April 1976

Probation under the Federal Youth Corrections Act

Michael J. Fusz

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation
Michael J. Fusz, Probation under the Federal Youth Corrections Act, 53 Chi.-Kent L. Rev. 79 (1976).
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol53/iss1/5
The Federal Youth Corrections Act was enacted in 1950 in order to provide sentencing alternatives for young offenders. The purpose of the YCA was to prevent recidivism by emphasizing rehabilitative treatment rather than retributive punishment. To prevent youths from becoming hardened criminals through normal sentencing and incarceration, Congress granted the courts discretion to impose probation, specialized treatment in custody or, in the event that they would not benefit from these measures, normal penalties for the violation. After discharge from prohibition or custody prior to the expiration of his sentence, the youth’s conviction is automatically expunged, thus removing any stigma of a criminal conviction.

This note will deal with the imposition of probation under the YCA. Section 5010(a) of the YCA provides that if the court finds commitment unnecessary, it may sentence the offender to probation. While the YCA does not define what is meant by probation, the Federal Probation Act, which empowers courts to place adult offenders on probation, specifically enumerates the grounds for probation and probationary conditions for adults. The conditions include, among others, the payment of a fine, restitution or support. An unresolved question is whether probation granted to youth and young adult offenders under the YCA Probation Clause may also be conditioned on the payment of fines, restitution or support. Although the trend has been to prohibit imposition of fines on offenders sentenced under the YCA Probation Clause, it is believed that use of these conditions may effectuate the rehabilitation of young offenders under certain circumstances. By increasing the court’s sentencing options with probation, needless commitment of the offender can be avoided while still retaining the benefits of YCA conviction expungement.

PURPOSE OF THE YCA

The YCA was the result of an attempt to deal effectively with crime by youths and with youth offenders. In the early 1940’s, it was recognized that young people were responsible for a disproportionately large share of crime. Youthful offenders are an especially serious factor in the crime problem of the country. Young people between 15 and 21 years of age constitute only 13 percent of our population above 15, but their share in the total amount of serious crime committed far exceeds their proportionate representation.
In addition, it was discovered that the penal system, rather than rehabilitating and reforming offenders, was actually promoting criminal education by incarcerating young unsophisticated offenders with skilled felons and hardened recidivists.\(^6\) Almost twenty percent of federal prisoners were youths under the age of 23 who had previously served a term in a correctional institution.\(^7\) The American Law Institute expressed the opinion that the only way to prevent the development of habitual offenders was to reject punitive methods of dealing with young offenders in favor of rehabilitation.\(^8\) Social scientists hypothesized that rehabilitation of youths had a greater chance of success since many of the crimes committed before maturity were the result of typical adolescent rebellion.\(^9\)

One study of youth offenders\(^10\) recommended that they be given training of a rehabilitative nature in special facilities similar to the facilities of the Borstal system in England,\(^11\) rather than the customary punishment. This

Though but 13 percent of the population, they are responsible for approximately 26 percent of our robberies and thefts; they constitute some 40 percent of our apprehended burglars and nearly half of our automobile thieves. Boys from 17 to 20 are arrested for major crimes in greater numbers than persons of any other 4-year group. They come into court, not for petty offenses but for serious crime, twice as often as adults of 35 to 39; 3 times as often as those of 45 to 49; 5 times as often as men of 50 to 59. Nineteen-year-olds offend more frequently than persons of any other age, with eighteen-year-olds next.\(^12\)

Hearings on S. 1114 and S. 2609 Before the Subcomm. of the Comm. on the Judiciary on the Bills to Provide a System for the Treatment and Rehabilitation of Youth Offenders To Improve the Administration of Criminal Justice and for Other Purposes, 81st Cong., 1st Sess. 38 (1949) [hereinafter cited as 1949 Hearings].

6. Chief Judge Orie L. Phillips of the United States Court of Appeals for the Tenth Circuit, testifying before the Subcommittee of the Committee on the Judiciary said:

Again, reliable statistics demonstrate, with reasonable certainty, that existing methods of treatment of criminally inclined youths are not solving the problem. A large percentage of those released from our reformatories and penal institutions return to antisocial conduct and ultimately become hardened criminals.

Indeed, I sometimes wonder whether our penal institutions, because of their environment and the lack of segregation between classes and ages of criminals, do not foster, rather than prevent, crime. By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it.

Id. at 60; see Chandler, Latter-Day Procedures In the Sentencing and Treatment of Offenders In the Federal Courts, 37 VA. L. REV. 825, 844 (1951); Comment, The Federal Government’s Role In the Treatment of Youth Offenders: Two Approaches, 16 ST. LouIs U.L.J. 437, 463-64 (1972).


8. 1949 Hearings, supra note 5, at 37.

9. Id. at 60. (Remarks of Chief Judge Phillips) \“Sociologists and psychiatrists tell us that special causations which occur in the period between adolescence and manhood are, in a large measure, responsible for antisocial conduct trends manifest by persons in that age group.\” See Lamar, Sentencing Under the Federal Youth Corrections Act: The Need For An Explicit Finding And A Statement of Reasons, 53 B.U.L. REV. 1070, 1077 (1973).


11. Id. at 4-7. The Borstal system, conceived in the early 1900’s, segregates young offenders between the ages of 16 and 23 from older criminals and places them in special institutions which emphasize trade instruction and individual guidance by experienced personnel. Immediately after commitment, a study is made of the youth’s family and social background and he is assigned to the type of institution for
study recommended a flexible sentencing procedure, governed by the judge's discretion, by which offenders would be graded as to their potential for reformation and then sentenced to the kind of treatment which appeared most suited to their personalities and problems. In this way, the authorities could focus on those youths with the greatest promise, while those deemed incorrigible could be dealt with in the traditional manner.

The YCA was drafted to conform with the recommendations in the Judicial Conference Report. As announced in the House Report on the YCA, its purpose was to make a flexible sentencing system available for use in the discretion of the judge when youthful offenders showed possibilities of reformation. The Report emphasized that the YCA was intended to substitute rehabilitative treatment on an individual basis for retributive punishment in order to prevent and correct antisocial tendencies. The courts, following Congress' intent, have continually stressed this purpose of rehabilitation under the YCA. The Department of Justice also approved of the YCA, noting that it would not deprive the courts of present sentencing methods, but would merely provide alternatives.

OPERATION OF THE YCA

The YCA was passed by Congress and became law on September 30, 1950. It applies to federal offenders who are between the ages of 18 and 22 years at the time of conviction. Pursuant to its stated purpose of rehabilitation, the YCA has two important aspects: (1) discretionary sentencing alternatives and (2) automatic expungement of conviction upon discharge.
Under section 5010, the sentencing provision of the YCA, the judge essentially has three alternatives. First, he may sentence the youth to probation under the YCA Probation Clause if he believes commitment is unnecessary. Second, if the judge finds probation inappropriate, he may sentence the offender to the custody of the Attorney General for an indeterminate period of time under section 5010(b). While the youth may be released at any time under this section, he must be released under supervision four years after conviction and must be unconditionally discharged no later than six years after conviction. If the judge feels that treatment for longer than six years would be beneficial, however, he may sentence the offender to the custody of the Attorney General for the length of imprisonment allowed by the statute he violated, under section 5010(c). Under the provisions of this section, the defendant may be released under supervision at any time, but he must be released under supervision two years prior to the end of his term and must be unconditionally discharged by the time the term expires. Prior to sentencing under section 5010(b) or (c), the judge may commit the offender to custody for observation and study under section 5010(e) to determine if he

22. 18 U.S.C. § 5010(a) (1970) provides:
   If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.
23. 18 U.S.C. § 5010(b) (1970) provides:
   If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Division as provided in section 5017(c) of this chapter.
24. 18 U.S.C. § 5017(c) (1970) provides:
   A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.
25. 18 U.S.C. § 5010(c) (1970) provides:
   If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017(d) of this chapter.
26. 18 U.S.C. § 5017(d) (1970) provides:
   A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.
27. 18 U.S.C. § 5010(e) (1970) provides:
   If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsection (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Division shall report to the court its findings.
would benefit from treatment under the YCA. Finally, under section 5010(d), the judge may sentence the offender to any other sentence authorized by law for the offense. 28 This last alternative permits the sentencing of a youth offender under the normal adult provision when there has been a specific finding by the court that he would not benefit from sentencing under the YCA. 29

There is a presumption that offenders under the age of 22 years will benefit from application of the YCA. 30 On the other hand, under the Federal Young Adult Offenders Act, 31 offenders between the ages of 22 and 26 years may be sentenced under the YCA only upon an explicit finding by the court that they will benefit from sentencing under the YCA. 32

Under section 5021, the expungement provision of the YCA, 33 the concept of total rehabilitation is furthered through the automatic setting aside of the conviction upon discharge from custody or probation. The original YCA only provided for the expungement of conviction for a committed offender, 34 but a 1961 amendment extended the benefits of expungement to offenders who were put on probation under the YCA Probation Clause. 35 This provision has been lauded as one of the most beneficial aspects of the YCA. 36

28. 18 U.S.C. § 5010(d) (1970) provides:
   If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (e), then the court may sentence the youth offender under any other applicable penalty provision.
29. "Literal compliance with the Act can be satisfied by any expression that makes clear the sentencing judge considered the alternative of sentencing under the Act and decided that the youth offender would not derive benefit from treatment under the Act." Dorszynski v. United States, 418 U.S. 424, 444 (1974).
31. 18 U.S.C. § 4209 (1970) provides:
   In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C. § 3651 (1970)) sentence may be imposed pursuant to the provisions of such act.
32. Id.
   Upon the unconditional discharge by the Division of a committed youth offender before the expiration of the maximum sentence imposed upon him the conviction shall be automatically set aside and the Division shall issue to the youth offender a certificate to that effect.
   Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect.
although it is questionable whether as a practical matter it erases all stigma
from the offender. 37

**JUDICIAL CONSTRUCTION OF THE YCA PROBATION CLAUSE—SECTION 5010(a)**

Having considered the basic provisions and applications of the YCA, the
problems of imposing probation under the YCA will now be examined. As
noted in the previous section, the court may suspend the imposition of
sentence and place the offender on probation if it decides that commitment is
not required. 38 The statute does not define or elaborate on the meaning of
probation and there has been some dispute as to the court's power to impose
conditions on the probationer under the YCA Probation Clause.

Under the older Federal Probation Act, 39 an offender placed on probation
for a violation punishable by both a fine and imprisonment can be fined and
put on probation. Furthermore, the Federal Probation Act specifically
empowers the court to impose conditions on probation. These include
payment of a fine to the government and payment of restitution or reparations
to any injured parties for actual losses. The question which persists is whether
probation under the YCA Probation Clause is the same type of probation as
that under the Federal Probation Act, so that the court may impose similar
conditions on probation sentences granted under the YCA.

While section 5023(a) 40 purports to define the relationship between the
YCA and the Federal Probation Act, it merely says that the YCA does not
affect the power of a court to suspend sentence and place the offender on
probation nor in any way affect the provisions of the Federal Probation Act.
The question becomes whether the Federal Probation Act provisions are
incorporated in the YCA Probation Clause either by reference in section
5023(a) or through judicial construction.

This question has been explored and partially resolved in several cases.
The trend has been to differentiate probation under the YCA from probation
under the Federal Probation Act. In Cherry v. United States, 41 a 19 year-old
defendant had been placed on probation for five years. After one year,

---

37. See note 97 infra.
ch. 521, § 1, 43 Stat. 1259).
40. 18 U.S.C. § 5023(a) (1970) provides:

Nothing in this chapter shall limit or affect the power of any court to suspend the
imposition or execution of any sentence and place a youth offender on probation or be
construed in any wise to amend, repeal, or affect the provisions of chapter 231 of this
title or the Act of June 25, 1910 (ch. 433, 36 Stat. 864), as amended (ch. 1, title 24, of
the D. of C. Code), both relative to probation.

Note that chapter 231 referred to in the statute is the Federal Probation Act, 18 U.S.C. § 3651
41. 299 F.2d 325 (9th Cir. 1962).
probation was revoked and he was sentenced to the custody of the Attorney General under section 5010(b). On appeal, the youth argued that since there had been no specific finding at trial that he was a youth offender, he must have been sentenced under the Federal Probation Act and thus could not be resentenced under the YCA upon revocation of probation. The court held that since he was only 19 when sentenced, there was no requirement of a finding that he was a “youth offender” in order to sentence him under the YCA. Relying on section 5023(a), the court then asserted that probation under the YCA Probation Clause is identical to that under the Federal Probation Act.

In United States v. Borawski, the court affirmed a sentence of probation imposed on a youth offender under the YCA Probation Clause. The opinion specifically noted that sentencing under the Federal Probation Act, unlike the YCA, would deprive the defendant of the opportunity to have his conviction set aside. Similarly, in United States v. Bailey, the court approved the defendant’s request that he be sentenced to probation under the YCA, rather than under the Federal Probation Act, in order that he be spared a criminal record. These two decisions were the first to recognize the difference in benefits between youth and adult probation sentences.

Two subsequent cases, in the Second and Ninth Circuits, further clarified the distinction. In United States v. Kurzyna and United States v. Jarratt, the courts sustained the imposition of “adult” probation on youths under the Federal Probation Act. In both instances, the lower courts had determined that the defendants would not benefit from sentencing under the YCA. Having made this finding, the courts were free to sentence the offenders under “any other applicable penalty provision,” including the Federal Probation Act. As in the previous cases, the only distinction made between the two probation provisions was the expungement advantage of the YCA Probation Clause.

Beginning in 1973 with the Ninth Circuit case of United States v. Hayes, a series of decisions focused on the possibility of imposing fines with YCA sentences. In Hayes, the defendants were fined under the normal penal statute and then committed to custody under section 5010(b) of the YCA. They appealed, contending that the fines were inconsistent with sentencing under the YCA since commitment under the YCA was intended to be a sole remedy. The court, while noting that fines were not expressly prohibited under the YCA, emphasized that the general purpose of the YCA was to

43. 343 F. Supp. 76 (W.D. Mo. 1971).
45. 471 F.2d 226 (9th Cir. 1972), cert. denied, 411 U.S. 969 (1973).
46. 474 F.2d 965 (9th Cir. 1973).
substitute rehabilitative treatment for retributive punishment. It then characterized fines as retributive and concluded that as such, they were inconsistent with the purpose of the YCA. *Cramer v. Wise*, 47 decided on almost identical facts, cited *Hayes* and agreed that fines were impermissible:

We are of the opinion, however, that judges utilizing the Youth Corrections Act are limited to the options specified in the Act, and that fines may not be imposed on individuals sentenced under the Act. Initially the clearly punitive fine imposed here is inconsistent with the expressed rehabilitative purposes of the Act. 48

The court further asserted that since the provisions of the YCA were logically exclusive of each other, they were also exclusive of any other penalty provisions not contained in the YCA. While both *Hayes* and *Cramer* espouse the general proposition that fines are retributive and thus inconsistent with the rehabilitative ideal of the YCA, it is imperative to restrict these holdings to the narrow facts in each case. When limited in this manner, these decisions only indicate that fines are prohibited when the offender is committed for treatment under the YCA.

Subsequent cases decided in the Ninth Circuit considered the specific issue of whether fines may be imposed as conditions of probation under the YCA Probation Clause. In *United States v. Mollett*, 49 the defendants were convicted, fined and their prison sentences suspended. Probation was granted, but conditioned on payment of the fines. On appeal, relying solely on *Hayes*, the court held that fines were not permitted as conditions of YCA probation since their retributive character was incompatible with the basic aim of YCA sentencing. Judge Anderson, in the dissent, argued that the rule of *Hayes* should be confined to commitment sentences under section 5010(b). He advocated the use of fines as a condition of probation under the YCA Probation Clause, citing *Cherry*, 50 and argued that this combination of conditional probation and subsequent expungement of conviction was intended by Congress when it wrote section 5023(a). This construction, he argued, was consistent with the general purpose of the YCA, namely, flexibility of sentencing:

When one reads the Youth Corrections Act as a whole and in combination with 18 U.S.C. §§ 3651 and 3653, it would seem that Congress intended the very flexibility used in this case with respect to a Section 5010(a) sentence. While I recognize that the need for judicial flexibility in sentencing does not of itself spell out or support an argument as to a particular Congressional intent, nevertheless the district judges are in need of this flexibility in fashioning a hopefully enlightened sentence,

47. 501 F.2d 959 (5th Cir. 1974).
48. Id. at 962.
49. 510 F.2d 625 (9th Cir. 1975).
50. 299 F.2d 325 (9th Cir. 1962).
particularly when dealing with the sensitive problems of youthful and young offenders.\textsuperscript{51}

Two months after \textit{Mollett} was decided, another Ninth Circuit case, \textit{United States v. Bowens},\textsuperscript{52} also held that probation under the YCA Probation Clause could not be conditioned upon the payment of restitution or a fine since this would constitute an improper combination of rehabilitative treatment and retributive punishment. This court cited \textit{Hayes} in support of its decision just as the \textit{Mollett} court did, without questioning its applicability. Thus, it appears that the precedential value of these cases may be somewhat in doubt, in view of the reliance placed on the \textit{Hayes} dicta.

In November 1975, \textit{United States v. Prianos}\textsuperscript{53} was decided in a district court in the Seventh Circuit. The defendant, a young adult, was found suited for treatment under the YCA. He had been convicted of conspiracy after accepting $4000 from a government agent for the sale of a substance containing cocaine. He was sentenced to five years probation under the YCA Probation Clause conditioned on payment of a $5000 fine at $100 per month. The defendant moved to amend the probation order, alleging that under the Fifth and Ninth Circuit decisions,\textsuperscript{54} imposition of a fine was improper when combined with a sentence under provisions of the YCA.

The court dealt with the previous decisions rather summarily, pointing out that \textit{Hayes} and \textit{Cramer} were not factually on point. It then dismissed \textit{Mollett} and \textit{Bowens} as persuasive authority on the grounds that they had not been logically decided on the issues, noting that the Ninth Circuit had merely followed its previous decision in \textit{Hayes} which involved a custody sentence rather than a probation sentence.

After rejecting these previous cases, the court cited Judge Anderson's dissent in \textit{Mollett} with approval. It agreed that a reading of the YCA with the Federal Probation Act indicated an intent to preserve sentencing flexibility:

\begin{quote}
Conditions of probation are, pursuant to statute and the dictates of reason, matters to be determined in the discretion of the sentencing court. We have no doubt that the legislature neither intended to encroach upon that discretion nor to restrict the use of somewhat innovative, though penologically and rehabilitatively sound, sentencing alternatives.\textsuperscript{55}
\end{quote}

\textsuperscript{51} 510 F.2d 625, 628 (9th Cir. 1975).
\textsuperscript{52} 514 F.2d 440 (9th Cir. 1975).
\textsuperscript{53} 403 F. Supp. 766 (N.D. Ill. 1975).
\textsuperscript{54} United States v. Bowens, 514 F.2d 440 (9th Cir. 1975); United States v. Mollett, 510 F.2d 625 (9th Cir. 1975); Cramer v. Wise, 501 F.2d 959 (5th Cir. 1974); United States v. Hayes, 474 F.2d 965 (9th Cir. 1973).
The court also discarded the suggestion that fines were improper under the YCA because of their punitive nature:

[W]e wish to dispel the notion that it [the fine] was intended as a punitive measure. Apart from our realization that sentences pursuant to the Federal Youth Corrections Act were intended by Congress to be rehabilitative rather than retributive, it was and remains the considered opinion of this court that the most effective rehabilitation of this defendant would be realized through a program of probation and the payment of a fine.

Though the imposition of a fine is normally characterized as a punitive measure, we are of the opinion that in this instance the fine will serve as a deterrent to such future misconduct by the defendant, particularly when coupled with the probationary term ordered herein.56

The facts of this case may have been particularly important in the court’s characterization of fines as rehabilitative. The opinion mentions that only $1000 was, in reality, a fine. The other $4000 payment was essentially restitution of the sum the defendant was paid by the government in the narcotics sale.57 It might be argued that this case stands only for the proposition that restitution is a permissible condition of probation, the discussion of fines merely being dicta. The fact that the court pointed this out may indicate some uncertainty on its part. Nevertheless, the defendant was fined $1000 over and above his profit from the offense. The court’s arguments in support of flexible sentencing options, including probationary conditions are persuasive, however, in the absence of a definitive indication of legislative intent.

Thus it can be seen that the decisions in this area have, until recently, maintained a distinction between probation under the YCA Probation Clause and the Federal Probation Act. Under this view of YCA probation, while conditions of payment may not be imposed, the offender’s conviction is expunged upon discharge. If the court desires to make the youth offender’s probation subject to pecuniary conditions, it must first determine that he would derive no benefit from the YCA and sentence him under the Federal Probation Act, thus foregoing the advantages of expungement. The opposing view, as expressed in Prianos and the Mollett dissent would allow probation under the YCA Probation Clause to be conditioned upon payment of fines or restitution as under the Federal Probation Act. While this approach is certainly more flexible from a sentencing standpoint, it is questionable whether it is a valid construction of the YCA.

56. Id. at 769-70.
57. Id.
A REASSESSMENT OF THE INTENT AND POLICY OF THE YCA PROBATION CLAUSE

In ascertaining the propriety of imposing conditions of financial payment on probation under the YCA Probation Clause, several means of analysis are useful: Statutory construction and legislative intent; compatibility of the goals and policies of the two statutes (which is also dependent on legislative intent); and the practical effects of allowing or disallowing financial conditions of this type under the YCA Probation Clause.

Statutory Construction and Legislative Intent

As mentioned previously, the Federal Probation Act was enacted before the YCA, and was based on a prior act of a similar nature. It sets out the circumstances under which a court can grant probation, and expressly permits probation to be conditioned on payment of fines, restitution or support. In contrast, the YCA merely permits the imposition of probation if the court is of the opinion that commitment is unnecessary. The statute is silent as to whether financial conditions are permissible.

In the Judiciary Committee Report on the YCA, the authors commented that the power of the court to grant probation would remain undisturbed under the YCA. The question arises as to whether Congress only included the YCA Probation Clause for reference to the Federal Probation Act, or whether the YCA Probation Clause was intended to operate as a separate probation option. As has been pointed out, the YCA Probation Clause has acquired a somewhat independent existence through judicial construction of the amendment to section 5021 which extended expungement to probationers under the YCA. This amendment was originally enacted to cure the apparent inconsistency by which young offenders sentenced to custody had their convictions expunged, while those merely placed on probation did not. The original legislative intent as to the YCA Probation Clause is unclear, however. If the YCA Probation Clause was only intended to point out the availability of sentencing under the Federal Probation Act in cases under the YCA, then it seems clear that financial penalties are permissible as conditions of probation. If the YCA Probation Clause was intended to authorize an independent probation alternative specifically for youthful offenders, Congress has left the courts without guidelines for its implementation.

Several cases have implied that section 5023(a) incorporates the Federal Probation Act into the YCA by reference. On its face, however, section 5023(a) only states that the Federal Probation Act is not limited by the YCA. It does not state the effect, if any, of the Federal Probation Act on the YCA. Thus the existence of the YCA Probation Clause as an alternative probation option to the Federal Probation Act is neither precluded nor approved by section 5023(a).

One commentator suggests that since the YCA section only authorizes probation, but is otherwise silent, it is clear that when a youthful offender is placed on probation, the regulatory provisions of the Federal Probation Act apply. Initially, this view seems to be supported by commonly recognized rules of statutory construction. Generally speaking, in the absence of clear legislative intent as to meaning, terms which have previously been used in other statutes are presumed to have the same meaning in subsequent acts. Furthermore, if two statutes relate to the same subject matter or have a common purpose, they are to be construed consistently together, if at all possible. However, if the two provisions only refer to the same subject incidentally and their aims are distinct and unconnected, the construction of terms in the earlier statute is not necessarily persuasive with regard to the subsequent act.

In applying these general guidelines to the present situation, it seems reasonable to conclude that Congress expected the courts to refer to the Federal Probation Act in construing the YCA Probation Clause. The Federal Probation Act, a flexible, comprehensive sentencing provision, was amended only two years before the YCA. Both the Federal Probation Act and the YCA Probation Clause deal with the same general area, probation. The difficulty arises in determining whether they have a common purpose or whether they only refer incidentally to the same subject. If the YCA Probation Clause stood alone, it would be relatively simple to discover if the two acts could be read together consistently. The problem lies in the fact that the YCA Probation Clause is only a component of the larger YCA. In order to construe the YCA Probation Clause, it becomes essential to examine fully the policies and goals of the YCA as compared to those of the Federal Probation Act. If the policies and goals are relatively compatible, the undefined YCA Probation Clause may reasonably be construed through reference to the prior Federal Probation

64. Gottshall, Sentencing the Youth and Young Adult Offender, 26 Fed. Prob. 17, 20 (June 1962).
65. 82 C.J.S. Statutes § 316 (1953).
66. 82 C.J.S. Statutes § 366 (1953).
67. Id.
Act. If the construction offered by the Federal Probation Act conflicts with a basic policy of the YCA, rehabilitation for example, the YCA Probation Clause must be construed consistent with its parent statute, the YCA.

Compatibility of the Policies and Goals of the YCA and the Federal Probation Act

The major objection to imposing fines and restitution as conditions of probation under the YCA Probation Clause is the contention that these conditions are essentially punitive, and as such are inconsistent with the stated goal of the YCA to substitute rehabilitative treatment for retributive measures. This objection seems to be based on the assumption that fines and restitution payments are punitive per se. It is suggested that this generalization is too strong. Even if they are basically punitive sanctions, they may also perform a rehabilitative function.

The main purpose of probation in general is rehabilitation, not punishment. Indeed, the vast weight of authority construing the Federal Probation Act has recognized that its basic purpose is to offer a young or unhardened offender a chance to rehabilitate himself without suffering incarceration, if possible. The most important factor in rehabilitative probation, however, is some form of control or guidance of the offender after release. One commentator has observed that a set of conditions that is clearly understood by the offender and is rationally related to assisting his reintegration in the community and preventing future offenses is the only basis on which rehabilitation can be achieved. Some of the standard conditions imposed in many states include lawful behavior, timely reports to the probation officer, steady employment, family support, restitution, fines and sometimes even a term of imprisonment.

Several notable organizations have approved of conditioning probation on financial payment. In 1970, the American Bar Advisory Committee on

68. 82 C.J.S. Statutes § 363 (1953).
69. United States v. Bowens, 514 F.2d 440 (9th Cir. 1975); United States v. Mollett, 510 F.2d 625 (9th Cir. 1975); see Cramer v. Wise, 501 F.2d 959 (5th Cir. 1974); United States v. Hayes, 474 F.2d 965 (9th Cir. 1973).
75. Judicial Review of Probation Conditions, supra note 73, at 183.
Sentencing and Review drafted a set of Standards Relating to Probation.\textsuperscript{76} Part III of the Probation Standards offers guidelines to the courts as to valid conditions of probation. It allows, among others, conditions requiring the payment of restitution, reparations, fines and family support. The committee remarked that any conditions imposed should be designed to aid the probationer in leading a law-abiding life, and should be reasonably related to his rehabilitation; presumably it considers fines and restitution to have this effect in some cases.\textsuperscript{77} The American Law Institute, in the Model Penal Code,\textsuperscript{78} also encourages the courts to use any reasonable conditions which may assist the offender to lead a law-abiding life, including the payment of restitution and reparations.\textsuperscript{79}

The correctional value of fines has never been conclusively established. Some writers find it doubtful; some attack financial penalties imposed as conditions of probation for being unconstitutional or imprisonment for debt,\textsuperscript{80} but the most sweeping criticism contends that they are purely punitive sanctions having no rehabilitative value.\textsuperscript{81} While it is true that rehabilitation is not always the prime motivation in requiring financial payment as a condition of probation,\textsuperscript{82} there is some support for the proposition that these conditions have some rehabilitative aspects:

By making the defendant pay, the argument runs, his sense of obligation to society is awakened. This approach to rehabilitation, namely, that the defendant is returned to complete freedom in society only through undergoing some tangible sacrifice, has its counterpart in psychoanalysis, where the sacrifice undergone through payment of substantial fees plays a significant role in treatment.

\* \* \* \* 

\textsuperscript{76} ABA \textsc{Project on Minimum Standards for Criminal Justice, Standards Relating to Probation} § 1.2 (Approved Draft, 1970) [hereinafter cited as \textsc{Probation Standards}] suggests that:

Probation is a desirable disposition in appropriate cases because:

(i) it maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of the law;

(ii) it affirmatively promotes the rehabilitation of the offender by continuing normal community contacts;

(iii) it avoids the negative and frequently stultifying effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community;

(iv) it greatly reduces the financial costs to the public treasury of an effective correctional system;

(v) it minimizes the impact of the conviction upon innocent dependents of the offender.


\textsuperscript{77} \textsc{Probation Standards}, supra note 76, at § 3.2(b), (c), (d).

\textsuperscript{78} \textsc{Model Penal Code} § 301.1 (Proposed Official Draft, May 1962).

\textsuperscript{79} \textit{Id.} at § 301(2)(h)(1).

\textsuperscript{80} \textit{See} Note, \textit{Imprisonment for Nonpayment of Fines and Costs: A New Look at the Law and the Constitution}, 22 \textsc{Vand. L. Rev.} 611 (1969); \textit{cf.} Tate v. Short, 401 U.S. 395 (1971); Williams v. Illinois, 399 U.S. 235 (1970). Both of these cases suggest that conditioning the defendant’s freedom on his ability to pay is a violation of equal protection.

\textsuperscript{81} \textit{Best & Birzon, Conditions of Probation: An Analysis}, 51 \textsc{Geo. L.J.} 809, 819, 821 (1963) [hereinafter cited as \textit{Best & Birzon}]; \textit{Juvenile Probation}, supra note 74, at 279.

\textsuperscript{82} McGrath, \textit{The Role of the Federal Probation Officer in Criminal Justice}, 34 \textsc{Fed. Prob.} 3, 5 (Dec. 1970). The author points out the economic advantages of probation both in terms of savings to society and also the continuation of support for the probationer’s family.
The rationale articulated for the imposition of the restitution and reparation conditions is the reformative effect the imposition of such a responsibility will have upon the probationer's character.\textsuperscript{83}

The argument for allowing fines and restitution as probation conditions is grounded primarily on the hypothesis that the offender will realize the seriousness of his offense and will mature through meeting these financial obligations.\textsuperscript{84} Some advocate the penalty of fines to impress the seriousness of the offense upon the probationer who might feel he is "getting away with something" by being released.\textsuperscript{85} Others suggest that paying of a fine requires a form of discipline which is therapeutic for the offender, particularly when it is payable in installments.\textsuperscript{86}

These arguments would seem to apply a fortiori when the offender is required to make restitution of gains from the crime or pay reparations to an injured party.\textsuperscript{87} The offender who learns that he cannot profit from the crime or must pay damages for the loss he caused has taken a large step toward rehabilitation.\textsuperscript{88} The symbolic repayment and forgiveness serve to reintegrate the individual into society rather than to alienate him as often happens if he is incarcerated.

It is by no means suggested that these conditions be utilized in all instances of probation. The ABA suggests that fines only be imposed where the offender has gained money or property through the commission of the offense, and then only relative to the amount of his gain.\textsuperscript{89} Whenever these conditions of requiring payment are imposed, however, the amount and manner of payment should be determined with reference to the offender's financial status, his obligations and the seriousness of his crime.\textsuperscript{90} In the case

\begin{flushleft}


88. \textit{Model Penal Code} § 301.1 Comment 7 (Tent. Draft 2, 1954) [hereinafter cited as Model Code].

89. \textit{ABA Project on Minimum Standards For Criminal Justice, Standards Relating to Sentencing Alternatives & Procedures }§ 2.7 (Tent. Draft 1967) [hereinafter cited as Sentencing Alternatives].

\end{flushleft}
of youthful offenders and young adult offenders, the court should remember that its primary goal is to reform, not to punish.

It is submitted that these financial penalties should be made available for use in sentencing under the YCA Probation Clause in order to allow the judge to tailor the type of sentence and restrictions to each defendant. This writer suggests that in certain cases, such as Prianos, where the offender has benefited by his wrongdoing, the punitive aspects of fines and restitution are minimized, and requiring payment may spark the offender’s sense of societal responsibility whether payment is made to the government or to a victim who has suffered loss.

The argument may again be raised that punitive measures were to be strictly forbidden under the YCA and only rehabilitative treatment substituted. In reality, however, virtually nothing can be labeled as pure rehabilitation. Dean Abraham Goldstein once said that any sanction whatsoever is a punishment, whether or not its effect is rehabilitation. One author examined the real purpose behind the espoused goal of rehabilitation and pointed out that the real goal of any method of reform is to change the offender’s attitude, through compulsion or otherwise, so that he will cease to offend. This is done, not for his sake, but for the sake of protecting society.

While the general approach of the YCA was to substitute rehabilitation and treatment for retribution, in reality there are significant punitive aspects to the YCA itself. The very fact of a criminal conviction results in the moral stigmatization of the offender. Probation itself, despite its goal of rehabilitation is still a punitive sanction imposed on an offender to restrict his freedom. The trial judge, in sentencing an offender to treatment under the YCA may consider the objective of deterrence in addition to the goal of rehabilitation when determining the minimum time for treatment in custody. Confinement of an offender is most clearly punitive in that it drastically restricts his physical and intellectual freedom, regardless of whether it is termed custody or imprisonment. In spite of the expungement of convictions under the YCA, many offenders are obliged to disclose sentences under the YCA to avoid the risk of prosecution for making fraudulent statements.

94. Sentencing Alternatives, supra note 89, at § 2.2(a) Comment.
95. Juvenile Probation, supra note 74, at 290.
97. See Schaeffer, The Federal Youth Corrections Act: The Purposes and Uses of Vacating the Conviction, 39 Fed. Prob. 31 (1975). The author points out that government employers, for example, require varying degrees of disclosure. The U.S. Civil Service Commission seems to allow a youth offender whose sentence has been set aside to answer “no” to the question of whether he has been convicted of a
NOTES AND COMMENTS

disclosure may result in an impairment of the individual’s ability to gain employment. All of the sentencing provisions of the YCA are combinations of some form of criminal sanction tempered with guidance in the hope of reforming the individual. It appears that the demand for pure rehabilitation by those who criticize the use of fines as probation conditions is a hypocritical argument at best. It is suggested that the goal of the YCA is essentially the same as that of the Federal Probation Act, rehabilitation. Even if the use of these conditions may have a minor punitive effect, used properly they have the potential for rehabilitation.

Practical Effects

The practical considerations in adopting the use of financial probation conditions under the YCA are also persuasive of their rehabilitative potential. Use of the financial conditions allows greater sentencing flexibility, permitting the judge to tailor the punishment or treatment to the individual’s unique situation. It is generally recognized that probation is highly preferred to incarceration in that it helps the offender adjust to society rather than removing him from it. It lessens the stigmatization of the individual, and it preserves the offender’s framework of normal living conditions. In certain minor types of crime, such as theft of government property, mail theft, income tax evasion, and the like, fines or restitution might well be sufficient crime.

The U.S. Army, however, requires a listing of all previous convictions, regardless of whether they have been set aside. The State of California permits the exclusion of a misdemeanor conviction of a minor when records are sealed under California youth laws, but still requires the general listing of all other convictions, even when the record has been expunged. Presumably, this includes expunged YCA convictions.

Several cases have attempted to delineate the legal effect of expungement. Mestre Morera v. United States Immigration and Naturalization Serv., 462 F.2d 1030 (1st Cir. 1972) held that an alien whose felony conviction had been expunged under the YCA could not be deported for the felony, since expungement removes both the record and the conviction itself. In United States v. Fryer, 402 F. Supp. 831, 837 (N.D. Ohio 1975), the court held that:

[O]nce a conviction has been set aside pursuant to § 5021, it is expunged from the defendant’s record for all purposes and may not later be used to convict someone of violating a statute which requires as an essential element of the offense a prior felony conviction.

Contra, United States v. Collado Betancourt, 405 F. Supp. 1063, 1065 (D.P.R. 1975). The court refused to sentence the young adult defendant under the YCA. The defendant argued that YCA sentencing and subsequent expungement would benefit him by enabling him to fulfill his ambition to become a lawyer. Normal conviction and sentencing would prevent his admission to the Bar. The court said:

Although it is true that upon completion of his sentence defendant would be entitled to the automatic setting aside of said sentence, we are not convinced that the rights and privileges to be restored by such an amnesty include the annulment of the conviction, the right to negate the conviction, to be fully accredited as a witness, to hold office and to be the grantee of a license.

This author is of the opinion that the spirit of the YCA favors total expungement and approves of the decisions in Mestre Morera and Fryer as furthering that objective.

98. Braude, Boy’s Court: Individualized Justice for the Youthful Offender, 12 FED. PROB. 9, 10 (June 1948).

99. SENTENCING ALTERNATIVES, supra note 89, at § 2.3(e) Comment; C. SCHRAG, NAT. INSTIT. OF MENTAL HEALTH, CRIME AND JUSTICE: AMERICAN STYLE 216 (1971); GUIDES, supra note 86, at 16.
treatment to reform unsophisticated first offenders for whom incarceration might be disastrous, even under the YCA. Indeed, the view of many writers that rehabilitation in custody is ineffective, even under the YCA, might suggest the utility of a greater use of probation in combination with conditions of fines or restitution. Where formerly a judge desiring to utilize these conditions was required to find "no benefit" under the YCA, thereby eliminating the opportunity for expungement, allowing the judge to use these conditions under the YCA Probation Clause will preserve the benefits of having the offender's conviction set aside. Thus, such a change would increase sentencing flexibility, avoid the awkward and sometimes harmful fiction of finding "no benefit" and yet would give the offender the best chance for rehabilitation as well as expungement of his record.

CONCLUSION

The judicial restriction of sentencing alternatives under the YCA to those which have traditionally been labeled "rehabilitative" has prevented the use of fines and restitution as conditions of probation. Use of these conditions with probation can assist in the reformation of young offenders under circumstances where mere probation would be ineffective, commitment to custody would be too severe and the court wishes to provide an opportunity for later expungement of the conviction. In order to maximize sentencing alternatives and promote individualized treatment, sentencing judges should have the discretion to impose financial conditions on probation under the YCA. Insofar as these conditions are consistent with the rehabilitative policy and goals of the YCA, the courts should adopt the better reasoned rule of United States v. Prianos.

MICHAEL J. FUSZ

100. Youngdahl, Developments in the Federal Probation System, 28 FED. PROB. 3, 8 (Sept. 1964); Note, The Federal Youth Corrections Act: Past Concern In Need of Legislative Reappraisal, 11 AM. CRIM. L.R. 229, 258-60 (1972); see Scudder, In Opposition to Probation with a Jail Sentence, 23 FED. PROB. 12, 15 (June 1959); Wheeler & Inskeep, Youth in the Gauntlet, 32 FED. PROB. 21, 24-25 (Dec. 1968).

101. Senator Beall introduced a bill in 1972 to amend the YCA to preclude early release of violent offenders under the YCA. S. 3290, 92d Cong., 2d Sess. (1972). Apparently this bill was motivated by his belief that offenders were not being rehabilitated when committed under the YCA:

Originally, the Youthful Offenders Act [sic] contemplated the incarceration of these young people until it was possible to release them under proper conditions. Records such as those above indicate that in the beginning this plan was followed and offenders were only released when ready. Today, however, this is not the case. Today offenders are released because of the overcrowded conditions of the institutions where they are sent for treatment. The criteria for release, therefore, seems to no longer be the condition of the individual, but rather the condition of the institution; something that certainly was not contemplated by the Congress.

118 CONG. REC. 6777 (1972).