

Training Bulletin

Major Cities Chiefs



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

SUBJECT: CARRYING OF CONCEALED FIREARMS BY ACTIVE AND RETIRED OFFICERS

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 should apply to all classified and retired classified employees wishing to carry a concealed firearm.

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. §921)

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.

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 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)** 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.

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.
- d. Meets all standards established by the agency that 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.

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 powers of arrest.
- 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 that agency.
- d. Has a "nonforfeitable right to benefits" under the retirement plan of the agency.
- 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.

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

2 PHOTO I.D. 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 of-

ficer. 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

- 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 should be contacted.

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 I.D. 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 should 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.

The background check should include but not be 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.
- Suspension or revocation of the applicant's state license during and 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.

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 fed-

eral law expires one year from the date of the last qualification.

**Harold L. Hurtt, President
Major Cities Chiefs**

4 ANNUAL RENEWAL & 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.

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.

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.