

Law Enforcement Safety Act 2004






Prepared and Edited by
Deputy Director Craig E. Ferrell Jr.
Admin. Assistant Susan Harden
Officer Tom Griffin
Chief's Command/Legal Services

CHIEF'S COUNSEL

Law Enforcement Safety Act of 2004

18 USC § 926B Carrying of concealed firearms by qualified law enforcement officers

(a) 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) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).**

18 USC § 926B

(b) This section shall not be construed to 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 USC § 926B

(c) As used in this section, the term “qualified law enforcement officer” means 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 standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;**
- (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 USC § 926B

(d) 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.

18 USC § 926B

(e) As used in this section, the term "firearm" does not include -

- (1) any machinegun (as defined in section 5845 of the National Firearms Act);**
- (2) any firearm silencer (as defined in section 921 of this title); and**
- (3) any destructive device (as defined in section 921 of this title).**

18 USC § 926C. Carrying of concealed firearms by qualified retired law enforcement officers

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

18 USC § 926C

(b) This section shall not be construed to supersede or limit the laws of any State that

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(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 USC § 926C

(c) As used in this section, the term “qualified retired law enforcement officer” means an individual who -

- (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;**
- (2) before such retirement, was 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 had statutory powers of arrest;**
- (3) (A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or**
(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- (4) has a nonforfeitable right to benefits under the retirement plan of the agency;**
- (5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms;**
- (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and**
- (7) is not prohibited by Federal law from receiving a firearm**

18 USC § 926C

(d) The identification required by this subsection is -

(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; **or**

(2) (A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; **and**
(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

CHIEF'S COUNSEL

***Law Enforcement Safety Act of
2004***

IACP Article

The Police Chief/October 2004

Active Officers

***The following questions and answers
pertain to active officers only.***

1a. Can a department restrict the use of its weapons?

Yes, a law enforcement agency may restrict an officer's right to carry a firearm, including restrictions prohibiting officers from carrying the weapons out of state regardless of whether they are on or off duty. While the police officer would not be violating state or federal law by carrying a firearm, he would be subject to discipline from his department for violating a lawful order from his agency not to carry a firearm. In other words, failure to comply with an agency directive would only be enforceable through departmental sanctions. The new legislation allows qualified officers to carry a concealed handgun nationwide. It does not create a right to do so.

1b. *Can a police department restrict the type and caliber weapon carried by an officer travelling to another state?* **Yes**

The law Enforcement Officers Safety Act of 2004 (hereafter referred to as the Act) states that a firearm does not include a machine gun, firearm silencer, or any destructive device. These terms are defined in different statutes in the *United States Code*. Other than the exceptions listed, the Act does not restrict the type of handgun an active officer may carry or whether it needs to be a duty weapon. A law enforcement agency, however, may have a more restrictive policy regarding the type of weapons officers may carry during their off duty time. Therefore, although it would not be illegal for the officer to carry a weapon while off duty that is not permitted by departmental policy, an officer could face departmental sanctions for violating his agency's policy.

2a.Should a police department have a policy statement that indicates that if an officer carries a privately owned weapon then they are acting as a citizen and not a representative of the department? Yes

It will be each department's decision on how they should regulate their officers. Although an agency may have a written policy as suggested in the question above, it may be more beneficial to have a good use-of-force policy and to provide additional training for the officers regarding the use of force and the interplay between the new federal law and the right to carry a concealed handgun the the officers' home state and in other jurisdictions. It is especially important to note that when an officer is in another state, absent law to the contrary, he has no law enforcement authority other than the authority to carry a firearm. A written policy on his lack of law enforcement power in another state should be part of the agency's written policy.

2b. Is there anything that requires a department to indemnify or defend an officer who took action in another state as a citizen? No

There is nothing that requires a department to indemnify actions taken by officers for actions they take as a private citizen in another state. It is a good idea to remind officers that although they may lawfully carry a weapon while in another state because they are police officers, they have no law enforcement authority there and should review and become familiar with that state's laws on the carrying of a firearm before traveling.


3. The law defines "qualified law enforcement officer" broadly. Will it include certain corrections officers and sheriff's deputies not previously covered by state laws? Maybe

The Act sets forth six criteria that a person must meet in order to qualify as a law enforcement officer and thus be eligible to carry a concealed handgun under the Act. The most restrictive of these are that a person must have been granted the statutory power of arrest and be authorized to carry a firearm by their state. This is more inclusive than what is provided by some state laws. The portion of the federal law governing retired officers is more restrictive. For instance, a retired officer must have a nonforfeitable right to benefits under a pension plan and have a minimum of 15 years in the aggregate, as a licensed police officer.

4. The Act says that officers must be authorized to carry a firearm by the agency. What obligation does the department have to restrict the officer's right to carry if an officer is physically or mentally unfit to carry a firearm; whether it is temporary or permanent?

If an employer knows that an officer should be restricted from carrying a weapon due to physical or mental infirmities, then it is the employer's responsibility to restrict the incapacitated officer's right to carry a weapon. This is accomplished by issuing a written directive and retaining his police credentials until the restrictions can be released. Section 926B(c) (2) of the Act supports this position. Additionally, a state regulatory agency may revoke or suspend an officer's license under certain circumstances, such as mental incapacity, thereby making him ineligible to carry under the Act. But note: if a police officer is not carrying his governmental issued identification as described under Section 926B(a) and Section 926C(a), he is not authorized to carry a concealed weapon under the Act.

5. What do the terms "not the subject of any disciplinary action by the agency" mean? Active disciplinary investigation? Alternatively, could it mean that any one with a disciplinary history, regardless of infraction, is disqualified? Do all disciplinary actions warrant restriction or should there be a class of offenses?

The Act states that, to be "qualified," an officer must not be the subject of "any disciplinary action by the agency." A  reasonable interpretation of this language would seem to be that when an officer is disciplined to such an extent that he is temporarily disqualified by the law enforcement agency for whom he works from working as a police officer and carrying a weapon, then he is restricted from carrying a weapon under the Act for the same period of time. Minor departmental violations resulting in counseling or verbal or written reprimands would not normally disqualify the officer to carry a concealed handgun under the Act.

6. What written policy should law enforcement agencies issue regarding officers' right to carry a concealed weapon as promulgated under the federal Law Enforcement Officers Safety Act of 2004? In particular, what is the definition of "under the influence of alcohol" as it pertains to the new federal law?

A written policy is a good measure. It provides the agency's employees with notice and training, and it is a supervisory tool. A department's written policy should make it clear that officers who are carrying a weapon while off duty in another state do not have law enforcement authority unless specifically granted that authority by that state. The policy should further state that officers can be restricted as to where they can carry a concealed weapon by laws in other states. Officers should be admonished to check the state laws where they intend to carry a weapon prior to going out of state to make sure they are in compliance. The policy should also note that all training and qualification requirements mandated by the department must be maintained before an officer can carry a firearm out of state. Any department standards as to make, model, and caliber of weapon should also pertain to concealed weapons carried by an officer traveling to another state.

6. Continued

The phrase “under the influence of alcohol or hallucinatory drug or substance” is not defined in the statute. Therefore, it should be interpreted using the states’ penal code or may even be more restrictive. A law enforcement agency’s policy regarding carrying a concealed weapon while off duty should include a definition of intoxication and should prohibit an officer from carrying a weapon if he is under the influence of alcohol. The written policy should also restrict an officer from carrying a firearm if over-the-counter or prescribed medicine impairs the officer’s mental or physical condition. A department’s policy should make it clear that the restrictions listed above also apply to officers carrying their weapon while traveling.

Law enforcement agencies are reminded that some jurisdictions have laws restricting off-duty officers from carrying weapons if they have consumed any reasonable quantity of alcohol or taken over the counter or prescribed medicine. This needs to be taken into consideration when writing a policy.

Retired Officers

The following questions and answers pertain to retired officers.

1. There is no age limit specified under the Act or any requirement that the retired officer be mentally and physically capable of carrying a firearm safely. What should the standard be?

The Act states that a retired officer must meet the same state standards for training and qualification as an active officer in order to be eligible to carry a firearm. The state regulatory agencies usually set the minimum standards that must be followed.

2. How much responsibility does an agency have to assist retired officers living in its jurisdiction? Remember that the retired officer that comes to you may not necessarily have retired from your department. Do you have any responsibility at all?

The Act requires the agency where the officer retired from to provide a photographic identification if the officer is honorably retired. (1) There is no requirement that the local agency assist officers from outside jurisdictions. (2) The state has the burden of certifying officers living within its jurisdiction. The state must certify that officers residing in their jurisdiction have met the requirements set forth in the Act and provide them with documentation stating so.

3. Retirees must meet state standards for training and qualification. Can the state adopt specific regulations for issuing certificates to retirees? For example, could they include a required medical certification from the retiree's physician?

The Act states that the retired officer must meet the standards established by the state. By implication, therefore, a state must have established standards for training and qualification. The Act does not specify what the minimum standards of training and qualification must include or what they may not include. Consequently, a reasonable requirement, such as obtaining a medical certification, would presumably be permissible.

→ ***4. Who determines what the state's standards are? If a state does not have statewide standards, must they adopt some or could they refuse to issue any certificates?***

The Act assumes all states will have standards already in place for their police officers. If they do not, the Act requires that states enact training and qualification standards.

5. The law requires retirees living in the same state to have an agency-issued identification. Who pays for these cards?

The agency where the officer retired must provide a photographic identification card. The Act is silent concerning reimbursement for the photographic identification. It appears that the issuing agency may elect to charge the retired officer for costs incurred for issuing the photo identification or the agency may provide the police identification at no cost to the retiree. The retiree is required to pay for any expense incurred by the agency to provide training or qualification opportunities. The Act requires the agency from which the officer retired to provide the officer with a photographic identification indicating that the officer retired in good standing; the identification may also indicate whether the officer completed firearms training within the most recent 12 months. If the agency does not elect to certify that the retired officer has met the state training and firearm qualification requirements, then the Act does not specify that the retiree's identification be renewed annually. The training and qualification requirement under the Act must be renewed annually.

6. The law says that identification card must denote that the retiree has, within the last year, been "tested or otherwise found by the agency to meet the standards established by the agency for training and qualification of active law enforcement officers to carry a firearm of the same type as the concealed firearm." Who is going to test the retired officers?

The retiree must receive an identification from the agency where he retired. The identification need only certify that the bearer is retired from that law enforcement agency. It is recommended that law enforcement agencies only provide identification to retirees for purposes of the Act to those who meet or exceed the requirements set forth under 18 USCA § 926C(c).

6. Continued

The Act then gives two options whereby a retired officer shall be able to certify that he has completed the mandated state training and qualification requirements. The first is optional under the Act. It states that the retired officer's agency **may** certify that the officer has met the mandatory requirements thereby making him eligible to carry a firearm under the new federal law.

The second option is mandated by the Act. The state is mandated by the Act to set procedures whereby a retiree can receive certification when he has met the state-mandated standards established for training and qualification for active law enforcement officers to carry a firearm. It requires the state to certify that a retired officer living within its jurisdiction has met all of the state requirements for active law enforcement officers to carry a firearm. The Act does not specifically authorize the individual states to place this burden on county or municipal police agencies.

7. What proof that the retiree passed the qualification requirements will be acceptable?

A photographic identification card issued by the retiree's agency indicating the officer is retired is sufficient. It may be prudent to note that this

→ identification does not certify that the listed officer has met state training and qualification requirements. If the agency is also providing certification, a notation on the card indicating that the officer has met the minimum training and qualifications required by the state will suffice. An expiration date not exceeding 12 months should also be noted on the identification. The certification portion of the identification should also indicate the type of firearm the officer is qualified to carry.

7. Continued

If the retiree is obtaining certification from the state, then the certification card should contain the same information as noted above.

The records demonstrating that the retiree met the state-mandated proficiency should be kept as required by the state. In Texas, the state's Commission on Law Enforcement Standards Examinations has written guidelines for record retention for firearms qualification.

8. Does this testing include mental and physical testing?

The Act does not explicitly require any type of testing, mental or physical, in order for a retired law enforcement officer to carry a firearm. The Act, instead, defers to the qualifications mandated by the individual states for their active officers to carry a concealed firearm.

9. What does the law mean where it reads, "to carry a firearm of the same type as the concealed weapon"?

Section 926C(d)(1) and (2)(B) reference "the type of concealed weapon." The type of firearm is interpreted as meaning either a semiautomatic handgun or a revolver. A law enforcement agency should list either semiautomatic handgun or revolver or both on identification cards issued to retirees who meet state-mandated qualification requirements. A retiree will need to demonstrate proficiency with each type of weapon he desires to carry (revolver or semiautomatic handgun or both) before it is listed on the identification. The Act does not restrict a retiree from carrying other weapons of the same type as the one for which he qualified.

10. How will the agency issuing the card know what type of weapon the person is carrying?

The agency certifying that the retired officer has qualified with a particular weapon is the agency that will be conducting firearms training and qualification testing.

11. Does that mean the retiree (and by extrapolation, an active officer) can be limited in the type of weapon carried? Can a retiree carry more than one type of weapon? Will there have to be a separate card for each type of weapon? Can an agency decline to issue cards for certain weapons or multiple weapons?

An agency may regulate the type of weapon the officer can qualify with at their facility, including caliber, barrel length, and so on. If an agency does not permit its officers to carry a revolver or a semiautomatic firearm, then it would be within its rights to limit qualification to those types of weapons at their range. The Act specifically states that the retiree must “meet the qualifications established by the agency for training and qualification for active law enforcement officers.”

12. Does the agency have to do the qualification or can a private, for-profit group do the actual firearm testing based on the agency's standards?

Some jurisdictions allow private ranges to conduct their firearm qualification now. The Act only requires that the officer qualify annually, meeting the agency's minimum qualification requirements.

13. For retirees from another state living in your jurisdiction, the photographic identification does not have to have been issued in the past year. For how long is that identification acceptable? How do you verify the card?

The Act is silent on these issues. A police department should use the same requirements for updating retirees' identifications as it uses for active officers. A written policy detailing this is preferable.

An identification card should be registered in each agency's database. Verification can then be obtained by contacting the originating agency.

Each agency should evaluate its own state licensing law for police officers and consult with local legal counsel before amending its policies.

Training Bulletin

Major Cities Chiefs



ISSUE DATE:

September 24, 2005

NO.

2005-01

**REFERENCE: 18 U.S.C. §926B and
18 U.S.C. §926C**

SUBJECT: CARRYING OF CONCEALED FIREARMS BY ACTIVE AND RETIRED OFFICERS

Training Bulletin Major Cities Chiefs

POLICY

Under the Federal Law Enforcement Officer Safety Act of 2004 (FLEOSA), qualified active and honorably retired police officers are now allowed to carry a concealed firearm in any state. However, active officers must be aware that they do NOT have any law enforcement authority while traveling outside the state where they are employed. Active and retired officers must be aware that FLEOSA does NOT authorize them to carry a firearm in certain prohibited locations.

Officers are not only responsible for adhering to FLEOSA standards, but also responsible for compliance with all department policies regarding carrying, qualification and control of firearms.

This Model Policy applies to all classified and retired classified employees wishing to carry a concealed firearm.

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DEFINITIONS

Concealed Firearm. A firearm, meeting all requirements of individual agency policies, carried in a manner that is not exposed to public view. Within the confines of this Model Policy and as defined in section 926 of FLEOSA, a firearm does not include any type of:

- Machine gun
- Silencer for a firearm
- Destructive device (as defined in 18 U.S.C §926)

FLEOSA. The Federal Law Enforcement Officer Safety Act of 2004 exempting qualified law enforcement officers from state laws prohibiting the carrying of concealed firearms, enacted, July 22, 2004 and codified under 18 U.S.C. §926. The Act does not supercede or limit any state laws that allow private property owners or state or local governments from restricting the carrying of concealed firearms on their property.

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Photographic Identification. A current photographic identification issued by the governmental agency for which the officer is employed or has retired from service as a law enforcement officer. The ID must 1) certify the retired officer has, within the past 12 months from the date the individual is carrying the concealed firearm, been tested or other wise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or 2) contain a certification issued by the State in which the individual resides that indicates that the individual has, within the past 12 months from the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

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Qualified Active Officer. Any officer of a governmental agency who meets all of the stipulations as outlined in FLEOSA. Stipulations include all of the following.

The officer:

- a. 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.**
- b. Is authorized by their agency to carry a firearm.**
- c. Is not the subject of any on-going disciplinary action by the agency.**

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QUALIFIED ACTIVE OFFICER: Continued

- d. Meets all standards established by the agency which require the employee to regularly qualify in the use of a firearm.**
- e. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.**
- f. Is not prohibited by Federal law from receiving a firearm.**

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QUALIFIED RETIRED OFFICER: Any person who meets all of the stipulations as outlined in FLEOSA. Stipulations include the following. The retired officer:

- a. Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability.**
- b. Prior to retirement, was 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 had statutory power of arrest.**

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QUALIFIED RETIRED OFFICER: Continued

- c. Prior to retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or after completing all applicable probationary periods, retired from active service with said agency due to a service related disability, as determined by such agency.**
- d. Has a “nonforfeitable right to benefits” under the retirement plan of the agency.**

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QUALIFIED RETIRED OFFICER: Continued

- e. During the most recent 12-month period, has met the State's standards for training and qualification for active law enforcement officers to carry firearms.**
- f. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.**
- g. Is not prohibited by Federal law from receiving a firearm.**

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1. RESTRICTIONS

Qualified active and honorably retired officers are permitted (but not mandated) to carry a concealed firearm in any state, subject to the following restrictions:

- a. The Federal Government, States, and Sovereign Tribal Nations can prohibit or restrict the possession of firearms on their government property, installation, building, base, airport or park. Additionally, private persons or businesses are permitted to prohibit or restrict the possession of concealed firearms on their property.**
- b. The qualified active or retired officer MUST have ON THEIR PERSON a current photographic identification issued by the governmental agency for which they are employed or have retired from as a law enforcement officer. It is also suggested that employees carry an additional government issued photographic ID card such as a driver license or passport.**

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RESTRICTIONS: Continued

- c. Employees will also be required to comply with all department directives, orders, and rules concerning the qualification, carrying and control of concealed firearms.**

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2. PHOTO ID FOR RETIRED OFFICERS:

The law mandates when retired law enforcement officers carry a firearm they will possess one of the following:

- a. A photographic identification card issued by the agency from which the individual retired from service as a law enforcement officer. The ID must also certify the retired officer has, within the past 12 months from the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or**

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PHOTO ID FOR RETIRED OFFICERS: Continued

- b. A photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and a certification issued by the state in which the individual resides that indicates that the individual has, within the past 12 months from the date the individual is carrying the concealed firearm, been tested or otherwise found by the state to meet the standards established by the state for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.**

When questions arise regarding the legal status of a person who is carrying a weapon under FLEOSA, classified officers will consult with their local county district attorney's office. If there is a question regarding the validity of a particular identification, the issuing agency will be contacted.

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3. PROCEDURES

Under 18 U.S.C. §926B(d), the photographic identification issued to active officers by their agencies is sufficient to comply with the requirements of FLEOSA. Therefore, no further actions should be required by the active officer. It is recommended that the ID card should contain the language that “*the holder qualifies for the right to carry a firearm under federal law 18 U.S.C. §926B.*” This should help avoid any controversy as to whether an officer is in compliance with the Act.

Retired officers wishing to carry a concealed firearm should contact the agency from which they retired. A sworn Eligibility Affidavit must be completed and returned to the agency.

The agency should conduct a background check on the applicant, including an internal review, to ensure the applicant meets the requirements for certification under the applicable law.

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PROCEDURES: Continued

The background check should include but is not limited to all of the following

- **Sustained allegations of criminal activity.**
- **Retirement in lieu of disciplinary action, including suspension, dismissal, demotion, disciplinary transfer or referral to Administrative Personnel Committee.**
- **Criminal activity after retirement.**

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└ PROCEDURES: Continued

- **Suspension or revocation of the applicant's state license during or after employment with the agency. State licenses should be checked because retired police officers may be working as peace officers for another law enforcement agency.**
- **Any activity constituting sufficient cause for the Chief of Police to include a no-rehire letter in an applicant's personnel file.**

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PROCEDURES: Continued

The applicant who successfully completes the background check should then be instructed to report to the firearms training unit of the agency for testing and certification. Proof of proficiency from other law enforcement agency qualification courses or state certified private ranges will also be accepted if it meets the minimum state requirements of the applicant's state of residence.

Once the applicant satisfactorily demonstrates proficiency and upon final approval by the agency, the applicant will be issued an "honorably retired" certificate of handgun proficiency. Certification issued under federal law expires one year from the date of the last qualification.

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4. ANNUAL RENEWAL AND QUALIFICATION

Most agencies require active officers to qualify annually with their firearm during their birth month. It is recommended that annual renewals for retired officers also be during their birth month to maintain consistency, to avoid having agencies being overwhelmed during certain months and to assist the retired officer in remembering when to reapply and qualify each year.

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4. ANNUAL RENEWAL AND QUALIFICATION: Continued

Renewal applicants should complete a new sworn Eligibility Affidavit along with a demonstration of handgun proficiency as established for original applicants.

Agencies should perform a criminal history check and state driver's license verification on all renewal applicants. Law enforcement licenses and/or certifications should be checked because retired police officers may be working as peace officers for another law enforcement agency. Internal Affairs histories need no longer be reviewed after the original application.

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5. RELATED AGENCY POLICIES

Agencies should ensure that this policy is coordinated with their other internal policies including:

Use of Force

Weapon Uniformity

Officers on Transitional/Light Duty

Officers Facing Disciplinary Investigation

Use of Intoxicants

and any other policies the agency may have that will impact their officers' ability to carry a firearm.

**HOUSTON POLICE DEPARTMENT
HUMAN RESOURCES DIVISION
RETIRED PEACE OFFICER FIREARMS APPLICATION DATASHEET**

Application Date: _____

Employee Number: _____ Social Security # _____

Last Name: _____, First Name: _____, MI: _____

Rank At Retirement: _____ Retirement Date: _____

Hair Color: _____ Eye Color: _____ Height: _____ Weight: _____

Race: _____ Sex: _____ Date of Birth _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Contact Phone – 1: _____ Contact Phone – 2: _____

FOR HUMAN RESOURCES USE ONLY

	State Only	HPD Card – State Ret. Only and Handgun Proficiency Card
	Federal Only (Gun Qualification in TX)	HPD Card – Federal Only
	Federal Only (Gun Qualification Out of State)	HPD Card – Retired Only
	State & Federal	HPD Card – With S&F Certificate

Steps	Date	Initial
Affidavit:		
Data Sheet:		
HPOPS/HMEPS:		
Photo Taken:		
QPEPPS:		
IAD:		
TCLEOSE:		
Qualification:		
Letter to AC:		
ID Made:		
ID Mailed/Contacted		

Type of Weapon: (Check one)

- ☐ **Revolver**
- ☐ **Semi-Automatic**
- ☐ **Both**

Revised: 1/12/05

**ELIGIBILITY AFFIDAVIT
HONORABLY RETIRED POLICE OFFICER**

State of Texas
County of Harris

BEFORE ME, the undersigned authority, personally appeared _____
who made this Affidavit and, on Oath, stated the following.

I have fulfilled all of the eligibility requirements listed under Section 1701.357 of the
Occupations Code. This includes that:

Initial

_____ I have honorably retired after 20 years of service as a commissioned police officer.

_____ My license as a commissioned officer was never revoked or suspended during any of my
term of service as a commissioned police officer.

_____ I am not incapable of exercising sound judgement with respect to the proper use and
storage of a handgun.

_____ I have no physical limitations that would interfere with the proper handling of a handgun.

_____ I understand that I must meet and follow the procedures established by the Houston
Police Department in meeting the requirements for obtaining proper certification.

_____ I have not made any material misrepresentation, or failed to disclose any material fact, in
my request for certification as an honorably retired police officer.

Applicant's Signature

SWORN TO and SUBSCRIBED before me this _____ day of _____, 2005.

(SEAL)

Notary Public in and for
The State of Texas

ELIGIBILITY AFFIDAVIT

**HONORABLY RETIRED POLICE OFFICER
FEDERAL PERMIT ONLY**

State of Texas
County of Harris

BEFORE ME, the undersigned authority, personally appeared _____
who made this Affidavit and, on Oath, stated the following.

I have fulfilled all of the eligibility requirements listed under federal law, 18USCA section 926(c), as defined by the Law Enforcement Officers Safety Act of 2004. This includes that:

Initial

_____ I retired in good standing from the Houston Police Department, have at least 15 years of cumulative service as a commissioned law enforcement officer, or am retired in good standing with a service connected disability other than mental instability.

_____ I have a non-forfeitable right to benefits under the retirement plan for Houston Police Officers.

_____ I am not prohibited under Federal law from receiving a firearm.

_____ I am not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

_____ I am not incapable of exercising sound judgement with respect to the proper use and storage of a handgun.

_____ I have no physical limitations that would interfere with the proper handling of a handgun.

_____ I understand that I must meet and follow the procedures established by the Houston Police Department in meeting the requirements for obtaining proper certification.

_____ I have not made any material misrepresentation, or failed to disclose any material fact, in my request for certification as an honorably retired police officer.

Applicant's Signature

SWORN TO and SUBSCRIBED before me this _____ day of _____, 2005.

(SEAL)

Notary Public in and for
The State of Texas



**Houston Police Department
Firearms Range**

_____ Federal Qualification

_____ State CHL Qualification

_____ State Retired Officer

Date: _____

Range Officer: _____

Officer's Name: _____

Payroll #: _____

Social Security #: _____

Weapon # 1 Passed: _____ Failed: _____

Revolver _____

Make: _____

Serial #: _____

Semi- Auto _____

Make: _____

Serial #: _____

Weapon # 2 Passed: _____ Failed: _____

Revolver _____

Make: _____

Serial #: _____

Semi-Auto _____

Make: _____

Serial #: _____

Signature: _____



STANDARD OPERATING PROCEDURES

PROFESSIONAL DEVELOPMENT COMMAND HUMAN RESOURCES DIVISION

CATEGORY:

DATE ISSUED:

EFFECTIVE DATE:

PROCEDURE NUMBER

EMPLOYEE RELATIONS

300/8.00

SECTION:

DATE OF REVISION:

REVISION NUMBER:

PAGE NUMBER:

EMPLOYEE RELATIONS UNIT

1 OF 3

SUBJECT/EVENT:

RULES AND REGULATIONS REGARDING THE ISSUANCE OF HONORABLY RETIRED
POICE IDENTIFICATION UNDER FEDERAL AND STATE LAW

General Order

Houston Police Department



ISSUE DATE:

April 22, 2002

NO.

400-05

**REFERENCE: Supersedes General Order 400-05,
dated August 24, 2000**

SUBJECT: FIREARMS QUALIFICATION AND CONTROL

General Order

Houston Police Department



ISSUE DATE:

February 3, 2005

NO.

600-17

REFERENCE:Supersedes General Order 600-17,
dated August 30, 2004

SUBJECT: USE OF FORCE

General Order 600 - 17 Continued

6

RELATED GENERAL ORDERS

**200-03, Investigation of Employee
Misconduct**

**200-04, Assistance to Officers Inflicting or Suffering
Injury**

200-10, Notification and Emergency Management

200-16, Firearm Discharges by Officers

700-01, Property/Evidence Control Regulations.



Office of the Attorney General

Washington, D.C. 20530

January 31, 2005

MEMORANDUM FOR THE DIRECTOR, BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES
THE ADMINISTRATOR, DRUG ENFORCEMENT
ADMINISTRATION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, FEDERAL BUREAU OF PRISONS
THE INSPECTOR GENERAL
THE DIRECTOR, UNITED STATES MARSHALS SERVICE

FROM:

THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "John Ashcroft", is written over the text "THE ATTORNEY GENERAL".

SUBJECT:

GUIDANCE ON THE APPLICATION OF THE
LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004
TO CURRENT AND RETIRED DEPARTMENT OF
JUSTICE LAW ENFORCEMENT OFFICERS

Agencies Affected by Attorney General Ashcroft's Memo

- **Bureau of Alcohol, Tobacco, Firearms, and Explosives**
- **Drug Enforcement Administration**
- **Federal Bureau of Investigations**
- **Inspector General**
- **United States Marshals Service ALSO**
- **Federal Bureau of Prisons**

On July 22, 2004, Congress passed and the President signed the Law Enforcement Officers Safety Act of 2004 (the "Act"), Pub. L. No. 108-277, 118 Stat. 865 (2004), codified at 18 U.S.C. §§ 926B and 926C. With certain limitations and conditions, the Act exempts active and retired "qualified law enforcement officers" ("qualified LEOs") from state laws and local ordinances prohibiting the carrying of concealed weapons. The Act does not purport to affect any state or local laws and ordinances that permit restrictions of concealed firearms on private property or any such laws that restrict the possession of firearms on any State or local government property, installation, building, base, or park.

This memorandum outlines the Act's application to current and retired Department of Justice LEOs. The Department recognizes that individuals who meet the definition of a qualified LEO under the Act may or may not meet the definition of an LEO under the Civil Service Retirement System or the Federal Employee Retirement System. The guidance set forth below is not intended to and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. Nothing in the Act or this memorandum impairs or otherwise affects the right of an individual to keep and bear arms under the Second Amendment to the Constitution of the United States.

As these provisions make clear, an active qualified LEO under the Act is a current government agency employee who (1) is authorized to perform the specified law enforcement functions and holds a position for which powers of arrest are granted by statute; (2) is authorized to carry a firearm by the agency for which he or she works; (3) is not the subject of disciplinary action; (4) meets any standards set by the employing agency that require the employee to regular qualify in the use of a firearm; (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (6) is not prohibited by Federal law from receiving a firearm; and (7) carries a photo identification issued by the agency. For purposes of the last factor, the Department considers a current, valid "U.S. Government Employee" photographic identification card or a Department-issued credential to constitute "the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer." Should any questions arise concerning the application of these qualification provisions, the determination made by the head of the relevant Department component or his designee shall be subject to review by the Deputy Attorney General.

It is important to note that the Act does not supersede existing agency regulations or policies limiting, restricting, conditioning, or otherwise affecting the carrying of concealed firearms. The Act does preempt and supersede inconsistent state laws and local ordinances, whether criminal or civil. It does not prohibit any component from taking any appropriate disciplinary action for any violation of its existing regulations or policies.

The Department considers the following components to be agencies whose current employees may qualify as LEOs for purposes of the Act: the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Federal Bureau of Prisons; the Office of the Inspector General; and the United States Marshals Service. Of course, any particular employee of one of these components independently must meet each of the specified statutory qualifications to qualify as an LEO under the Act.

II. The Act's Application to Retired Department Law Enforcement Officers

With respect to retired law enforcement officers, the Act provides as follows:

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

Under these provisions, a person is a retired qualified LEO under the Act if he or she (1) retired in good standing from his or her employing agency (other than for reasons of mental instability); (2) was authorized to perform the specified law enforcement functions *and* held a position for which powers of arrest were granted by statute; (3) was regularly employed as a law enforcement officer for an aggregate of 15 years or more before his or her retirement, *or* retired from service with his or her agency (after completing any applicable probationary period of such service) due to a service-connected disability as determined by the agency; (4) has a non-forfeitable right to retirement plan benefits of the law enforcement agency; (5) during the most recent year, has met state firearms training and qualifications that are the same as the training and qualifications for active duty officers; (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (7) is not prohibited by Federal law from receiving a firearm; (8) carries a photo identification issued by the agency; and (9) meets an annual qualification requirement.

Each affected component separately shall prepare and issue a photographic identification card for qualified retired LEOs. Each such identification card shall, at a minimum, include the name of the individual, the individual's photograph, an identification number traceable to the bearer, the date the employee retired in good standing from service with the issuing agency, and the phrase "Retired Law Enforcement Officer."

NOTE: It shall be within the discretion of the employing agency to issue the retired LEO credential called for under the Act. Should the agency (1) make a finding that the subject is not qualified, or (2) enter into an agreement in which the subject agrees that he or she is not qualified, the subject shall not be issued the retired LEO credential described above.

NOTE: With respect to the Act's limitation that a qualified retired LEO "is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance," each former Department employee seeking such qualification annually must meet state standards, if any, regarding alcohol or drug use by law enforcement officers authorized to carry a firearm.

OFFICE OF GENERAL COUNSEL



Latest updates on Florida's implementation of HR 218 (chronological order):

→ **Dateline: 3/15/05. Executive Council of Florida's Criminal Justice Standards and Training Commission meets in Tallahassee and votes not to recommend new firearms standards for active officers.** On Tuesday, March 15, 2005, the EC met in Tallahassee to discuss whether the CJSTC should implement firearms training and qualification standards for active Florida law enforcement officers. After receiving public comment and debating the issue, a motion was tendered to keep the "status quo" and recommend no changes. The motion's author indicated his intent to communicate that the state's standard was the requirement to graduate from the academy and then it became an employer's option whether to require active officers to meet an agency standard or not. The motion passed 4-3, with the chair breaking a tie vote. After subsequent discussion, a motion to reconsider the vote was made by one of those voting on the prevailing side, but it died for lack of a second by a prevailing side member.

The position of the Council will be reported to the CJSTC at its meeting in May.

Note: The Council's vote is just a recommendation and does not necessarily bind the CJSTC. The full Commission may accept, may modify, or may reject the Council's recommendation when it meets in early May.

HR 218 Implementation Update 5/16/05

Criminal Justice Standards and Training Commission Votes to Set Firearms Standard for Active Officers

The Criminal Justice Standards and Training Commission in its May 2005 meeting in Tampa voted to set an annual firearms qualification standard for active law enforcement officers. Chairman Dee Seibert will appoint a select committee of agency administrators, training center directors and subject matter experts to address the issue. The committee will be charged with developing a standard for annual firearms qualification for active law enforcement officers. This standard will include the course of fire and the minimum scores required as well as the employing agencies responsibilities. The committee will also develop a plan for implementing the standard and its effective date.

The Commission in its continuing efforts to address the issues surrounding HR 218 is seeking qualified individuals to serve on the select committee. Interested persons should have their agency head submit their names to Director Mike Crews, Professionalism Program, Florida Department of Law Enforcement, P. O. 1489, Tallahassee, FL 32302-1489. Once the names of those interested persons are received they will be forwarded to the Chairman of the Criminal Justice Standards and Training Commission for final approval and appointment.

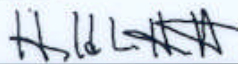
HONORABLY RETIRED, FEDERAL LICENSE ONLY

FRONT



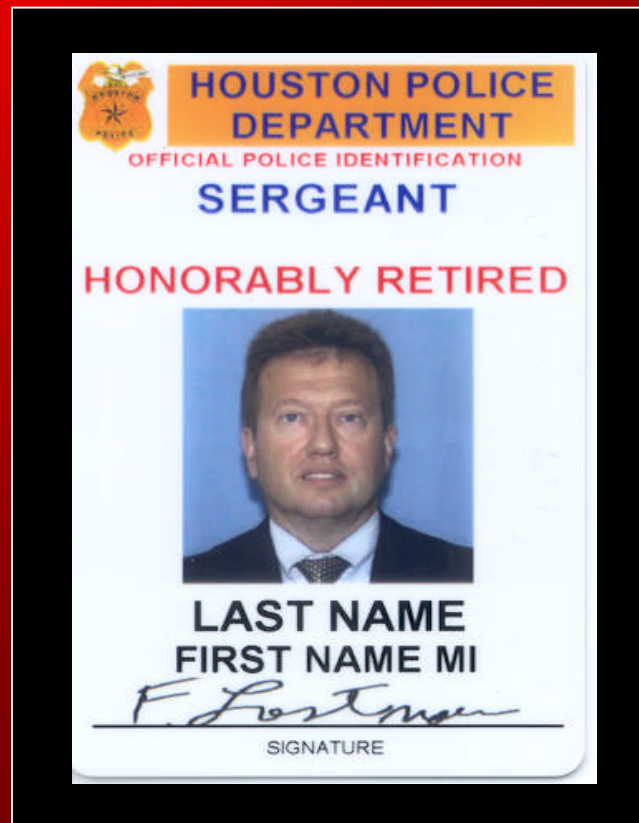
HONORABLY RETIRED, FEDERAL LICENSE ONLY

BACK

RETIRED EMPLOYEE DATA				
EMPL #:	999999	BADGE:	1234	
RACE:	W	SEX:	M	
HAIR:	BLONDE	EYE:	BLUE	
DOB:	01/01/1960		HEIGHT:	511
		WEIGHT:	211	
TYPE WEAPON: Revolver and Semi-Automatic				
<p>"THE AUTHORIZED BEARER OF THIS CARD IS AN HONORABLY RETIRED OFFICER AS DEFINED BY THE LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004. HE/SHE HAS MET THE STATE OF TEXAS TRAINING REQUIREMENT. THEREFORE, THE RETIRED PEACE OFFICER LISTED QUALIFIES TO CARRY A CONCEALED FIREARM UNDER FEDERAL LAW, 18 USCA §926C. THIS IDENTIFICATION IS NOT VALID BEYOND THE EXPIRATION DATE LISTED". THIS IDENTIFICATION IS PROPERTY OF THE CITY OF HOUSTON POLICE DEPARTMENT. ANY MISUSE MAY RESULT IN CRIMINAL PROSECUTION.</p>				
IF FOUND, PLEASE CALL 713-884-3131.		 HAROLD L. HURTT CHIEF OF POLICE		

HONORABLY RETIRED, NO HANDGUN LICENSE

FRONT



HONORABLY RETIRED, NO HANDGUN LICENSE

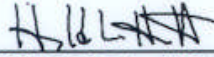
BACK

RETIRED EMPLOYEE DATA					
EMPL #:	999999	BADGE:	1234	DOB:	01/01/1960
RACE:	W	SEX:	M	HEIGHT:	511
HAIR:	BLONDE	EYE:	BLUE	WEIGHT:	211

"THIS CARD DOES NOT AUTHORIZE RETIRED POLICE OFFICER TO CARRY A CONCEALED FIREARM AS ALLOWED UNDER FEDERAL LAW, 18 USCA SECTION 926 (c). BEARER MUST ALSO POSSESS A FIREARM TRAINING AND QUALIFICATION CERTIFICATE FROM AN AGENCY AUTHORIZED BY THE STATE ISSUING THE CERTIFICATION"

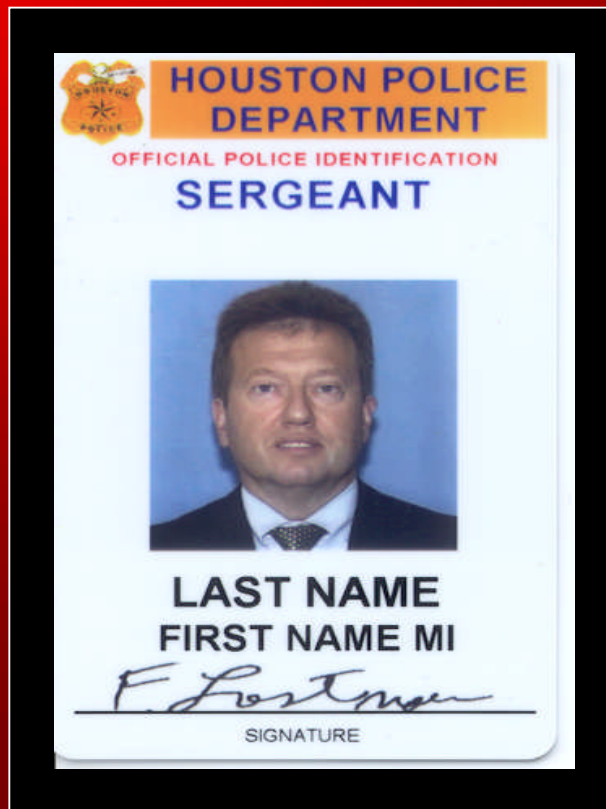
THIS IDENTIFICATION IS PROPERTY OF THE CITY OF HOUSTON POLICE DEPARTMENT. ANY MISUSE MAY RESULT IN CRIMINAL PROSECUTION.

IF FOUND, PLEASE CALL
713-884-3131.


HAROLD L. HURTT
CHIEF OF POLICE

ACTIVE EMPLOYEE

FRONT



ACTIVE EMPLOYEE

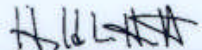
BACK

EMPLOYEE DATA

EMPL #: 999999 BADGE: 1234 DOB: 01/01/1960
RACE: W SEX: M PRINTED: 04/01/2005
HAIR: BLONDE EYE: BLUE
HEIGHT: 511 WEIGHT: 211

THE AUTHORIZED BEARER OF THIS CARD IS A CERTIFIED LAW ENFORCEMENT OFFICER EMPOWERED BY THE LAWS OF THE STATE OF TEXAS AND ORDINANCES OF THE CITY OF HOUSTON. "THE HOLDER QUALIFIES FOR THE RIGHT TO CARRY A FIREARM UNDER FEDERAL LAW, 18 USCA §926B." THE ILLEGAL USE OR POSSESSION OF THIS CARD BY ANYONE OTHER THAN THE PEACE OFFICER PICTURED IS IN VIOLATION OF STATE LAW CHAPTER 37. SECTION 37.11 AND 37.12.

IF FOUND, PLEASE CALL
713-884-3131.


HAROLD L. HURTT
CHIEF OF POLICE