



OFFICE OF THE ATTORNEY GENERAL
CONNECTICUT

WILLIAM TONG
ATTORNEY GENERAL

January 24, 2023

By Email

Gary Roberge, Executive Director
Judicial Branch Court Support Services Division
Office of the Chief Court Administrator
455 Winding Brook Drive
Glastonbury, Connecticut 06033

Re: *Request for Formal Opinion*

Dear Director Roberge:

By letter dated November 15, 2022, you requested a formal opinion on “the issue of whether the duty to intervene and duty to report excessive use of force incidents, contained in the Police Accountability Act (P.A. 20-1), are applicable to Judicial Branch probation officers.” As we explain in this formal legal opinion, the answer is *no*.¹

I. The Act’s Intervention and Reporting Requirements Only Bind Police and Correction Officers

In the summer of 2020, responding in part to national outrage over the murder of George Floyd, Governor Lamont convened the Connecticut General Assembly in special session to "enact

¹ We offer three notes at the outset. First: This opinion considers only whether the Police Accountability Act requires Connecticut probation officers to intervene and report. It does not consider whether any other source of authority – including constitutional rules, other statutes, regulations, agency policy, or ethical, professional, and moral codes – might apply.

Second: This opinion explains what existing law requires. It does not speak to what the law or policy should be.

Third: In 1993, the Connecticut Attorney General’s Office issued an opinion explaining that, under the statutory regime then in place, probation officers were considered “police officers” subject to certain training and certification requirements. 1993 Conn. Ag. Op. 93-28. That opinion was swiftly superseded by Public Act 94-6, now codified at Conn. Gen. Stat. § 7-294d(f)(2), which exempted Judicial Branch employees – including probation officers – from that training and certification. Because the legislature overrode the 1993 opinion on the sole squarely presented legal question, we do not consider that opinion controlling as to whether probation officers are police officers within the meaning of Conn. Gen. Stat. § 7-294a who must intervene and report.

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legislation to promote greater transparency and accountability for law enforcement."² On July 31 of that year, the Governor signed Public Act 20-1, "An Act Concerning Police Accountability," enacting a suite of law enforcement reforms. Two of the Act's provisions are at issue here.

Section 30 of the Act, now codified at General Statutes § 7-282e, requires "police officers" to intervene (subsection 1) and report (subsection 2) certain uses of force, and protects intervening and reporting officers from retaliation (subsection 3). In full, § 30 provides:

(1) Any police officer, as defined in section 7-294a, who while acting in such officer's law enforcement capacity, witnesses another police officer use what the witnessing officer objectively knows to be unreasonable, excessive or illegal use of force, shall intervene and attempt to stop such other police officer from using such force. Any such police officer who fails to intervene in such an incident may be prosecuted and punished for the same acts in accordance with the provisions of section 53a-8 as the police officer who used unreasonable, excessive or illegal force. The provisions of this subdivision do not apply to any witnessing officer who is operating in an undercover capacity at the time he or she witnesses another officer use unreasonable, excessive or illegal force.

(2) Any police officer who witnesses another police officer use what the witnessing officer objectively knows to be unreasonable, excessive or illegal use of force or is otherwise aware of such use of force by another police officer shall report, as soon as is practicable, such use of force to the law enforcement unit, as defined in section 7-294a, that employs the police officer who used such force. Any police officer required to report such an incident who fails to do so may be prosecuted and punished in accordance with the provisions of sections 53a-165 to 53a-167, inclusive.

(3) No law enforcement unit employing a police officer who intervenes in an incident pursuant to subdivision (1) of this subsection or reports an incident pursuant to subdivision (2) of this subsection may take any retaliatory personnel action or discriminate against such officer because such police officer made such report and such intervening or reporting police officer shall be protected by the provisions of section 4-61dd or section 31-51m, as applicable.

² A Proclamation from His Excellency the Governor 3 (July 17, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200717-Call-of-July-2020-Special-Session.pdf>. *And see Connecticut State Police Union v. Rovella*, 36 F.4th 54, 59 (2d Cir. 2022) (summarizing context of Police Accountability Act).

Section 43 imposes the same requirements on “correction officers.” It also prohibits “the Department of Correction or any employee of the department” from taking retaliatory action or discriminating against a correction officer who intervenes or reports.³

The Act imposes these intervening and reporting requirements on police and correction officers, and only on those officers. But as explained below, the Judicial Branch’s probation officers are neither.

II. Judicial Branch Probation Officers Are Not Correction Officers

The General Statutes do not explicitly define “correction officers,” either in the Act or elsewhere. But immediate context reveals the term’s plain meaning. *See, e.g., Hasychak v. Zoning Bd. of Appeals*, 296 Conn. 434, 446 (2010) (determining statutory language’s plain meaning “in light of its context”). Recall that subsection 43(3) bars retaliation against “correction officers” by their employers – a category limited to “the Department of Correction or any employee of the department.” So, for the purposes of § 43, correction officers are necessarily Department of Correction employees. But probation officers work for the Court Support Services Division of the Judicial Branch. *See* Conn. Gen. Stat. § 51-1d.

III. Judicial Branch Probation Officers Are Not Police Officers Because They Do Not Work for a “Law Enforcement Unit”

Unlike “correction officer,” “police officer” has a statutory definition. Section 30 of the Act adopts the definition given in Conn. Gen. Stat. § 7-294a:

(9) “Police officer” means a sworn member of an organized local police department or of the Division of State Police within the Department of Emergency Services and Public Protection, an appointed constable who performs criminal law enforcement duties, a special policeman appointed under [section 29-18](#), [29-18a](#) or [29-19](#) or any member of a law enforcement unit who performs police duties[.]

Probation officers are plainly not sworn members of local police departments; state troopers; constables; or special police officers. So if they are police officers within the meaning of § 7-294a –

³ Separately, the Act also imposes some requirements on all “peace officers,” a term defined in Conn. Gen. Stat. § 53a-3(9) to include adult probation officers. But the intervention and reporting required by §§ 30 and 43 of the Act and addressed in this opinion is limited to “police officers” and “correction officers.” All police officers and correction officers are, by definition, peace officers. *Id.* But not every peace officer is either a police officer or a correction officer.

and under the Act's § 30 – it is because they are both “member[s] of a law enforcement unit” and “perform[] police duties.”

This opinion need not determine whether probation officers ever meet the second criterion – performing “police duties” – because it is clear that they do not meet the first. The Judicial Branch, which employs probation officers, is not a “law enforcement unit” within the meaning of the statute.

Conn. Gen. Stat. § 7-294a explains that “law enforcement unit” means a government “agency” or “department” whose “primary functions” include “the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection or investigation of crime.”

Assuming without deciding that the Judicial Branch is a state “agency” or “department” for these purposes, probation officers still do not fit the bill, because the Branch’s primary function is adjudication and not law enforcement: “The mission of the Connecticut Judicial Branch,” as the Branch itself explains, “is to serve the interests of justice and the public by resolving matters brought before it in a fair, timely, efficient and open manner.”⁴ Designating the Judicial Branch as a law enforcement unit for these purposes would risk upsetting a separation of powers in which the judiciary adjudicates offenses and pronounces sentence, leaving arrest and prosecution to the executive. *See, e.g., Washington v. Comm’r of Correction*, 287 Conn. 792, 828 (2008) (“With respect to our criminal justice system, we have recognized that there are duties and responsibilities that are dedicated to each of our three branches of government... We have recognized that the judicial branch is charged with the responsibility of adjudicating criminal charges and ultimately determining the sentence of incarceration, if any, to be imposed.”); *State v. Courchesne*, 262 Conn. 537, 580 (2003) (“Simply put, the task of... the judicial branch is to interpret and apply [laws] in the context of specific cases.”).

Conclusion

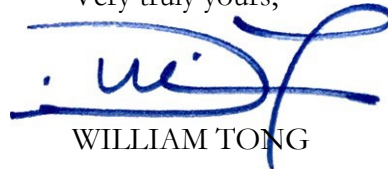
The Police Accountability Act required police officers and correction officers to intervene and report certain uses of force. But the intervention and reporting requirements in the Act's §§ 30 and 43 do not apply to probation officers, who are neither correction officers nor police officers for this purpose.

I trust this opinion responds to your request.

⁴ *Welcome to the Connecticut Judicial Branch*, State of Connecticut Judicial Branch, <https://jud.ct.gov/> (last visited Jan. 10, 2023).

Gary Roberge, Executive Director
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Very truly yours,

A handwritten signature in blue ink, appearing to read 'W. Tong', with a large, stylized flourish extending to the right.

WILLIAM TONG