

485. See *infra* Appendix (illustrating the correlation between states that consider JPOs to be peace officers and those that do not provide firearms guidance for JPOs).

486. See discussion *infra* note 487 and accompanying text; *infra* notes 493–502.

487. See DEL. CODE ANN. tit. 29, § 9005(13) (West 2023) (noting that the Secretary of the Department of Services for Children, Youth and Their Families is authorized to create a plan for the use of firearms by specialized JPOs but not mentioning regular JPOs).

488. See *id.*

489. See *id.*

490. See *infra* notes 493–502; e.g., CONN. GEN. STAT. ANN. § 7-294d (West 2022).

491. See *infra* notes 493–502; e.g., LA. STAT. ANN. § 40:2405 (West 2022).

492. See *infra* notes 493–502.

Connecticut,⁴⁹³ Florida,⁴⁹⁴ Idaho,⁴⁹⁵ Iowa,⁴⁹⁶ Louisiana,⁴⁹⁷ Missouri,⁴⁹⁸ New Hampshire,⁴⁹⁹ South Dakota,⁵⁰⁰ Washington,⁵⁰¹ and Wisconsin.⁵⁰²

493. See CONN. GEN. STAT. ANN. § 7-294d (West 2022) (describing Connecticut’s Police Officer Standards and Training Council and providing that a person who performs police functions carries a firearm, exercises the power of arrest, and engages in the prevention, detection, or investigation of crimes, which are not traditional functions for juvenile probation officers, though they are authorized to act in the capacity of peace officers; there are likely internal policies established for this issue).

494. See APPA, *supra* note 140, at 12 (indicating that prior Florida law permitted “youth custody officers”—whose duties aligned more closely with law enforcement than current juvenile probation officers—to carry firearms; there are no statutes clearly addressing this issue at present).

495. See IDAHO CODE ANN. § 19-5109 (West 2022) (allowing the POST council to implement basic training for JPOs upon recommendation of the juvenile training council, which could include firearms training).

496. See APPA, *supra* note 140, at 20.

497. See LA. STAT. ANN. § 40:2405 (West 2022) (showing that juvenile probation officers are not clearly defined as peace officers, though their adult counterparts are (in the criminal code)). Peace officers in the state are required to complete a training program on firearms safety, and impliedly permitted or required to carry firearms on duty. *See id.*

498. See MO. ANN. STAT. § 217.710 (West 2022) (explaining probation officers—presumably those supervising adults—are explicitly authorized by statute to carry firearms on duty). *See also* MO. ANN. STAT. § 211.351 (West 2017) (explaining their juvenile counterparts, by contrast, are employees of the juvenile court rather than the department of corrections and are titled “juvenile officer[s]” without reference to the word “probation”; it is unclear whether the distinction matters).

499. See N.H. REV. STAT. ANN. § 504-A:12 (2023) (stating adult probation officers carry firearms as part of their duty to enforce criminal laws); *see also* N.H. REV. STAT. ANN. § 170-G:16 (2023) (showing juvenile probation officers have a similarly drafted code section describing their duties in which firearms are not mentioned). The implication leans in favor of JPOs being forbidden to carry firearms, but ultimately, there is no clear guidance by statute. *See id.*

500. See S.D. CODIFIED LAWS § 22-14-24 (2023) (explaining while court services officers are not considered peace officers, they are exempted from penalties for possession of a firearm within county courthouses). It is unclear whether they are required, permitted, or forbidden to carry firearms in the course of their duties, or whether they are simply immune from criminal penalties. *See id.*

501. See WASH. REV. CODE § 13.04.040 (2004) (explaining probation counselors in Washington have peace officer powers to make arrests of juveniles under their supervision). It is unclear whether that grant extends to firearms. *See id.*

502. See *Wisconsin Juvenile Probation and Parole Officer Jobs: How to Become a Juvenile Probation and Parole Officer in Wisconsin Through Training*, PROB. OFFICER EDU, <https://www.probationofficeredu.org/wisconsin/wisconsin-juvenile-probation-officer/> [perma.cc/VXG9-N8GJ] (last visited Nov. 10, 2023) (showing Wisconsin provides less guidance than other states regarding the proper role and powers of juvenile probation officers). It is not clear whether they have the authority to carry firearms. *See id.*

III. REDEFINING THE LEGAL STATUS OF THE JUVENILE PROBATION OFFICER

As this Article has highlighted, juvenile systems across the United States vary in significant and nuanced ways.⁵⁰³ These differences manifest themselves in the organization and sophistication of the juvenile court system, whether there is a state or county-wide juvenile justice department, the presence of juvenile detention facilities, the extent to which a jurisdiction uses at-home probation, and whether probation officers are seen as members of law enforcement or as a social service resource for system-involved youth.⁵⁰⁴

This Article is not a call for a single approach to juvenile probation.⁵⁰⁵ Rather, the states have famously been characterized as laboratories of experimentation, which has proved useful in identifying best practices and in eliminating less successful approaches to a variety of issues.⁵⁰⁶ Doubtless the need to reform these and other systems will continue over time as new research surfaces and states experiment with new techniques and theories of their own.⁵⁰⁷ However, this Article proposes that, regardless of the specific details of a given juvenile system, it will always be necessary to consider the statutory component, especially during periods when reformers at the state level seek to transform its administration.⁵⁰⁸

The Council's 2021 Toolkit, for example, recommends that juvenile court judges lead the way in "rais[ing] the floor" for what offenses should lead to probation.⁵⁰⁹ The presumption, according to the Council, is that juvenile courts should divert or informally handle the cases of children who have committed misdemeanors or first-time felonies that do not involve serious violence because there is only a low to moderate risk of these offenders being rearrested.⁵¹⁰ Raising the floor would reduce the overall number of children placed

503. See, e.g., Hartman, *supra* note 260, at 26.

504. See, e.g., Hartman, *supra* note 260, at 2–3, 8, 26, 28.

505. See NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 25.

506. See, e.g., *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory").

507. See *About NCJFCJ*, *supra* note 38.

508. See also Hartman, *supra* note 260, at 26.

509. See NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 62 (capitalized in original).

510. See *id.* at 61–62.

on probation and address the problem of children of color being disproportionately placed on probation for minor offenses.⁵¹¹

The Council also calls for “rais[ing] the ceiling” for probation by trusting that JPOs can handle the cases of “young people with serious offenses and complex risk/needs.”⁵¹² Raising the ceiling would increase the use of probation for juveniles with more serious histories of offending, while limiting the use of incarceration.⁵¹³ By raising both the floor and the ceiling, the Council is seeking to reduce the caseloads of probation officers so that they can devote more time to each young person and thus increase their chances of helping a youth-at-risk to succeed.⁵¹⁴

Research shows that high caseloads cause a substantial risk of emotional exhaustion, compassion fatigue, and burnout in JPOs.⁵¹⁵ As with police and correctional officers, the juvenile probation function is plagued by occupational stressors.⁵¹⁶ Such stressors include role conflict, violence, shift work, excessive administrative tasks, and inconsistent leadership.⁵¹⁷ In addition to burnout, these stressors can manifest in the forms of depression, metabolic syndromes, heart conditions, and more instinctive violent reactions with family members.⁵¹⁸ Moreover, when people act contrary to their values (e.g., acting as punishers when they seek to rehabilitate juveniles under their supervision), feelings of inauthenticity bubble up, creating “job dissatisfaction, burnout, alienation, and cynicism.”⁵¹⁹

Consider the experiences of the following hypothetical JPOs:

Henry is in his forties and has been a JPO for the last five years. Prior to that, he was a police officer for more than a decade. Because of his background, Henry has been assigned to work with youth requiring intensive supervision due to their propensity for violence

511. *See id.* at 76.

512. *See id.* at 62 (capitalized in original).

513. *See id.*

514. *See id.* at 68–69.

515. *See* Gayle Rhineberger-Dunn & Kristin Y. Mack, *Predicting Burnout Among Juvenile Detention and Juvenile Probation Officers*, 31 CRIM. JUST. POL'Y REV. 335, 348 (2020).

516. *See* Laura M. White et al., *Job-Related Burnout Among Juvenile Probation Officers: Implications for Mental Health Stigma and Competency*, 12 PSYCH. SERVS. 291, 299 (2015).

517. *See* Andreas Santa Maria et al., *Reducing Work-Related Burnout Among Police Officers: The Impact of Job Rewards and Health-Oriented Leadership*, 94 POLICE J.: THEORY, PRAC., & PRINCIPLES 406, 407 (2021).

518. *See id.*

519. Lonnie M. Schaible & Viktor Gecas, *The Impact of Emotional Labor and Value Dissonance on Burnout Among Police Officers*, 13 POLICE Q. 316, 318 (2010).

and the severity of their charges. In this role, Henry finds himself continuously on edge, often getting into shouting matches or minor scuffles with his assigned youth.⁵²⁰ Henry reports every technical violation to the court—a procedure made problematic by the fact that his case plans are not individualized and fail to provide incentives for youth who show signs of progress.⁵²¹ Henry recommends that youth be detained upon the first technical violation.

Ida is in her early thirties and has been a JPO for the last five years. She holds a master's degree in social work and worked as a social worker for the Department of Family Services for two years before making the move to juvenile probation. She is assigned to youth requiring intensive supervision due to her ability to effectively utilize “water tools” that deescalate situations.⁵²² Ida's case plans are individualized after she spends several weeks getting to know both the child on her caseload and the family environment they come from.⁵²³ These plans always include incentives for avoiding technical violations and explicitly define the circumstances in which she will recommend detention.⁵²⁴

When comparing the two hypothetical professionals—each representing a vision of JPOs, though certainly not the most extreme ends of the scale—there is a clear contrast between the types of education and experience supporting the Council's preference for an adolescent development model and that of a punisher or enforcer.⁵²⁵ That's not to say the JPO who comes to the profession from a law enforcement background can't be retrained or taught anew, but there

520. See, e.g., Maria, *supra* note 517, at 407 (“High levels of burnout among police officers in turn are associated with a more positive attitude toward violence and a more frequent use of violence during officers' duty . . . as well as with work-family conflicts.”).

521. See, e.g., NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 20.

522. See generally RYAN DOWD, *THE LIBRARIAN'S GUIDE TO HOMELESSNESS: AN EMPATHY-DRIVEN APPROACH TO SOLVING PROBLEMS, PREVENTING CONFLICT, AND SERVING EVERYONE* (Am. Libr. Ass'n 2018) (explaining “water tools” employ empathy to deescalate tension and friction).

523. See, e.g., NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 16 (explaining that a partnership with families will yield better outcomes for both juveniles and probation agencies).

524. See *id.* at 22 (recommending as key elements positive incentives when juvenile adheres to the individualized plan and gradual consequences when juvenile disobeys the plan).

525. See discussion *supra* notes 520–524 and accompanying text; see also *NCJFCJ Resolution*, *supra* note 39 (explaining the need for juvenile probation systems that are tailored to adolescents because of the inherent difference between youth and adults).

will certainly be significant unlearning to do at both the conscious and unconscious level.

Henry is likely stressed at work, dealing with violence and believes that he must punish those who fail to measure up to his exacting standards.⁵²⁶ As a result of using boilerplate case plans with little room for error, he is also likely cycling through his caseload more frequently than Ida, not taking the time to understand the youth and families he serves.⁵²⁷ This does a disservice to both his charges and himself.⁵²⁸ Ida is more likely to maintain feelings of compassion and works as a coach or counselor for the youth she interacts with.⁵²⁹ As a result, she is able to develop deeper, more meaningful relations that foster growth and make a positive impact on youth.⁵³⁰

The examples above, while instructive, fail to incorporate the legal status of the JPO in each hypothetical.⁵³¹ As the statutory analysis in Part II demonstrated, the legal status of JPOs varies significantly from state to state, and even within states.⁵³² This poses a significant challenge for reformers whose goal is to transform the role of JPOs from agents of surveillance into youth guidance counselors that work with juveniles who have committed serious offenses and have complex needs.⁵³³ The first step, which nine states have already taken, is to clarify that JPOs are not peace officers.⁵³⁴

526. See, e.g., Maria, *supra* note 517, at 407 (describing one consequence of job-related stress is an increased likeliness to react violently to disobedience).

527. See NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 20 (emphasizing the positive role families play in the development of individualized juvenile probation plans).

528. See *id.* (explaining that planning that is not tailored to youth based on the involvement of both the youth and their families may result in negative changes for the youth, including increased likelihood of rearrest).

529. See Schaible & Gecas, *supra* note 519, at 330–31 (explaining that officers who are distanced from the youth whom they serve are more likely to struggle with compassion).

530. See *id.*

531. See discussion *supra* notes 520–530 and accompanying text.

532. See discussion *supra* Section II.A.

533. See, e.g., NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 15–16 (explaining traditional models of probation, which emphasize “surveillance and rule compliance,” are inconsistent with our understanding of the adolescent brain, requiring changes to juvenile probation practices).

534. See discussion *supra* notes 210–218 (referencing nine states in which probation officers are not peace officers).

Imagine the same hypotheticals above in a jurisdiction where JPOs are explicitly peace officers.⁵³⁵ Could Ida be as effective at de-escalation with her youth if she presented herself with a firearm and handcuffs on her duty belt?⁵³⁶ If the statutes governing firearms gave Ida discretion, would she choose to carry one?⁵³⁷ Would it depend on the youth she planned to interact with, their locations, their families, their neighborhoods?⁵³⁸ How might carrying a firearm subtly influence her self-conception and might that role-conflict create feelings of inauthenticity or lead to compassion fatigue and/or burnout?⁵³⁹

Further, might allowing Henry to carry a firearm escalate his confrontations with youth?⁵⁴⁰ Could his drawing of the firearm trigger violent behaviors or traumatic memories in the youth he interacts with?⁵⁴¹ If JPOs are explicitly peace officers, might they be subject to the oversensitivity to criticism of policing in response to Blue Lives Matter campaigns?⁵⁴² These questions and more should be considered when attempting to modify a state's laws affecting juvenile probation.⁵⁴³

The next steps are more complicated.⁵⁴⁴ For as the Supreme Court noted in *Fare v. Michael C.*: “In California, as in many States, the other duties of a probation officer are incompatible with the view that he may act as a counselor to a juvenile accused of crime.”⁵⁴⁵ As the minor in that case expressed, JPOs are, at best, seen as trusted

535. See *infra* Appendix (showing California, Colorado, Georgia, Illinois, Nevada, New Hampshire, and New York as jurisdictions in which Ida and Henry could exist).

536. See *infra* Appendix (showing California, Colorado, Georgia, Illinois, Nevada, and New York as likely locations where this scenario would take place).

537. See discussion *supra* notes 449–451 and accompanying text.

538. See, e.g., NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 20.

539. See Schaible & Gecas, *supra* note 519, at 318 (explaining that an individual who works contrary to her core beliefs is more likely to experience burnout, which increases the likelihood of one distancing herself during work related activities).

540. See Maria, *supra* note 517, at 407 (explaining exposure to high levels of work-related stress increases the likelihood of higher levels of psychological distress).

541. See *id.* (explaining exposure to high levels of work related stress increases the likelihood of more violent reactions during interactions with others).

542. See generally Frank Rudy Cooper, *Cop Fragility and Blue Lives Matter*, 2020(2) U. ILL. L. REV. 621 (2020) (explaining this sensitivity has famously been characterized as “[c]op fragility,” which serves to entrench public opinion regarding reasonable and large-scale police reform ideas).

543. See discussion *supra* notes 531–534 and accompanying text.

544. See *Fare v. Michael C.*, 442 U.S. 707, 720 n.5 (1979).

545. *Id.*

confidants by youth.⁵⁴⁶ This amplifies a related consideration that youth might tell their probation officers information they wouldn't want shared.⁵⁴⁷ If the goal of that role is to build and maintain trust, change-seekers will have to consider the *Tarasoff* problem by which JPOs are mandated reporters of certain information.⁵⁴⁸ Specifically, the counselor in *Tarasoff* was found to have a duty to protect her client's intended victim by disclosing his homicidal thoughts either to police or the victim.⁵⁴⁹ This rule is not uniform in all states, and thus, should be a factor reformers consider in broader evaluations of the juvenile justice system (i.e., whether a JPO can ever truly be a trusted counselor if they must put on a law enforcement hat in certain circumstances).⁵⁵⁰

Institutional reformers who wish to make JPOs into coaches should work to ensure that the duties of JPOs are compatible with pursuing an adolescent development framework.⁵⁵¹ This may include, as Idaho, Montana, and Oregon have done, specifying that JPOs lack the power to arrest but may take a juvenile who falls within their jurisdiction into custody when engaged in activities that could be construed either as crimes or as violations of probation conditions.⁵⁵²

We have also analyzed the distribution of probation authority between the executive and judicial branches for each state.⁵⁵³ As there is no majority consensus on whether juvenile probation services are more appropriately aligned with one branch, reformers will need to consider approaches that can be implemented with regard to the employing authority involved.⁵⁵⁴ For example, while no states assign JPO hiring to local police departments, JPOs in Idaho, Maine, and Oregon are employees of departments of corrections.⁵⁵⁵ In many states, corrections officers are considered police, but regardless, are

546. See *id.* at 714.

547. See *id.* at 710, 712.

548. See *Tarasoff v. Regents of the Univ. of Cal.*, 551 P.2d 334, 350 (Cal. 1976).

549. See *id.* at 348.

550. See *id.*; *infra* Appendix.

551. See discussion *supra* notes 531–534 and accompanying text.

552. See discussion *supra* note 384 and accompanying text; discussion *supra* notes 386–387 and accompanying text.

553. See *infra* Appendix.

554. See *infra* Appendix.

555. See *supra* notes 275–277.

wrapped in the public's perception as agents of punishment.⁵⁵⁶ Reformers may wish to consider whether it's appropriate in their vision of juvenile probation for probation officers to work under the correctional umbrella.⁵⁵⁷ Moreover, should members of the community be able to recognize a probation officer on sight or should they blend into the communities they serve?⁵⁵⁸ State lawmakers should be cognizant that where juvenile justice systems function like criminal justice systems, courts have consistently required more due process since the *Gault* decision.⁵⁵⁹

As discussed in this section, institutional reformers should consider whether JPOs should carry firearms on duty, whether in the courtroom or out in the community.⁵⁶⁰ Certainly, there are legitimate concerns for officer safety, which explains why officers in Colorado, Nevada, and New York (among others), are permitted to carry firearms.⁵⁶¹ As importantly, officers who carry weapons are required to undergo firearms safety training in those jurisdictions to protect themselves and the community.⁵⁶² Regardless, reformers will want to consider whether to employ a risk-benefit analysis on these issues as to officer and juvenile safety, or if such officers should train at a police academy, carry firearms, or wear body armor.⁵⁶³

Finally, we come to the question of whether JPOs should exist at all.⁵⁶⁴ Abolitionists, such as Dorothy Roberts, have made compelling arguments that the entire child welfare system—to include juvenile detention and probation—exists as a mechanism of control reminiscent of slavery.⁵⁶⁵ In Roberts' view, impoverished communities could thrive if given the resources dedicated to both civil and criminal policing, which would get to the root causes of

556. See Robert Lee Ausby, *Exploring Probation Clients' Perception of the Officer-Client Relationship*, at 20 (2021) (Ph.D. dissertation, Walden University) (ScholarWorks).

557. See discussion *supra* notes 531–534 and accompanying text.

558. See discussion *supra* notes 535–543 and accompanying text.

559. See, e.g., *Lanes v. State*, 767 S.W.2d 789, 800 (Tex. 1989) (requiring probable cause protections in the arrest of a juvenile). The *Lanes* court offers a summary of the protectionist origins of the juvenile court systems and shows the progression of due process applications to youth over time. See *id.* at 791–800.

560. See Nanda, *supra* note 26, at 698–99.

561. See discussion *supra* note 432 and accompanying text; discussion *supra* notes 435–436 and accompanying text.

562. See, e.g., discussion *supra* notes 370–381 and accompanying text.

563. See Nanda, *supra* note 26, at 698–99.

564. See, e.g., Soung, *supra* note 26, at 588.

565. See Roberts, *supra* note 19.

incarceration of minors.⁵⁶⁶ Instead, the government spends billions every year to disproportionately police Black and Brown communities.⁵⁶⁷ Roberts contends parents in these communities fear their children being taken or killed by the government and are thus slow to trust government officials (i.e., police).⁵⁶⁸ If juvenile justice proponents are serious about JPOs having a rehabilitative focus, then, they must consider the communities they serve and make sure to clearly define the role of JPOs.⁵⁶⁹ This may require statutory reform.⁵⁷⁰

CONCLUSION

The juvenile court and probation have been intertwined since Jane Addams and Julia Lathrop helped to craft the world's first juvenile court legislation in 1899.⁵⁷¹ Every generation of juvenile court reformers since then has struggled to answer the all-important question: What is the proper role of a JPO?⁵⁷² And, just as Dean Pound stressed that JPOs should be different from police officers, today's reformers, who champion an adolescent development approach, are making similar arguments.⁵⁷³ Much like in the 1930s, there is an ongoing debate about the qualification for this work.⁵⁷⁴ Both then and now, reformers debated whether JPOs needed either a college degree or other professional certification, and if so, what field(s) is/are relevant?⁵⁷⁵

Although it is conceivable to change the role of JPOs without making substantial legislative changes, our recommendation is that reformers must first ensure that their state's statutory framework supports their vision for the future of juvenile probation.⁵⁷⁶ This includes considering whether a peace officer with the power to make

566. *See id.*

567. *See* TORN APART, *supra* note 18, at 24, 205.

568. *See id.* at 56–57.

569. *See* Torbet, *supra* note 21, at 1–5.

570. *See* NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 83.

571. *See* TANENHAUS, *supra* note 51, at 4–5, 93–94.

572. *See* Torbet, *supra* note 21, at 2–3.

573. *See* Pound, *supra* note 3, at xi–xiii; NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 42.

574. *See* Pound, *supra* note 3, at xi–xviii; NAT'L COUNCIL JUV. & FAM. CT. JUDGES, *supra* note 41, at 25.

575. *See* Pound, *supra* note 3, at xi–xviii; Soung, *supra* note 26, at 580–81.

576. *See* Hartman, *supra* note 260, at 26–29; Soung, *supra* note 26, at 569–73.

arrests can serve as an effective youth counselor instead of acting as an agent of surveillance.⁵⁷⁷

577. See KATKIN, *supra* note 59, at 341–42.

APPENDIX

Juvenile Probation Officer Characteristics by State⁵⁷⁸

State	Peace Officer Status Section II(a)	Employer* Section II(b)	Power to Arrest Section II(c)	Firearms on Duty Section II(d)
Alabama	No	J	Likely No	Likely No
Alaska	Powers	E	Yes	Allowed
Arizona	Authority	J	Likely Yes	Allowed
Arkansas	Likely No	J	Likely No	Prohibited
California	Yes	H	Likely Yes	Allowed
Colorado	Yes	J	Likely Yes	Allowed
Connecticut	Capacity	J	Yes	Unclear
Delaware	Powers	E	Likely Yes	Unclear
Florida	Likely No	E	Likely No	Unclear
Georgia	Yes	J	Yes	Allowed
Hawaii	Powers	J	Likely Yes	Prohibited
Idaho	Training	E	No	Unclear
Illinois	Yes	J	Yes	Allowed
Indiana	No	J	No	Prohibited
Iowa	Powers	J	Likely Yes	Unclear
Kansas	Likely No	H	Yes	Allowed
Kentucky	Likely No	H	Likely No	Likely No
Louisiana	Likely No	J	Yes	Unclear
Maine	Powers	E	Yes	Allowed
Maryland	Likely No	E	Likely No	Likely No
Massachusetts	Likely No	J	Yes	Likely No
Michigan	Likely No	H	Likely No	Likely No
Minnesota	Powers	J	Likely Yes	Likely No
Mississippi	Likely No	E	Likely No	Likely No
Missouri	Authority	H	Yes	Unclear

578. See *supra* Part II. These results are provided as a convenience, as a companion to our Article, and should not be relied upon independently. This research contains significant room for interpretation. For deeper analysis, see discussion *supra* Part II.

State	Peace Officer Status Section II(a)	Employer* Section II(b)	Power to Arrest Section II(c)	Firearms on Duty Section II(d)
Montana	No	J	No	Likely No
Nebraska	No	J	Likely No	Prohibited
Nevada	Yes	H	Yes	Allowed
New Hampshire	Yes	E	Yes	Unclear
New Jersey	Powers	J	Likely Yes	Prohibited
New Mexico	No	E	Likely No	Likely No
New York	Yes	E	Yes	Allowed
North Carolina	Likely No	E	Likely No	Likely No
North Dakota	Likely No	J	Likely No	Likely No
Ohio	Likely No	J	Yes	Allowed
Oklahoma	Likely No	J	Likely No	Likely No
Oregon	No	E	No	Likely No
Pennsylvania	Likely No	J	No	Allowed
Rhode Island	Likely No	E	Likely No	Likely No
South Carolina	Likely No	E	No	Prohibited
South Dakota	Likely No	J	No	Unclear
Tennessee	No	J	Likely No	Likely No
Texas	Likely No	H	Likely No	Allowed
Utah	Likely No	J	Likely No	Likely No
Vermont	Likely No	E	Likely No	Likely No
Virginia	No	E	No	Allowed
Washington	Powers	J	Yes	Unclear
West Virginia	Powers	J	Yes	Allowed
Wisconsin	Likely No	H	Unclear	Unclear
Wyoming	No	E	Likely No	Likely No

* E = Executive Branch, J = Judicial Branch, H = Hybrid Approach