

## Law Enforcement Concealed Carry

### The Law and its Amendments

Whether or not a person is privileged by the Law Enforcement Officers Safety Act (LEOSA) of 2004 and its amendments in 2010 and 2013 to carry a concealed firearm depends on whether or not he or she meets the federal definitions for either a "qualified law enforcement officer" or a "qualified retired law enforcement officer." If a person meets the criteria, then "notwithstanding any other provision of the law of any State or any political subdivision thereof", he or she may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, in any state or [political subdivision](#) thereof. As a result, an individual who qualifies under LEOSA does not require a state-issued [permit for carrying](#) a concealed firearm in any state, including that person's home state. This is because LEOSA, by its terms, provides in its introductory paragraphs (Sections 926B(a) and Section 926C(a)) that notwithstanding the law of "any State" a person who qualifies under LEOSA is not subject to the [concealed carry](#) laws of any state. Some officials, such as in [New Jersey](#), believe that a retired officer residing in NJ must still obtain a state issued permit in order to be eligible to carry a firearm under LEOSA, in effect nullifying LEOSA. However, that view assumes New Jersey law is not preempted by LEOSA and has no support in the LEOSA statute itself, by its terms, or in any published court case to date. Furthermore, LEOSA's legislative history indicates that its framers intended LEOSA to supersede all states' laws, including the home state of the individual claiming its exemption. For example, Congress declared LEOSA's purpose was to implement "national measures of uniformity and consistency" and allow officers to carry a concealed firearm "anywhere within the United States." In addition, Congress rejected efforts to allow states to opt out of LEOSA.<sup>[8]</sup> The House of Representatives also defeated, and the Senate refused to consider, proposed amendments aimed at preserving local law enforcement agencies' discretion to regulate "the conditions under which their officers may carry firearms."<sup>[9]</sup> Thus, both the words of LEOSA and its legislative intent clearly establish that LEOSA applies nationwide, including the home state of the individual. The privilege specifically does not extend to [machine guns](#), [destructive devices](#), or [silencers](#).

Although LEOSA [preempts](#) state and local laws, there are two notable exceptions: "the laws of any State that (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property" (such as a bars, private clubs, amusement parks, etc.), or "(2) prohibit or restrict the possession of firearms on any State or [local government](#) property, installation, building, base, or park".

Additionally, LEOSA does not override the federal [Gun-Free School Zone Act](#) (GFSZA) which prohibits carrying a firearm within 1,000 feet of elementary or secondary schools. Although the

GFSZA authorizes on-duty law enforcement officers to carry firearms in such circumstances, off-duty and retired law enforcement officers are still restricted from doing so unless they have a firearms license issued from the state in which they reside and then it is only good for the state in which they reside.<sup>1</sup> Individuals must also obey any federal laws and federal agency policies that restrict the carrying of concealed firearms in certain federal buildings and lands, as well as federal regulations prohibiting the carriage of firearms on airplanes.

Debate has continued over the effect and scope of policies issued by individual law enforcement agencies in relation to their own employees, where such policies would appear to restrict the ability of a law enforcement officer to carry a firearm. Some argue that the law does not override the internal policies of a department or agency. However, when LEOSA was under consideration in the [United States House of Representatives Committee on the Judiciary](#), considerable representations were made to the effect that it would override agency-specific policies, leading to opposition to the Act from the [International Association of Chiefs of Police](#), the [Police Executive Research Forum](#), and the [United States Conference of Mayors](#), which was expressed as a dissenting view in the report of the Committee. Congressman [Bobby Scott \(D-VA\)](#) proposed an amendment to the Bill to provide that it "shall not be construed to supersede or limit the rules, regulations, policies, or practices of any State or local law enforcement agency," but this amendment was opposed by the sponsors of the bill, and was rejected by the Committee 21-11, so the enacted law contains no such exception.<sup>[16]</sup> In his dissent to the passage of LEOSA, Senator [Edward M. Kennedy](#) acknowledged that LEOSA overrides agency policy in accordance with [United States Supreme Court](#) precedent: "The bill removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on-duty or off-duty. Section 2 of the bill provides that regardless of "any other provision of the law of any State or any political subdivision thereof," any individual who qualifies as a law enforcement officer and who carries photo identification will be authorized to carry any firearm. In a variety of contexts, including the federal preemption of state law, courts have interpreted the term "law" to include agency rules and regulations. The Supreme Court has ruled that this term specifically includes contractual obligations between employers and employees, such as work rules, policies, and practices

## **2010 Amendment**

In 2010, LEOSA was amended by the Law Enforcement Officers Safety Act Improvements Act of 2010, which specifically extended coverage to include law enforcement officers of the [Amtrak Police](#), [Federal Reserve Police](#), and law enforcement officers of the executive branch of the Federal Government. The provisions for disqualification on mental health grounds and the provisions regarding qualifications to carry a firearm were amended, and the number of aggregate years for retired officers was reduced from fifteen to ten. In addition the definition of a firearm was expanded to include any ammunition not prohibited by the National Firearms Act of

1934. This was done to exempt qualified active and retired law enforcement officers from the prohibitions against carrying hollow-point ammunition that is in force in New Jersey (except for their peace officers and active federal law enforcement officers) and a few other locations. The concept of "retirement" was replaced with "separated from service" and the requirement that the retired officer have a non-forfeitable right to retirement benefits was eliminated.

## **2013 Amendment**

In 2013, LEOSA was again amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2013, effective January 2, 2013 after President Obama signed Public Law 112-239 (H.R. 4310). Section 1089 of the NDAA contained language which further clarified that military police officers and civilian police officers employed by the U.S. Government unambiguously met the definitions in the original Act.

The definitions of "qualified active" and "qualified retired" law enforcement officer include the term "police officers" and expanded the powers of arrest requirement definition to include those who have or had the authority to "apprehend" suspects under the [Uniform Code of Military Justice](#). Senator [Patrick Leahy](#), a key sponsor of the bill, remarked "The Senate has agreed to extend that trust to the law enforcement officers that serve within our military. They are no less deserving or worthy of this privilege and I am very pleased we have acted to equalize their treatment under the federal law". He further stated "The amendment we adopt today will place military police and civilian police officers within the Department of Defense on equal footing with their law enforcement counterparts across the country when it comes to coverage under LEOSA."

## **Qualified Retired Law Enforcement Officers**

In 18 USC § 926C(c), "qualified retired law enforcement officer" is defined as an individual who:

- 1.** separated from service in good standing from service with a public agency as a law enforcement officer;
- 2.** before such separation, 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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);
- 3.** before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or separated 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.** during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to

conduct a firearms qualification test for active duty officers within that State; **5.** has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued photographic identification; or has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept photographic identification; **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.

Additionally, the individual must carry either:

- 1.** photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and 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 active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or
- 2.** photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and a certification issued by the State in which the individual resides or by an instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

## **Case Law**

The first known criminal prosecution against an individual asserting concealed carry privileges under LEOSA occurred in New York in *People v. Rodriguez*, Indictment No. 2917 (2006). Rodriguez was a full-time construction worker who was also employed as a [Pennsylvania State Constable](#). He was arrested in [New York City](#) for criminal possession of a weapon. He testified in a hearing that he was authorized, qualified, and certified to carry a weapon in his state as a constable. The Court took [judicial notice](#) of the various Pennsylvania statutes that authorize constables to carry firearms, make arrests, serve process, and enforce the law. Upon applying LEOSA in terms of the known facts, the Court dismissed the charge against Rodriguez and held that he was covered by section 926B though constables are elected law enforcement officers and they lack government funding.

A number of other courts have held that Coast Guard boarding officers are qualified under LEOSA. In *People against Benjamin L. Booth, Jr.*, Indictment No. 2007-940 (2007), a county court in Orange County, New York, dismissed a criminal charge against Booth, an off-duty member of the Coast Guard, who had been arrested for carrying a loaded handgun in a vehicle. The court held that Booth was authorized to carry a firearm while acting as a Coast Guard boarding officer, adding, "Although the proof at the hearing indicates that the defendant engaged in a violation of rules, regulations and policies of the United States Coast Guard by possessing a handgun for which he had no license, these violations do not act to lessen the scope of LEOSA as it is applied in this instance."

Another Coast Guardsman, Reserve Petty Officer Jose Diaz, was arrested for carrying an unloaded handgun in a vehicle in San Fernando, California, in November 2007, but the charge was later dismissed and Diaz won a \$44,000 settlement from the city for false arrest. The Coast Guard has issued a formal directive to advise Coast Guard personnel of which Coast Guard personnel are considered to be covered by LEOSA, and the limitations of such coverage.