



The Criminal Justice Institute's
Management Quarterly

Spring 2005

Hold Your Fire!

A Review of the Law Enforcement Officers Safety Act of 2004 and its Impact on Your Agency

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On July 22, 2004, Congress passed and President George W. Bush signed into law the **Law Enforcement Officers Safety Act of 2004** which is now set forth at Title 18, United States Code, Sections 926B and 926C. While there are several limitations and conditions within this legislation, the Act **exempts active and retired “qualified law enforcement officers” from state laws and local ordinances prohibiting the carrying of concealed weapons.**

Although widely supported by many law enforcement officers, the Act was opposed by many individuals and organizations. In this issue of the *CJI Management Quarterly*, we'll provide an overview of the Act and discuss issues that may be of concern to law enforcement managers.

How the Act Impacts Active Law Enforcement Officers

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 required identification may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce. This 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.



With this statement, the **Law Enforcement Officers Safety Act of 2004** has given active law enforcement officers additional leeway to carry concealed weapons. The Act defines a qualified active law enforcement officer as “an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, prosecution, or incarceration of any person for any violation of law.” In addition, the officer must:

- have the statutory power of arrest;
- be authorized by their agency to carry a firearm;
- not be the subject of any disciplinary action by the agency;
- meet the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- not be prohibited by federal law from carrying a firearm.

The definition of a firearm does not include:

- machine guns
- silencers
- explosives or other destructive devices

Active law enforcement officers are required to carry the photographic identification issued by the agency for which they are employed.

This Act does not authorize active qualified law enforcement officers to carry a firearm on a commercial airline. There are numerous federal statutes and regulations which strictly regulate the carriage of firearms onto aircraft. The Act also does not affect any state or local laws which restrict carrying a concealed weapon on private property or governmental property including installations, buildings, bases, or parks.

An out-of-state officer claiming to be a “qualified law enforcement officer” under the federal law must be able to demonstrate that he or she meets all the requirements as spelled out in the law. Failure to meet any particular requirement of the statute would place an officer traveling to other states at risk of violating another states’ concealed firearms or related firearms statutes. Some states with strict firearms laws, such as New York, have indicated they will insist on all elements of the law being met. An active qualified officer traveling to another state must also realize that he or she has no law enforcement authority in that jurisdiction. An active law enforcement officer visiting another state has the standing of a private citizen without the law enforcement immunity for use of deadly force.

This Act does not supersede any law enforcement agency’s regulations or policies which limit, restrict, condition, or otherwise affect the carrying of a concealed firearm. This Act also does not prohibit any law enforcement agency from taking any appropriate disciplinary action for any violation of its existing regulations or policies. A department may restrict an officer’s right to carry a firearm out of state, regardless of whether they are on or off duty, and discipline an officer for violating such a policy.¹

How the Act Impacts Retired Law Enforcement Officers

The Law Enforcement Officers Safety Act of 2004 also exempts “retired qualified law enforcement officers,” subject to certain limitations and conditions, from state

and local laws prohibiting carrying a concealed weapon. This is the provision of the Act that is the principal area of concern for law enforcement management.

Under these provisions, a person is a “retired qualified law enforcement officer” if he or she:

- retired in good standing from their employing agency other than for reasons of mental instability;
- was authorized to perform the specified law enforcement functions and held a position for which powers of arrest were granted by statute;
- was regularly employed as a law enforcement officer for an aggregate of 15 years or more before their retirement, or retired from service with their agency due to a service-related disability;
- has a non-forfeitable right to retirement plan benefits of the law enforcement agency;
- during the most recent year, has met state firearms training and qualifications that are the same as training and qualifications for active duty officers;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance;
- is not prohibited by Federal law from receiving a firearm;
- carries a photographic identification issued by the agency; and
- meets an annual qualification requirement.

It is extremely doubtful that a state, county, or city law enforcement agency is required by this Act to issue a photographic identification credential to retired agency law enforcement officers or provide firearms qualification training to them.² For example, federal law enforcement agencies intend to provide photographic identification credentials to retired federal law enforcement officers, but these individuals will not be provided with firearms training or qualification.³

State, county, and city rules and regulations in some areas may even prevent currently appropriated operational revenues from being expended on retired employees. Many agencies across the United States have indicated they will not provide firearms training to retired officers because their training facilities are scheduled to train active law enforcement officers or because of the financial burden which would be imposed because of such training.

Another area of concern the Act presents for law enforcement management is § 926C (2) (B), which requires retired officers to have met the standards established by the state for training and qualification for active law enforcement officers who carry firearms. Arkansas, like many states, has no state firearms certification requirement. An officer typically meets the qualification requirement at a basic training program and subsequent certification is through his local agency or department. While the Act's statutory intent seeks to promote the carrying of concealed firearms by qualified retired law enforcement officers, the statute itself does not speak in terms of individual agency firearms qualification.

The California Commission on Peace Officer Standards and Training (POST) noted that no state agency, including POST, issues such a certification. Accordingly, they have directed that retired California officers must obtain the photographic identification and verification from the law enforcement agency from which they retired.⁴ It is noted that Congress could have included this agency option in the Act but did not do so.

Officers who retired from a law enforcement agency in another state other than the one in which they currently reside are faced with a difficult situation. This problem has been discussed by the International Association of Directors of Law Enforcement Standards and Training, with three prevailing views:⁵

- The employing law enforcement agency has the sole responsibility to establish policies and procedures to regulate their officers and retirees.
- P.O.S.T. organizations can accept the responsibility to establish policies, regulations, and identification only for retired officers residing in their state who retired from departments outside the state.
- The P.O.S.T. organization should regulate all retirees regardless of the department from which they retire.

At the present time, the only logical course of action for a law enforcement retiree from another state is to return to his former employing entity to obtain identification and firearms qualification. Unfortunately, there is no resolution to the issue of retired federal law enforcement officers who reside in Arkansas. The U.S. Department of Justice will not provide the firearms qualification, and there is no state qualification option in Arkansas.

Florida has indicated that the active officer's credentials should indicate that the officer has "statutory powers of arrest under the laws of the state" and should indicate the officer is "authorized to carry a firearm." The U.S. Department of Justice has suggested that a retired law enforcement officer's identification card should, 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." Several sources have suggested including a telephone number on the identification card—one that is available twenty-four hours a day—to assist law enforcement officers who encounter an armed individual who claims to be an active or qualified retired officer under the Act.

Law enforcement managers have legitimate concerns about this Act. The prospect of off-duty active and retired officers carrying handguns in other states gives rise to a number of potential liability situations. The League of Minnesota Cities (LMCIT) did a risk management review of the Law Enforcement Officers Safety Act of 2004 and recommended that members "carefully consider the extent to which they become involved in enabling active and retired officers to carry handguns in foreign jurisdictions." Regarding active officers and retired officers, they also suggested the following precautions:

Active Officers:

- There should be a written policy defining the course and scope of duties for police officers. All officers should receive documented training on the policy.
- There should be a written policy about ID cards. It should spell out that the cards belong to the issuing agency, not the individual employee, and must be immediately surrendered to the agency upon demand.
- If circumstances arise that warrant disarming an officer, the agency should also demand the immediate surrender of I.D. cards.

Retired Officers:

"Cities should think even more carefully about whether to help retired officers achieve qualified status. The risks are more difficult to manage. Retired officers are not subject to the daily monitoring that goes on with current employees. Impairments or disabilities that would warrant disarming a retiree will develop largely outside

of the agency's knowledge, and there will be no opportunity to respond. As with active officers, standard police training does not necessarily prepare them to make legally defensible "citizen" shooting decisions in Minnesota or elsewhere. A bottom-line consideration for policy makers is whether there is a sufficient public benefit from arming retired officers to offset these risks to your city."

Conclusion

Although Congress intended to assist active and retired law enforcement officers in carrying concealed weapons within other jurisdictions, the **Law Enforcement Officers Safety Act of 2004** is not clearly drafted. As such, many of the issues discussed here will be resolved in subsequent court decisions. A law enforcement agency that intends to authorize its current and retired law enforcement to carry a concealed firearm should have a solid policy with its primary source as the **Law Enforcement Officers Safety Act of 2004**.

If identification cards are issued to qualified retired law enforcement officers, a written agreement should spell out that the individual is not an active law enforcement officer

and that the identification card must be surrendered upon demand. The identification card issued to retired law enforcement should state: "The bearer is not an officer or agent of (city or county), and this identification card does not give the bearer the right to exercise law enforcement authority."

IMPORTANT NOTE: *Although the information in this article has been taken from sources believed to be accurate, readers should not rely exclusively on the contents of this publication. While a professional effort is made to ensure the accuracy of the contents of this publication, no warranty, expressed or implied, is made. Readers should always consult competent legal advisors for current and independent advice.*

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1. Ferrell, Jr., Craig E., *Law Enforcement Safety Act of 2004*, **The Police Chief**, March 2005
 2. *Printz v. United States*, 521 U.S. 898 (1997)
 3. Attorney General Memorandum to Federal Law Enforcement Agency Heads, *Guidance On The Application Of The Law Enforcement Officers Safety Act of 2004 To Current And Retired Department of Justice Law Enforcement Officers*, January 2005
 4. California POST Bulletin 2004-13, *Clarification of House Resolution 218: Law Enforcement Officers Safety Act of 2004*, September 2004
 5. *International Association of Law Enforcement Standards and Training Newsletter Vol. 16-No. 1*, January 2005



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