

**OPINION NO. 79-029****Syllabus:**

County probation officers, pursuant to R.C. 2923.12, may carry a concealed weapon when acting within the scope of their duties.

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**To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio**

**By: William J. Brown, Attorney General, June 13, 1979**

I have before me your request for my opinion concerning the following question:

May a probation officer of the Court of Common Pleas, in light of R.C. 2923.12, carry concealed firearms when acting within the scope of his official duties?

As your letter indicates, this question has arisen because 1966 Op. Atty Gen. No. 66-184 stated that county probation officers may carry a concealed weapon while in the course of their duties. That conclusion was based upon former R.C. 2923.01 which was repealed by H.B. No. 511 (1974) and supplanted by R.C. 2923.12. R.C. 2923.01 had provided:

No person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person. This section does not affect the right of sheriffs, regularly appointed police officers of municipal corporations, regularly elected constables, and special officers as provided by sections 311.07, 737.10, 1717.06, 1731.14, and 2917.32 of the Revised Code, to go armed when on duty. Deputy sheriffs and specially appointed police officers, except as are appointed or called into service under said sections may go armed  
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In 1966 Op. Att'y Gen. No. 66-184 my predecessor determined that the General Assembly intended that county probation officers be permitted to go armed while on duty. This result was reached because R.C. 2301.31 gave county probation officers authority to arrest parole violators and were thus "specially appointed police officers" under former R.C. 2923.01.

The question of who may be considered a "specially appointed police officer" under former R.C. 2923.01 (and G.C. 12819) has been addressed by this office on a number of occasions. In each instance, the pivotal issue was whether the General Assembly had charged the official with the exercise of any police functions, particularly the power to make arrests. If so, the official was held to be a specially appointed police officer within the purview of the concealed weapons statute, thereby authorized to carry a weapon in the discharge of his or her duties. Thus, in addition to probation officers, deputy game wardens, dog wardens, juvenile court probation officers, game protectors, and personnel of the Ohio Youth Commission have all been permitted to carry a weapon as specially appointed police officers. 1915 Op. Att'y Gen. No. 884, p. 1900; 1933 Op. Att'y Gen. No. 1008, p. 1017; 1929 Op. Att'y Gen. No. 508, p. 767; 1950 Op. Att'y Gen. No. 2074, p. 525; 1969 Op. Att'y Gen. No. 69-151.

With the revision of the Criminal Code, R.C. 2923.01, the concealed weapons statute, was repealed and replaced by R.C. 2923.12, which provides in pertinent part:

(A) No person shall knowingly carry or have, concealed on his person or concealed ready at hand, any deadly weapon or dangerous ordnance.

(B) This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and acting within the scope of their duties. (Emphasis added.)

Since the Legislature no longer recognizes the concept of specially appointed police officers, the continuing viability of 1966 Op. Att'y Gen. No. 66-184, with reference to the authority of county probation officers to carry weapons, must be reexamined. If a probation officer is still to be permitted to carry a concealed weapon, the authority to do so must now arise from his or her classification as a "law enforcement officer" pursuant to R.C. 2923.12(B).

R.C. 2901.01(K) defines "law enforcement officer," in part, as follows:

(2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority;

This section, in effect, codifies the principles evolved by my predecessors and myself which granted specially appointed police status (and the resultant authority to carry concealed weapons) to an official statutorily charged with certain police functions and duties.

Accordingly, county probation officers may be considered law enforcement officers if, by statute, they have a duty to conserve peace or enforce laws, and can arrest violators.

A county probation officer is given the authority to arrest by virtue of R.C. 2301.31, which states:

For violation of the conditions of parole, as defined by section 2967.01 of the Revised Code, or of the rules and regulations governing persons on parole, any county probation officer may arrest a person on parole

in the custody of the county department of probation provided for in section 2301.27 of the Revised Code with which such officer is connected. Upon the written order of the chief probation officer of the county department having custody of a person on parole violating such conditions, rules, and regulations, any probation officer, or any sheriff, constable, or police officer shall arrest such person . . . .

Therefore, a county probation officer, having the authority to arrest parole violators, is a "law enforcement officer" within the meaning of R.C. 2901.01(K), and may carry a concealed weapon while acting within the scope of his or her duties.

Further support for this result may be found in 1974 Op. Att'y Gen. No. 74-084 wherein the question submitted was whether a county dog warden could carry a concealed weapon. I stated that a dog warden must first be found to be a "law enforcement officer" pursuant to R.C. 2901.01(K), and that the ultimate question in this respect is whether there is statutory authority to arrest violators. Finding authorization for the power to arrest, I determined that county dog wardens are law enforcement officers and are, therefore, permitted to carry a concealed weapon while carrying out their duties. This reasoning applies with equal force to the case of a county probation officer.

It is my opinion, and you are so advised, that county probation officers, pursuant to R.C. 2923.12, may carry a concealed weapon when acting within the scope of their duties.