

**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

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<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 20, 2007</p>	<p>No. I07-012 (R06-032)</p> <p>Re: Probation Officers and Surveillance Officers' Status as Qualified Law Enforcement Officers Under Federal Law</p>
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To: The Honorable Karen S. Johnson  
Arizona State Senate

**Question Presented**

You have asked whether probation officers and surveillance officers are “qualified law enforcement officers” under Arizona law for the purpose of carrying concealed firearms as permitted by the federal Law Enforcement Officers Safety Act of 2004, 18 U.S.C. § 926B (the “Act”).

**Summary Answer**

Probation officers and surveillance officers are not “qualified law enforcement officers” under the Act. Therefore, the Act does not affect their authority to carry concealed firearms.

## Background

The Law Enforcement Officers Safety Act of 2004 permits “qualified law enforcement officers” to carry concealed firearms nationwide. 18 U.S.C. § 926B. With respect to currently employed law enforcement officers, the Act provides:

Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d)<sup>1</sup> may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

18 U.S.C. § 926B(a). Therefore, any “qualified law enforcement officer” as defined in the Act may carry a concealed firearm anywhere in the United States if he or she meets the statutory criteria, notwithstanding any state concealed-weapons law to the contrary. The only limitation to this federal authorization to carry concealed firearms is that it does not

supersede or limit the laws of any State that—

- (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
- (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

18 U.S.C. § 926B(b).

The Act defines “qualified law enforcement officer” as an employee of a governmental agency who:

- (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
- (2) is authorized by the agency to carry a firearm;
- (3) is not the subject of any disciplinary action by the agency;
- (4) meets the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

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<sup>1</sup> Subsection (d) states: “The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.”

- (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (6) is not prohibited by Federal law from receiving a firearm.

18 U.S.C. § 926B(c).

### Analysis

The Act regulates qualified law enforcement officers' carrying of concealed firearms nationwide. Before the Act's passage, each state determined whether an individual could carry a concealed firearm within its borders without respect to whether the individual was a qualified law enforcement officer authorized to carry a concealed weapon in his or her home state. The Act permits a person who meets the definition of a "qualified law enforcement officer" and whose employing agency authorizes him or her to carry a firearm to carry a concealed firearm within his or her home state and into another state without first applying for and receiving permission to carry it under that state's own concealed-weapons process.

The Act sets out six criteria for determining whether an employee of a governmental agency is a "qualified law enforcement officer." 18 U.S.C. § 926B(c). One criterion is whether the employee is authorized by the employing agency to carry a firearm. 18 U.S.C. § 926B(c)(2). As you note in your opinion request, the Arizona Code of Judicial Administration (ACJA) authorizes some probation officers and surveillance officers to carry firearms under certain circumstances. ACJA § 6-113 (setting forth firearms standards for adult and juvenile probation and surveillance officers). Thus, probation officers and surveillance officers may satisfy the requirement in 18 U.S.C. § 926B(c)(2) that they are authorized to carry a firearm.

To be a “qualified law enforcement officer” under the Act, a surveillance officer or probation officer must also be “authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.” 18 U.S.C. § 926B(c)(1). Determining how this applies requires an analysis of the powers and duties of probation officers and surveillance officers. Although the federal law refers to the “statutory” power of arrest, Arizona law requires an analysis of statutes and the ACJA to determine the authority of probation officers and surveillance officers.

Arizona statutes and the ACJA do not give juvenile surveillance officers the authority to arrest people. *See* A.R.S. § 8-205; ACJA § 6-105(F). Therefore, juvenile surveillance officers do not satisfy subsection (c)(1) and are not “qualified law enforcement officers” under the Act.

In contrast, adult and juvenile probation officers and adult surveillance officers have statutory powers of arrest under Arizona law. Arizona law authorizes adult probation officers to, among other things, “serve warrants, make arrests and bring persons before the court who are under suspended sentences.” A.R.S. § 12-253(3); ACJA § 6-105(E)(2)(c). Arizona law also authorizes adult surveillance officers to “[s]erve warrants, make arrests and bring before the court persons who are under suspended sentences.” A.R.S. § 12-259.01(2)(d). Although Arizona statutes do not explicitly grant arrest powers to juvenile probation officers, the ACJA provides that juvenile probation officers’ duties include serving warrants, making arrests, and bringing non-compliant probationers before the court. ACJA § 6-105(E)(3)(b)(1)-(3). Therefore,

adult and juvenile probation officers and adult surveillance officers have powers of arrest under Arizona law.

In addition to having statutory powers of arrest, the governmental employee must be “authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law.” 18 U.S.C. § 926B(c)(1). The duties of an adult probation officer include creating and maintaining records on all persons placed on probation, exercising supervision and observation over probationers, creating presentence reports for the court, keeping complete identification of probationers and their terms and conditions of probation, obtaining information concerning the conduct of probationers and reporting the information to the court, and bringing defaulting probationers into court when the probationer’s conduct justifies revocation of probation. A.R.S. § 12-253. Adult surveillance officers maintain contact with probationers and their employers and family members, monitor the conduct of the probationer, assemble information on the probationer, and report to the court if the probationer engages in conduct constituting an offense. A.R.S. § 12-259.01.

Juvenile probation officers “receive and examine all referrals or Arizona uniform traffic ticket and complaint forms involving an alleged delinquent juvenile or incorrigible child,” A.R.S. § 8-205(1), “[r]eceive petitions alleging a child or children as dependent and transmit the petitions to the juvenile court,” A.R.S. § 8-205(4), maintain case records, ACJA § 6-105(E)(3)(d), conduct personal interviews, ACJA § 6-105(E)(3)(e), exercise general supervision and observation, enforcing all court orders, ACJA § 6-105(E)(3)(f), ensure probationers pay restitution, ACJA § 6-105(E)(3)(g), conduct risk assessments, ACJA § 6-105(E)(3)(h), monitor school attendance and performance, ACJA § 6-

105(E)(3)(i), assist juveniles in finding employment and monitor employment, ACJA § 6-105(E)(3)(j), involve parent or guardian in the rehabilitation and treatment, ACJA § 6-105(E)(3)(k), provide for supervision of juveniles performing community service, ACJA § 6-105(E)(3)(l), and “prepare a disposition summary report for every juvenile who has been adjudicated of a delinquent act or of a technical violation of probation,” A.R.S. § 8-352(A).

In short, the duties of adult and juvenile probation officers and adult surveillance officers generally consist of supervising persons on probation and addressing probation violations. Taken as a whole, the language “prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law,” 18 U.S.C. § 926B(c)(1), applies to actions taken before or during prosecution, prior to conviction, or during incarceration. *See Ruiz v. Hull*, 191 Ariz. 441, 450, 957 P.2d 984, 993 (1998) (in construing statute, court reads statute as a whole and gives meaningful operation to each of its provisions). The statute does not mention supervision and monitoring for which probation and surveillance officers are responsible. Probation and surveillance officers are not involved in the criminal investigations that precede a person’s prosecution and conviction. And, although probation and surveillance officers might be involved in probation violation hearings, those hearings concern whether a person has violated the terms and conditions of probation and are not criminal prosecutions for violations of law. *See State v. Alfaro*, 127 Ariz. 578, 579, 623 P.2d 8, 9 (1980) (“Essentially, the function of a probation violation hearing is not to decide guilt or innocence but to determine, by a preponderance of all reliable evidence, whether a probationer has violated the terms and conditions of his probation.”). Moreover, probation is not incarceration. *Cf. State v.*

*Graves*, 188 Ariz. 24, 27, 932 P.2d 289, 292 (App. 1996) (holding that because incarceration means “confinement,” it does not include parole, which is a release from confinement). Adult and juvenile probation officers and adult surveillance officers do not engage in the “prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law” as described in 18 U.S.C. § 926B(c)(1), and, therefore, they are not “qualified law enforcement officers” under the Act.<sup>2</sup>

Your opinion request states that “Arizona law also specifically grants peace officer status to probation officers.” While it is true that certain statutes grant probation and surveillance officers the authority of a peace officer under state law, they specifically do so only in regard to the performance of the officer’s duties. *See* A.R.S. § 8-205(3) (stating that juvenile court officers “[h]ave the authority of a peace officer *in the performance of the court officer’s duties.*” [emphasis added]); A.R.S. § 12-253(3) (stating that adult probation officers have “the authority of a peace officer *in the performance of the officer’s duties.*” [emphasis added]); A.R.S. § 13-916(E) (stating that adult probation and surveillance officers “both have the authority of a peace officer *in the performance of their duties.*” [emphasis added]). Thus, probation officers’ authority as peace officers extends only to the duties Arizona law otherwise gives them and does not confer any additional powers or duties upon them. The statutory classification as “peace officers” under certain circumstances does not eliminate the need to fall within the specific definition of qualified law enforcement officer in 18 U.S.C. § 926B.

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<sup>2</sup> In addition, the legislative record repeatedly refers to police officers. *See* H.R. Rep. No. 108-560, at 3 (2004) (stating that purpose of law is to “mandate that . . . police officers could carry a concealed weapon anywhere within the United States”).

### **Conclusion**

A “qualified law enforcement officer” under the Act must be “authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and ha[ve] statutory powers of arrest.” 18 U.S.C. § 926B(c)(1). Because Arizona law does not bestow statutory powers of arrest on juvenile surveillance officers, they do not qualify under subsection (c)(1), and are therefore not qualified law enforcement officers under the Act. Although adult and juvenile probation officers and adult surveillance officers have statutory powers of arrest, their duties do not include the “prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law.” Therefore, adult and juvenile probation officers and adult surveillance officers are likewise not “qualified law enforcement officers” under the Act.

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