

United States Probation Office
District of Arizona
Annual Report for Fiscal Year 2005



A Year of Case Law Decisions Affecting the Probation Office

Fiscal Year 2005 was unique in the demands placed upon the Probation Office by a series of case law decisions. As the year began in October 2004, probation officers were applying and calculating the Federal Sentencing Guidelines using two distinct procedures in each presentence report. In July 2004, in the *Blakely v. Washington* decision, the Supreme Court determined that sentencing factors resulting in exposure to an increased sentence must be determined based on the standard of evidence of "beyond a reasonable doubt." This decision contrasted to directives of the Sentencing Guidelines which establishes a standard of "preponderance of evidence." Since *Blakely v. Washington* pertained to sentencing guidelines promulgated by the State of Washington, when the decision was issued, it was unclear whether it applied to the Federal Sentencing Guidelines. In October 2004, the Ninth Circuit issued the *U.S. v. Ameline* decision which adopted the *Blakely* finding in this circuit. Consequently, officers were applying the Federal Sentencing Guidelines twice to present the information using both approaches in order to assist the sentencing judges and counsel. In January 2005, the Supreme Court issued the *U.S. v. Booker* and *U.S. v. FanFan* decisions in a jointly issued decision which sought to settle the issue of standard of evidence. Once again, the Probation Office modified the manner in which the Federal Sentencing Guidelines were applied and made other necessary modifications to the presentence report format.

Probation supervision operations were also affected by case law decisions. In *U.S. v. Vargas-Amaya*, the Ninth Circuit invalidated all outstanding arrest warrants issued at the request of U.S. Probation Officers because the warrants had been issued without the officers having been formally sworn as to the validity of the facts. All of the warrants had to be withdrawn from NCIC and officers had to submit requests to the courts to quash the warrants and, where legally appropriate, request that a new warrant be issued. Because of the age of certain cases and unique legal factors, some warrants had to be quashed without simultaneously being reissued. Implementation of this case decision triggered a substantial amount of work that took place over the course of the fiscal year.

In August 2006, the Ninth Circuit issued a decision in *U.S. v. Arturo-Higareda*, overturning a revocation action because before he was deported to Mexico following service of his prison sentence and he had not been advised in writing or in court that he "shall not commit another Federal, state or local crime during the term of supervision." This decision affected procedures at sentencing to incorporate notice of this standard condition of supervision and it affected officers' ability to request a revocation action. Policy revisions and implementation were necessary both during the sentencing process as well as in our revocation procedures.

All offenders being supervised on a term of probation or supervised release have a Congressionally mandated requirement to submit one urine test within 15 days of the beginning of supervision and at least two more urine tests during the term. During the last month of the fiscal year, September 2005, the Ninth Circuit issued a decision in the *U.S. v. Stephens* case which provided that the maximum number of such tests could not be determined by a probation officer supervising the case; rather, the maximum number of tests must be established by the sentencing judge in the judgment. This decision hampered our supervision officers in that they could collect no more than three urine

tests pursuant to this mandatory condition in cases sentenced before the *Stephens* decision. The Probation Office worked closely with the District's judges to establish parameters for the maximum number of tests that can be administered for judgments to be issued following *Stephens*.

Since the inception of the Federal Probation Service in the late 1930's, there has never been a year in the Ninth Circuit with so many important case law decisions affecting the work of probation officers on a daily basis. Adjusting to these new requirements required nimble flexibility on the part of staff throughout the year. Fiscal Year 2005 was indeed a unique year.

Organizational Structure

When the fiscal year 2004 ended, the staffing allocation was 225.6 positions. With an additional 17.5 positions allocated at the beginning of fiscal year 2005, the allocation increased to 243.1. Beginning the year with 206.5 staff on-board, by the end of the fiscal year, we had a staff of 212. Vacancies were retained in view of anticipated budget cut for FY 2006. The following staffing charts describe the organization of staff in September 2005, the end of the fiscal year.

Officer/Manager Staffing

LOCATION	CUSPO	DCUSPO	ADCUSPO	SUSPO	SPEC.	USPO	USPOA
TUCSON	1		1	10	10	44	4
PHOENIX			2	11	13	38	5
FLAGSTAFF				1	2	4	
YUMA						3	
SIERRA VISTA						2	
TOTAL 151	1	0	3	22	25	91	9

Abbreviated titles:

CUSPO	=	Chief U.S. Probation Officer
DCUSPO	=	Deputy Chief U.S. Probation Officer
ADCUSPO	=	Assistant Deputy Chief Probation Officer
SUSPO	=	Supervisory U.S. Probation Officer
SPEC.	=	Senior U.S. Probation Officer
USPO	=	U.S. Probation Officer
USPOA	=	U.S. Probation Officer Assistant

Support Staff/Manager Staffing

LOCATION	OP/ADM MAN.	SUPV.	DQA	SEC. TO CHIEF	AAPO	CLERK	RECEP.	CONTR ADM
TUCSON		2	1	1	10	10	2	0
PHOENIX		2	1		9	6	2	1
FLAGSTAFF					1	.5		
YUMA					1			
SIERRA VISTA					1			
TOTAL 49.5		4	1	1	22	16.5	4	1

Abbreviated titles:

OP/ADM. MAN.	=	Operations/Administrative Manager
SUPV.	=	Probation Support Staff Supervisor
DQA	=	Data Quality Analyst
SEC. TO CHIEF	=	Secretary to the Chief
AAPO	=	Administrative Assistant to U.S. Probation Officer
RECEP.	=	Receptionist
CONTR ADM	=	Contracts Administrative Assistant

Administrative Services Staff

LOCATION	HUMAN RESOURCES	AUTOMATION	PROCUREMENT	FINANCIAL
PHOENIX	1.5	4	3	1
TUCSON	1	1		
TOTAL 11.5	2.5	5	3	1

Presentence Investigations

During fiscal year 2005, officers completed 4,127 presentence reports throughout the district. Almost all presentence reports were completed in the Phoenix and Tucson offices. Of the total number of reports completed, 64 percent were written for the district court in Tucson and 36 percent were written for the district court in Phoenix. The total completed for fiscal year 2005 represented a decrease of 146 reports over fiscal year 2004 (4,273).

Officers also completed 2,013 collateral investigation reports to assist U.S. probation officers in other districts. These reports were mainly completed in the Phoenix and Tucson offices, though the Flagstaff and Yuma offices also contributed. The Phoenix office completed 63 percent of the collateral investigation reports while the Tucson office completed 36.5 percent of these reports. The number of collateral investigations completed increased by 81 over the number completed during the last fiscal year (1,936).

At the end of the fiscal year, presentence reports and collateral investigation reports were completed by 65 officers assigned to presentence units, which were managed by 11 presentence supervisors. Although five supervisors and 29 officers were stationed at the Phoenix courthouse, one supervisor and five officers from the Phoenix office were dedicated to presentence work generated by the Tucson district court. Six supervisors and 36 officers were stationed at the Tucson courthouse. Throughout the year, some work originating from the Tucson district court was completed in Phoenix. The transfer of work from Tucson to Phoenix officer was necessary as 55 percent of the presentence staff were stationed in Tucson, yet the Tucson district court accounted for 64 percent of the presentence reports ordered for completion.

This district's proximity to the United States-Mexico border continues to be the primary factor affecting the types and number of cases seen by officers. In combination, immigration and drug related convictions accounted for the majority of cases investigated. The Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005) led to changes in presentence format with the addition of the new subheading, Part F. Other Sentencing Factors Pursuant to 18 U.S.C. § 3553(a). Staff trainers from the United States Sentencing Commission provided training to all presentence officers and we learned that Arizona's approach to formulating sentencing recommendations was consistent with the approach advocated by the Commission. In addition, the Commission's visit prompted advance coordination with the Clerk's Office to implement the latest revision to the Statement of Reasons.

The following chart depicts the distribution pattern of the types of reports completed by officers in the district.

Presentence Reports

Location	Presentence Investigation	Collateral	Total per Location
Phoenix	1489	1273	2762
Tucson	2613	735	3348
Flagstaff	0	2	2
Yuma	25	3	28
District Total	4127	2013	6140

Presentence Reports Completed by Officer Location

Location	Total per Officer Location
Phoenix Presentence	1827
Phoenix Supervision	14
Tucson Presentence	2252
Tucson Supervision	5
Flagstaff	3
Yuma	26
Sierra Vista	0
District Total	4127

Community Supervision

At the end of the fiscal year, the number of offenders on supervision totaled 3,037. The offenders under supervision were being supervised under the following forms of supervision.

Supervision Totals

Supervision Type	Total per Type
Probation	721
Supervised Release	2,037
Magistrate Probation	212
Juvenile Delinquency Supervision	10
Condition Release Supervision	3
Parole	21
Courtesy	13
Deferred Sentence	0
Mandatory Parole	2
Mandatory Release	5
Military Parole	1
Military Mandatory Release	3
Military Parole from Civilian Institution	1
Special Parole Term	3
Supervision BOP Inmates	2
Parole after Revocation of Mandatory Release	3
Total number of offenders on Supervision	3,037

Investigation Assignments

Investigation Type	Flag-staff	Phoenix PSR	Phoenix Supv	Sierra Vista	Tucson PSR	Tucson Supv	Yuma	Total
Preliminary Interview to Parole Commission	0	0	1	2	1	6	0	10
Prerelease	29	12	116	9	3	41	14	224
Pretransfer	11	7	57	3	2	14	13	107
Supplemental Report Bureau of Prisons	0	0	0	0	0	0	0	0
Sentencing Memorandum	0	1	0	0	9	2	0	12
Special Report to Court	0	0	1	0	0	0	0	1
Supervision Progress Report	49	43	409	59	21	178	13	772
Violation Report to Court	170	58	550	117	33	742	63	1,733
Total	259	121	1,134	190	69	983	103	2,859

Supervision Cases Closed

Closing Category	Total per Category
Expiration of Original Term	2,240
Early Termination	402
Term Closed after Extended Expiration Date	1
Revocation of Probation/Term of Supervised Release	992
Revocation of any Parole/Military Parole Case	5
Death	17
Other	209
Transferred Out to another District	97
Grand Total of Closings for the District	3,963

Sex Offenders

At the end of the fiscal year, the District of Arizona had 57 sex offenders under supervision. Sex offenders under supervision were located in the following offices: Phoenix office 20, Tucson office 13, Flagstaff office 23 and Yuma office 1. Often these offenders present a variety of issues related to treatment, community safety and family integration which requires an inordinate amount of an officer's time. Therefore, these offenders are assigned to more experienced senior officers who have smaller caseloads and are able to provide more intense supervision. The District of Arizona continues to be at the forefront in developing innovative treatment modalities with treatment providers, using electronic measures to monitor offenders in the community, and working with family members to reduce risks for recidivism.

Immigration Caseload

The Immigration Caseload at the end of fiscal year 2005 totaled 5,370. In Tucson, two probation officer assistants with two assigned support staff members monitored 3,329 cases, while in Phoenix, one probation officer assistant with an assigned support staff member monitored 2,041 cases. The immigration caseloads contributed substantially to the district workload by generating an inordinate amount of reports to the court and required court appearances by the probation officer assistants.

Collection of Financial Obligations

As part of a U.S. Probation Officer's responsibility to enforce conditions, the enforcement of fine and restitution conditions have a positive effect on the community. Officers ensure offenders pay their court-ordered financial sanctions. Fine payments are sent to the U.S. Treasury and are deposited in the Crime Victims Fund. Restitution payments are dispersed directly to victims. Monthly, officers review an offender's assets and resources to ensure the offender is making the maximum payment. This year, \$13,897,996.38 was received in restitution payments, a huge increase over fiscal year 2004 because approximately \$11 million in funds were seized by the IRS and turned over to the court in May 2005. For fine payments, \$1,253,934.40, including penalty assessments, was collected.

Offender Treatment Services

Contract Services

The probation office maintained 42 service agreements with 39 of those being outpatient treatment providers. These contracts helped offenders have access to substance abuse, general mental health and sex offender treatment throughout Arizona. It also covered emergency residential treatment in Phoenix and Tucson. The cost for all these services was 1.5 million dollars. This is a slightly lower figure than the previous fiscal year, due in part to the officers' continued efforts to utilize alternative sources for treatment and funding. Officers were also diligent in recommending co-payments, with offenders paying approximately \$50,000 during the year which helped to off-set treatment costs.

On the average, there were 1,154 offenders in contract treatment. This figure represents 39% of the 3,004 monthly average of offenders on active supervision. Of the offenders in treatment, 960 (84%) were in substance abuse programs, 101 (9%) were in sex offender programs, and 93 (8%) were in general mental health programs. Some offenders participated in more than one type of treatment.

In addition to the treatment services noted above, 27 defendants received psychosexual evaluations and one received a psychological evaluation to aid the court in determining appropriate sentences.

Urinalysis testing continued to be the primary method for detecting and deterring offender drug use. An average of 3,000 urine samples were collected from offenders each month. All drug testing was first screened by a non-instrumented drug testing (NIDT) device purchased from American BioMedica. An affirmative result on the NIDT is considered a presumptive positive until the offender either admits or the laboratory confirms using SAMSHA standards. This method of testing has resulted in not only more effective supervision but also a significant monetary savings.

Quest continued to be the National Laboratory that probation utilized until August when the Administrative Office awarded a new contract to Kroll Laboratory out of Louisiana. Due to severe damage to their laboratory and main site on the Gulf Coast from Hurricane Katrina, the transition

was progressively delayed until November. The transition was difficult as the test results were not as dependable and timely as we were accustomed with the Quest Laboratory.

Probation Average Substance Abuse Client Expenditures	
Type of Treatment	Average Spending Per Offender Completing Treatment
Long-Term Inpatient	\$3,715.00
Short-Term Inpatient	\$1,121.79
Outpatient Individual Counseling	\$ 551.26
Outpatient Group Counseling	\$ 450.54
Probation Average Mental Health Client Treatment Expenditures	
Type of Treatment	Average Spending Per Offender Completing Treatment
Outpatient Individual Counseling	\$ 366.35
Outpatient Group Counseling	\$ 185.70
Probation Average UA Client Expenditures	
Type of Treatment	Average Spending Per Offender Completing Treatment
Urine Collection and Reporting	\$ 42.86
Probation Average Sex Offender Client Expenditures	
Type of Treatment	Average Spending Per Offender Completing Treatment
Outpatient Individual Counseling	\$649.58
Outpatient Group Counseling	\$1,379.65

Electronic Monitoring Services

Electronic monitoring (EM) involves the use of an ankle or wrist bracelet and a transmitter that

emits a radio signal 24 hours a day to a monitoring device attached to the offender's home telephone line. The monitoring device alerts the EM provider monitoring center when the offender leaves and enters the home, or if the offender tampers with the equipment. Whenever a problem is noted, the monitoring center immediately contacts the probation officer. An additional tool provided to officers through the monitoring center was a passive Global Positioning System that could track the offenders past whereabouts throughout any given period. This system was not used as much due to the cost and logistics but proved to be effective with specific offenders such as stalkers or sex offenders.

The Administrative Office maintained an agreement with Securicor for electronic monitoring throughout Fiscal Year 2005. They also awarded a contract to Behavioral Interventions (BI) in April and allowed each district to use one or both agencies as they deemed appropriate. Due to officers frustrations with equipment failures and installation difficulties, Securicor was phased out and BI was the primary company utilized towards the end of the fiscal year.

In 2005, 164 offenders were placed on electronic monitoring home confinement and they served an average of 92 days. At any given time, there were approximately 52 offenders being monitored by EM. The total fiscal year EM expenditure was \$40,564.74. This does not include the \$14,538.88 co-pay made by offenders 27% of the time EM was used.

DNA Collection

On October 30, 2004, Public Law 108-405 Revised DNA Collection Requirements Under the Justice for All Act of 2004, became effective and extended the DNA collection requirements to all federal offenders convicted of any federal felony offenses. Some misdemeanor offenses involving violence, sex offenses or conspiracy or attempt to commit a felony also fell under the DNA collection requirement. The statute revised 42 U.S.C.A. § 14135a(d)(1) and 10 U.S.C. § 1565(d) which direct the Bureau of Prisons and U.S. Probation Office to collect the sample from specified offenders. These amended statutes resulted in the probation office entering into 13 service agreements with medical professionals throughout the state to ensure blood samples were collected from offenders who met the standards.

In Fiscal Year 2005, the DNA expenditure was \$39,214. Officers did an outstanding job in coordinating and assisting the collection of 2,458 samples. Probation officers were present throughout all the blood draws in order to identify and fingerprint the offender, as well as provide security. Only one problematic incident was reported and it involved a medical professional poking herself with a needle after she withdrew it from an offender. Both the collector and offender were tested and were free from any life threatening disease.

In March 2005, probation entered into an agreement with the U.S. Marshal Service that allowed for the collection of DNA from illegal aliens housed at Corrections Corporation of America (CCA) who had been sentenced to time served. The medical staff at CCA are notified immediately following sentencing by probation in an effort to have it collected prior to the offender's release to Immigration and Customs Enforcement. On the average, CCA has been collecting five samples per month.

Training

The Probation Office continued to provide quality training programs for staff at all levels of the organization. A district-wide annual training conference was held in Sedona, Arizona in July, 2005. This intensive 16-hour conference hosted *Defensive Tactics* for officers and supervisors, and *CPR/Basic First Aid* for support staff.

Further officer / SUSPO training offered during the year included *Basic First Aid and CPR, Electronic Monitoring, Defensive Tactics, PDA Training, New Officer Firearms Orientation, USSC Training; Counterfeit Bill Training* (provided by Secret Service staff), *Image Scan Computer Forensics* and quarterly *Firearms Training*. Two new officers received their *New Officer Orientation* in Washington, D. C. Two officers were promoted to Supervisory US Probation Officers and are currently enrolled and actively participating in the Federal Judicial Center's *New Supervisors' Program (NSP)*.

This fiscal year, four officers rotated from Field Supervision to Presentence and three officers rotated from Presentence to Field Supervision and received the appropriate training. Support staff received *Scanner Training* and *Automated Form 45* training. Also, all staff were trained in the use of *PACTS-ECM (version 4 enhancements)* and *ECF Query / Reports Functionality*. A supervisor in our Tucson office offered quarterly tours of the Bureau of Prisons facilities and Nogales Border training coordinated by U. S. Border Patrol for interested officers.

All staff continue to receive mandatory training in the following areas: *Sexual Harassment Awareness for Court Staff* and *for Court Managers* and *Code of Conduct Training* within 3 - 4 months of their entry on duty.

The Probation Office continued to utilize the Federal Judicial Television Network for numerous training programs. Video-streaming of the FJTN, whereby staff can access all FJTN programs at their desktop, has been a popular vehicle for viewing these programs.

Staff Safety Programs

First Aid Program

In the past, all officers are required to attend CPR and first aid training once every three years. Recognizing that such training can be vital in any setting, this year the same requirements were extended to support staff. Training in both CPR and first aid was provided to support staff during the annual district conference.

Defensive Tactics Program

The Defensive Tactics Instructors were offered the opportunity to conduct an all day safety training

at this year's district conference, held in Sedona. The training day was the perfect opportunity to review many of the basics, which included stances and movement, basic strikes, blocks and parries, and Cap-Stun techniques (pepper spray). It also allowed for training more advanced techniques which included weapon retention, disarming armed offenders, and ground defense. A scenario filmed prior to the conference was also presented which was debriefed by the participants in regards to suggested safety practices. The day was a success and allowed the Defensive Tactics Team to provide mandatory training for the majority of our law enforcement officers. Two additional sessions were provided during the year to allow those officers unable to attend the district conference to attend their mandatory training.

The Defensive Tactics Team is also responsible for certifying and training officers in the use of Cap-Stun. Sixteen officers were certified this year and provided with Cap-Stun for use in their regular duties.

Firearms Program

The district firearms instructor and assistant firearms instructors continued to work together to provide the most effective, realistic and safe firearms training during the 2005 fiscal year. Pursuant to the District Firearms Policy, officers involved in the firearms program must attend bi-annual training and bi-annual qualifications in order to maintain authorization to carry their firearm in the performance of their official duties. The district's policy regarding mandatory qualifications/training, continues to exceed the National Firearms Policy's recommendation of at least one qualification per year. Failure to attend a training or failure to qualify at one of the qualifications results in the immediate revocation of the officers authorization to carry their firearm.

By the end of fiscal year 2005, there were 107 officers involved in the firearms program throughout the district. In 2005, an additional nine officers received judicial authorization to carry a firearm in the performance of their official duties. The district also had its first officer certified to carry a firearm at the Federal Law Enforcement Training Center (FLETC) in South Carolina, through the New Officer Academy. In the future it is anticipated that there will be fewer district-level new officer firearms orientation classes offered as the new officers will be trained and certified at FLETC.

During the year, the U.S. Pretrial Services office in the District of Arizona approved a firearms policy and obtained judicial authorization to allow U.S. Pretrial Services officers to carry a firearm in the performance of their official duties. As a result, the U.S. Probation office was asked to conduct two new officer firearms orientation classes to train those officers interested in carrying a firearm. Two three-day training sessions were held, one in Phoenix and one in Tucson, in which 22 pretrial officers were trained. The U.S. Pretrial Services office will continue to train with this office until they establish their own group of instructors.

The National Firearms Program has implemented a different shooting style (more reactive than the classical Weaver style), which is being taught to the new officers at FLETC. This will pose some minor challenges at the district level, as this style has yet to be introduced to the officers that are already in the firearms program. It is the goal of the instructors to introduce the reactive shooting

style to the officers over the course of fiscal year 2006.

In 2005, two officers had their district-owned firearms stolen. Information pertaining to the firearms has been entered into the national stolen weapons database and the Administrative Office was apprized in accordance with the National Firearms Policy. To date the weapons have not been recovered.

In March 2005, an officer was seriously injured during the course of fire on the close range course. The officer, while drawing the weapon, discharged a round through his left forearm. Fortunately, the round did not strike the bone, which would have resulted in more serious damage to his arm. All instructors involved rendered aid immediately and took appropriate action to keep the remaining officers calm. As a result of this critical incident, an EAP representative was made available to speak to all officers in the district. The representative also provided contact information for anyone who desired further consultation regarding the incident. Given the nature of the critical incident, the firearms instructors amended the qualification schedule, after consulting the Chief, which allowed the instructors to ease the officers back into the shooting schedule, under a less stressful environment.

The qualifications continue to include the Close Range Course, the Double Action Course; various scenario/judgment courses and an annual night/low-light course. In the judgment courses officers were exposed to threatening situations, simulating situations they might be confronted with in the street while conducting fieldwork, and they responded accordingly. The instructors provide immediate feedback and assessment to the officers. The officers in the program shot the courses safely and with proficiency. It is the District Firearms Instructor's opinion that the officers got past the March 2005 incident and have returned to their previous confidence and comfort levels.

The district firearms instructor and the assistant firearms instructors will continue to meet regularly to develop the best training program possible for the district during the next fiscal year and beyond.