



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

February 27, 2006

MEMORANDUM FOR ALL STAFF

A handwritten signature in black ink that reads "Harley G. Lappin".

FROM: Harley G. Lappin, Director

SUBJECT: Guidance Regarding the Law Enforcement Officers Safety Act (LEOSA)

This memorandum provides updated guidance regarding the Law Enforcement Officers Safety Act of 2004 (P.L. 108-277; 18 U.S.C. §§ 926B and 926C; July 22, 2004) (LEOSA) as it pertains to Bureau of Prisons (Bureau) staff. My March 14, 2005, memorandum to all staff titled "Information on Implementation of the Law Enforcement Officers Safety Act" is hereby rescinded. Management and the Union met in April 2005 over the implementation of LEOSA. All matters that were agreed upon between the parties are incorporated in this memorandum.¹ The President of the Council of Prison Locals received a copy of this memorandum prior to issuance.

LEOSA exempts qualified current and retired law enforcement officers from State and local laws that prohibit carrying concealed firearms² (a copy of LEOSA is included with this memorandum as an attachment). On January 31, 2005, the

¹ Management and the Union could not come to a resolution on the matter of personal weapon storage for staff on BOP property.

² The law should not be interpreted as granting any benefits other than the exemption to State and local prohibitions on the carrying of a concealed firearm. State and local jurisdictions regulate an individual's ability to obtain a firearms permit or purchase a firearm in a variety of ways. For example, at least one jurisdiction has imposed a requirement that an individual's employer verify the employee's need to carry a firearm off duty as a condition of his or her employment. Bureau staff are not required to carry a firearm off duty as a condition of employment, and, therefore, the Bureau is not responsible for providing a letter of necessity or statement to this effect.

Department of Justice (Department) issued guidance to all components regarding application of LEOSA to current and retired Department law enforcement officers (a copy of the Department's guidance is included with this memorandum as an attachment).³ Most BOP staff who have primary or secondary law enforcement status are "law enforcement" officers as defined in LEOSA, because most of these staff are "authorized by the agency to carry a firearm," as required by the law (see 18 U.S.C. § 926B (c)(2)). But, certain staff who qualify as "law enforcement officers" for retirement purposes are NOT "authorized by the agency to carry a firearm," (for example, Chaplains, as discussed below). A staff member's retirement system status (i.e., law enforcement status) is a necessary condition but not a sufficient condition to determine eligibility under LEOSA.⁴

This memorandum should not be construed as the Bureau of Prisons encouraging any staff member to take any particular action with regard to LEOSA. Staff must continue to abide by Bureau policies and/or procedures regarding personal firearms that:

- (1) prohibit staff from carrying or using a personal firearm while on duty;
- (2) prohibit personal firearms from being brought into an institution or on the grounds of any Federal prison (except for personal firearms to be used on an institution firing range as authorized by the Warden, where constant possession and control of the firearm is maintained);

³ LEOSA defines a qualified current law enforcement officer as an employee 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.

⁴ The Department's guidance makes clear that individuals who meet the definition of a qualified law enforcement officer under LEOSA may or may not meet the definition of a law enforcement officer under the Civil Service Retirement System or the Federal Employees Employee Retirement System. (Emphasis added.)

- (3) prohibit storing personal firearms in Bureau facilities⁵ or in vehicles parked on Bureau property; and
- (4) require personal firearms that are owned by staff in reservation housing to be stored in a specified secure area other than residences.

Personal Responsibility of Off-Duty Employees for Carrying/Using Concealed Personal Firearms Under LEOSA

The carrying of concealed personal firearms by off-duty staff pursuant to LEOSA is not an extension of official Bureau duties. Any actions taken by off-duty staff involving personal firearms will not be considered actions within the scope of Bureau employment, but rather will be considered actions taken as private citizens. Off-duty staff will be individually and personally responsible for any event that may relate to the carrying or use of a concealed personal firearm under LEOSA.

Arrest and law enforcement authorities for Bureau employees are governed by statute (18 U.S.C. § 3050) (attached), Federal regulations (28 C.F.R. §§ 511.10-511.16) (attached), the Department of Justice Policy Statement on the Use of Deadly Force (attached), and Bureau policy (Program Statement No. 5510.09, Searching, Detaining, or Arresting Persons Other than Inmates; and Chapter 7 of Program Statement No. 5500.12, Correctional Services Procedures Manual on "Firearms and Badges"). These authorities may be exercised only in furtherance of official Bureau duties as explained in the statute, regulations, and program statements. LEOSA does not, within the Act itself, give off-duty staff any arrest authority or law enforcement authority.

Additionally, LEOSA exempts qualified current and retired law enforcement officers from State and local laws that prohibit "**carrying**" concealed firearms. LEOSA's language does not include exemptions from State and local laws for any other firearms-related activities, for example, purchasing, registering, licensing, or the permissible use of firearms. It is, therefore, incumbent upon off-duty staff to be aware of the laws, ordinances, regulations, etc., within their jurisdiction that may impact any aspect of their ability to obtain, carry, or use a personal firearm under LEOSA.

⁵ On April 7, 2005, Management and the Executive Board of the Council of Prison Locals agreed that "local supplemental agreements or MOUs negotiated under the current Master Agreement remain in effect under the terms of the current Master Agreement and are not affected by this guidance unless they are contrary to or are in violation of law (statute) or regulation."

Use of Bureau of Prisons Identification for LEOSA Purposes

Following Union negotiations, the Bureau has decided to approve staff use of Bureau identification cards or credentials for LEOSA purposes. Consequently, the Bureau will no longer issue specific LEOSA identification cards. Staff who received a LEOSA identification card pursuant to the March 14, 2005, guidance must return it to the Employee Services Department within two weeks of the date of this memorandum.

Bureau identification cards or credentials may always be used by staff to verify Bureau employment to any entity. This includes, but is not limited to, presenting your Bureau identification card or credentials, when necessary, to another Federal, State, or local law enforcement officer for purposes of explaining your eligibility to carry a concealed personal firearm in public under LEOSA. This situation could arise during a routine traffic stop, while shopping in public, or in other situations.

In these type situations, it is important that off-duty staff not misrepresent that they are acting in furtherance of their official Bureau duties. There should never be a time when off-duty staff claim to be carrying a concealed personal firearm **as part of** their Bureau employment or **in furtherance of** their official Bureau duties.

LEOSA does not alter the Bureau's policy which allows the use of Bureau credentials to obtain permissible discounts offered to a broad class of Government employees (see Bureau Program Statement No. 3420.09, Standards of Employee Conduct, Section 17.c). Neither does LEOSA change the Bureau's policy regarding badges. Official Bureau identification badges will be issued to staff only when they are assigned to duties that require the carrying of a firearm (see Bureau Program Statement No. 5500.12, Correctional Services Procedures Manual, Section 705).

Outside Employment

The Bureau rescinds its categorical prohibition on outside employment which requires the use of a firearm (see Bureau Program Statement No. 3420.09, Standards of Employee Conduct, Section 18). The Program Statement will be amended to reflect this change.

Employees are reminded that pursuant to 5 C.F.R. § 3801.106(b)(ii) they are still prohibited from engaging in outside employment that involves criminal matters. "Criminal matters," for this purpose, includes involvement with a Federal, State, or local law enforcement agency, or with inmates as defined in the Standards of Conduct, or with State and local inmates. In addition, the

prohibition covers outside employment that requires being deputized, granted police powers or arrest authority, or involvement with the courts. All requests for outside employment that require the carrying of a firearm must be reviewed and approved by the staff member's immediate supervisor, CEO, and the Ethics Office prior to beginning the outside employment.

Specific examples of prohibited outside employment may include, but are not limited to: auxiliary, reserve, or regular police officers; sheriffs or deputy sheriffs; and other positions that provide police or arrest powers to enforce criminal laws.

Specific examples of permissible outside employment may include, but are not limited to: a property reposessor charged with recovering property on behalf of a financial institution, a store security guard, positions involving search and rescue operations, and other positions that do not require the use of police powers or arrest authority, but may allow the carrying of a firearm.

Disciplinary Action

To be a qualified law enforcement officer for purposes of LEOSA, an employee must not be "the subject of any disciplinary action by the agency."⁶ For this purpose, the Bureau considers an employee to be the subject of "any disciplinary action" when the decision letter is issued to the employee (meaning, disciplinary action begins). Disciplinary action ends when all sanctions that were issued are completed. "Disciplinary action" includes both disciplinary and adverse actions as stated in the Master Agreement and Title 5 C.F.R. Part 3801. For demotion actions and letters of reprimand, the sanction is deemed completed on the date the letter rendering the demotion action or the letter of reprimand is issued.

Public Health Service Officers

Public Health Service (PHS) officers detailed to the Bureau do not have the statutory powers of arrest conferred upon Bureau staff by 18 U.S.C. § 3050 (see 28 C.F.R. § 511.10(b)). Consequently, these PHS officers do not meet one of the necessary criteria in the LEOSA definition of a "qualified law enforcement officer," and do not qualify to carry a concealed personal firearm pursuant to LEOSA.

⁶ See Bureau Program Statement No. 3420.09, Standards of Employee Conduct, for a review of what is considered to be disciplinary action by the Bureau.

Chaplains

Bureau Program Statement No. 3939.07, Chaplains' Employment, Responsibilities, and Endorsements, expressly prohibits chaplains from participating in firearms training, which likewise prohibits them from being issued firearms to perform official Bureau duties. Consequently, because chaplains are not "authorized by the agency to carry a firearm," they do not meet one of the necessary criteria to be a "qualified law enforcement officer" for LEOSA purposes, and do not qualify to carry a concealed personal firearm pursuant to LEOSA.

Employees For Whom Firearms Qualification is Optional

Employees in non-institution, primary or secondary law enforcement status (e.g., Central Office and Regional staff), may choose to complete the Bureau's firearms qualification program in order to remain authorized to be issued a firearm as part of official Bureau duties. Such staff should consult with their Employee Services Department to determine the most appropriate method for qualifying. Most likely, the Employee Services Department will have to coordinate with a Bureau facility that provides firearms qualification to determine a suitable time for non-institution staff.

Retired Law Enforcement Officers

Some Bureau retirees who were law enforcement officers will wish to take advantage of this law. The guidance from the Department requires that a retiree's identification 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, and the phrase "Retired Law Enforcement Officer." Guidance regarding the issuing of the required identification cards to retirees is contained in a March 30, 2005, memorandum from W. Elaine Chapman, Acting Assistant Director, Human Resource Management Division, to Employee Services Administrators and Managers titled "Additional Guidance and Procedures for Bureau Retirees to Obtain a Law Enforcement Officers Safety Act Identification Card."

The Bureau will not be responsible for training or qualifying retirees to carry a concealed personal firearm under LEOSA. In order to be authorized under LEOSA to carry a firearm, a Bureau retiree must qualify in accordance with State standards for active law enforcement officers, as provided in LEOSA (18 U.S.C. § 926C(d)(2)(B)), and the guidance from the Department.

Copies of LEOSA to Employees

All Bureau employees will be provided a copy of this guidance memorandum and its attachments and are required to sign to acknowledge receipt of these documents.

Attachments

**Acknowledgment of Receipt of Guidance Materials
Regarding the Law Enforcement Officers Safety Act of 2004**

I have received a copy of the Law Enforcement Officers Safety Act (P.L. 108-277); the Bureau of Prisons February 27, 2006, memorandum titled "Guidance Regarding the Law Enforcement Officers Safety Act (LEOSA);" the Department of Justice's January 31, 2005, memorandum titled "Guidance on the Application of the Law Enforcement Officers Safety Act of 2004 to Current and Retired Department of Justice Law Enforcement Officers," title 18 U.S.C. § 3050; 28 C.F.R. §§ 511.10-511.16, and the Department of Justice Policy Statement on the Use of Deadly Force.

Staff Member Printed Name

Staff Member Signature

Date Signed

Place this form on the left side of the employee's Official Personnel Folder

Title 18, United States Code

§ 3050. Bureau of Prisons employees' powers

An officer or employee of the Bureau of Prisons may—

- (1) make arrests on or off of Bureau of Prisons property without warrant for violations of the following provisions regardless of where the violation may occur: sections 111 (assaulting officers), 751 (escape), and 752 (assisting escape) of title 18, United States Code, and section 1826 (c) (escape) of title 28, United States Code;
- (2) make arrests on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violations occurring thereon of the following provisions: sections 661 (theft), 1361 (depredation of property), 1363 (destruction of property), 1791 (contraband), 1792 (mutiny and riot), and 1793 (trespass) of title 18, United States Code; and
- (3) arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property;

if such officer or employee has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of such person's escaping before an arrest warrant can be obtained. If the arrested person is a fugitive from custody, such prisoner shall be returned to custody. Officers and employees of the said Bureau of Prisons may carry firearms under such rules and regulations as the Attorney General may prescribe.



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", written over the typed name "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

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.

Administrator of DEA; Inspector 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

I. The Act's Application to Current Department Law Enforcement Officers

With respect to current 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 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).
- (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.
- (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.
- (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.”

118 Stat. at 865-66.

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

Administrator of DEA; Inspector 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

agency that 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; (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.

The Act has no effect on the requirement of any Department law enforcement components that agents or officers carry a firearm at all times. Similarly, any component's regulations or procedures with respect to on-duty agents or officers will continue to be in effect. Those requirements, regulations, and procedures separately remain in effect, notwithstanding any provision of the Act.

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).

Subject: Guidance on the Application of the Law Enforcement Officers
Safety Act of 2004 to Current and Retired Department of Justice
Law Enforcement Officers

- (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.

- (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.

- (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

Administrator of DEA; Inspector 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

- (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.
- (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) a destructive device (as defined in section 921 of this title)."

118 Stat. at 866-67.

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.

The Department considers the following components to be agencies whose retired 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 Inspector General, insofar as the retiree exercised statutory law enforcement authority at the time of his retirement; and the United States Marshals Service. As with current employees, any particular retired employee of one of these components independently must meet each of the specified statutory qualifications to qualify as a retired LEO under the Act.

Each affected component separately shall prepare and issue a photographic identification card for qualified retired LEOs. Each such identification card shall, at a

Memorandum for Directors for ATF, BOP, FBI, USMS;
Administrator of DEA; Inspector 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

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."

Individual components shall not themselves train or qualify retired employees to carry a firearm, as authorized under the law. In order to be authorized under the Act to carry a firearm, a retired qualified LEO from a DOJ component must qualify pursuant to 18 U.S.C. § 926C(d)(2)(B), and in accordance with state standards for active LEOs.

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.

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.

Public Law 108–277
108th Congress

An Act

To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

July 22, 2004
[H.R. 218]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Law Enforcement Officers Safety Act of 2004”.

Law Enforcement
Officers Safety
Act of 2004.
18 USC 921 note.

SEC. 2. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

“§ 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).

“(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.

“(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.

“(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.

“(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).”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

SEC. 3. EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is further amended by inserting after section 926B the following:

“§ 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).

“(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.

“(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.

“(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.

“(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) a destructive device (as defined in section 921 of this title).”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is further amended by inserting after the item relating to section 926B the following:

“926C. Carrying of concealed firearms by qualified retired law enforcement officers.”.

Approved July 22, 2004.

LEGISLATIVE HISTORY—H.R. 218 (S. 253):

HOUSE REPORTS: No. 108-560 (Comm. on the Judiciary).

SENATE REPORTS: No. 108-29 accompanying S. 253 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 23, considered and passed House.

July 7, considered and passed Senate.



§ 506.1

§ 506.1 What is the purpose of individual inmate commissary accounts?

The purpose of individual inmate commissary accounts is to allow the Bureau to maintain inmates' monies while they are incarcerated. Family, friends, or other sources may deposit funds into these accounts.

§ 506.2 How may family, friends, or other sources deposit funds into an inmate commissary account?

(a) Family and friends must mail deposits to the centralized inmate commissary account at the address we provide.

(1) The deposit envelope must not contain any enclosures intended for delivery to the inmate. We may dispose of any enclosure.

(2) The deposit must be in the form of a money order made out to the inmate's full name and complete register number. We will return checks to the sender provided the check contains an adequate return address.

(b) Other sources, (such as tax refunds, dividends from stocks, or state benefits) must be forwarded for deposit to the centralized inmate commissary account.

PART 511—GENERAL MANAGEMENT POLICY

Subpart A [Reserved]

Subpart B—Searching and Detaining or Arresting Persons Other Than Inmates

Sec.

- 511.10 Purpose and scope.
511.11 Definitions.
511.12 Procedures for searching visitors.
511.13 Controlled visiting—denying visits.
511.14 Right of refusal/termination of a visit.
511.15 Detaining visitors.
511.16 Use of arrest authority.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99, 6.1.

SOURCE: 49 FR 44057, Nov. 1, 1984, unless otherwise noted.

28 CFR Ch. V (7-1-05 Edition)

Subpart A [Reserved]

Subpart B—Searching and Detaining or Arresting Persons Other Than Inmates

§ 511.10 Purpose and scope.

(a) In an effort to prevent the introduction of contraband (such prohibited objects as defined in §511.11(c)) into an institution, Bureau of Prisons staff may subject all persons entering an institution, or during their presence in an institution, to a search of their persons and effects.

(b) Title 18, United States Code, section 3050 authorizes Bureau of Prisons employees (does not include United States Public Health Service employees)—

(1) To make an arrest on or off Bureau of Prisons premises without warrant for violation of the following provisions regardless of where the violation may occur: section 111 (assaulting officers), section 751 (escape), section 752 (assisting escape) of title 18, United States Code, and section 1826(c) (escape) of title 28, United States Code;

(2) To make an arrest on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violation occurring thereon of the following provisions: section 661 (theft), section 1361 (depredation of property), section 1363 (destruction of property), section 1791 (contraband), section 1792 (mutiny and riot), and section 1793 (trespass) of title 18, United States Code, and

(3) To arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property. Bureau policy provides that such an arrest may be made when staff has probable cause to believe that a person has committed one of these offenses and when there is likelihood of the person escaping before a warrant can be obtained.

[59 FR 5924, Feb. 8, 1994]

§ 511.11 Definitions.

(a) *Reasonable suspicion.* As used in this rule, *reasonable suspicion* exists if the facts and circumstances that are known to the Warden warrant rational inferences by a person with correctional experience that a person is engaged, or attempting or about to engage, in criminal or other prohibited behavior. A reasonable suspicion may be based on reliable information, even if that information is confidential; on a positive reading of a metal detector; or when contraband or an indicia of contraband is found during search of a visitor's personal effects.

(b) *Probable cause.* As used in this rule, *probable cause* exists if the facts and circumstances that are known to the Warden would warrant a person of reasonable caution to believe that an offense has been committed.

(c) *Prohibited object.* A firearm or destructive device; ammunition; a weapon or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison; a narcotic drug, lysergic acid diethylamide, or phencyclidine; a controlled substance or alcoholic beverage; any United States or foreign currency; and any other object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual.

[59 FR 5924, Feb. 8, 1994]

§ 511.12 Procedures for searching visitors.

(a) The Warden shall post a notice outside the institution's secure perimeter advising all persons that it is a Federal crime to bring upon the institution grounds any weapons, intoxicants, drugs, or other contraband, and that all persons, property (including vehicles), and packages are subject to search. A person may not use either a camera or recording equipment on institution grounds without the written consent of the Warden.

(b) The Warden may require visitors entering the institution from outside the secure perimeter to submit to a search:

(1) By electronic means (for example, walk-through and/or hand-held metal detector).

(2) Of personal effects. The institution ordinarily provides locker space for personal effects not taken into the visiting room.

(c) The Warden may authorize a pat search of a visitor as a prerequisite to a visit when there is reasonable suspicion that the visitor possesses contraband, or is introducing or attempting to introduce contraband into the institution.

(d) The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an inmate in a low and above security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution.

(e) The Warden may authorize a breathalyzer or urine surveillance test or other comparable test of a visitor as a prerequisite to a visit to an inmate when there is reasonable suspicion that the visitor is under the influence of a narcotic, drug, or intoxicant. As stated in § 511.14, the visitor may refuse to take the test, but the visit will not be allowed.

(f) A pat search, visual search, or urine surveillance test is to be conducted by a person of the same sex as the visitor. A pat search, visual search, urine surveillance, or breathalyzer test shall be conducted out of the view of other visitors and inmates.

[49 FR 44057, Nov. 1, 1984, as amended at 51 FR 26126, July 18, 1986; 56 FR 4159, Feb. 1, 1991; 59 FR 5925, Feb. 8, 1994; 63 FR 11818, Mar. 10, 1998]

§ 511.13 Controlled visiting—denying visits.

(a) The Warden may restrict visiting to controlled situations or to more closely supervised visits when there is any suspicion that the visitor is introducing or attempting to introduce contraband, or when there has been a prior incident of such introduction or attempted introduction, or when there is

§511.14

any concern, based upon sound correctional judgment, about the visitor presenting a risk to the orderly running of the visiting room or area.

(b) The Warden may deny visiting privileges when a controlled or closely supervised visit is not possible.

(c) Staff shall deny admission to the institution to a visitor who refuses to be screened by a metal detector or who refuses to undergo a search of person and/or effects as dictated by these rules.

§511.14 Right of refusal/termination of a visit.

(a) A visitor who objects to any of the search or test or entrance procedures has the option of refusing and leaving the institution property, unless there is reason to detain and/or arrest.

(b) Staff may terminate a visit upon determining that a visitor is in possession of, or is passing or attempting to pass contraband not previously detected during the search process, or is engaged in any conduct or behavior which poses a threat to the orderly or secure running of the institution, or to the safety of any person in the institution. The staff member terminating the visit is to prepare written documentation describing the basis for this action.

§511.15 Detaining visitors.

(a) Staff may detain a visitor or any person who is found to be introducing or attempting to introduce such contraband as narcotics, intoxicants, lethal or poisonous chemicals or gases, guns, knives, or other weapons, or who is engaged in any other conduct which is a violation of law (including, but not limited to, actions which assist escape, such as possession of escape paraphernalia, or which induce riots), pending notification and arrival of appropriate law enforcement officials. The standard for such detention is a finding, based on probable cause, that the person has engaged in such a violation. Institution staff should not interrogate suspects unless immediate questioning is necessary to protect the security of the institution or the life or safety of any person.

(b) Staff shall employ only the minimum amount of force necessary to de-

28 CFR Ch. V (7-1-05 Edition)

tain the individual. Visitors will be detained in an area away from the sight of, and where there can be no contact with, other visitors and inmates.

§511.16 Use of arrest authority.

To effect an arrest under any of the cited sections in §511.10(b) of this part, or under any future arrest authorization statute that may be approved by the Congress of the United States, staff shall have probable cause that the suspected individual is violating the law. Whenever possible, the Warden or designee shall make the determination as to whether an arrest should occur.

PART 512—RESEARCH

Subpart A [Reserved]

Subpart B—Research

Sec.

512.10 Purpose and scope.

512.11 Requirements for research projects and researchers.

512.12 Content of research proposal.

512.13 Institutional Review Board.

512.14 Submission and processing of proposal.

512.15 Access to Bureau of Prisons records.

512.16 Informed consent.

512.17 Monitoring approved research projects.

512.18 Termination or suspension.

512.19 Reports.

512.20 Publication of results of research project.

512.21 Copyright provisions.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A [Reserved]

Subpart B—Research

SOURCE: 59 FR 13860, Mar. 23, 1994, unless otherwise noted.

§512.10 Purpose and scope.

General provisions for the protection of human subjects during the conduct of research are contained in 28 CFR part 46. The provisions of this subpart B specify additional requirements for

DEPARTMENT OF JUSTICE
POLICY STATEMENT ON THE USE OF DEADLY FORCE

(Approved July 1, 2004)

GENERAL PRINCIPLES

- I. Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.
 - A. Deadly force may not be used solely to prevent the escape of a fleeing suspect.
 - B. Firearms may not be fired solely to disable moving vehicles.
 - C. If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.
 - D. Warning shots are not permitted outside of the prison context.
 - E. Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.

CUSTODIAL SITUATIONS

- II. Unless force other than deadly force appears to be sufficient, deadly force may be used to prevent the escape of a prisoner committed to the custody of the Attorney General or the Bureau of Prisons
 - A. if the prisoner is effecting his or her escape in a manner that poses an imminent danger to the safety of the officer or another person; or
 - B. if the prisoner is escaping from a secure facility or is escaping while in transit to or from a secure facility.
- III. If the subject is in a non-secure facility, deadly force may be used only when the subject poses an imminent danger of death or serious physical injury to the officer or another person.

- IV. If the subject is in transit to or from a non-secure facility and is not accompanied by a person who is in transit to or from a secure facility, deadly force may be used only when the subject poses an imminent danger of death or serious physical injury to the officer or to another person.
- V. After an escape from a facility or vehicle and its immediate environs has been effected, officers attempting to apprehend the escaped prisoner may use deadly force only when the escaped prisoner poses an imminent danger of death or serious physical injury to the officer or another person.
- VI. Deadly force may be used to maintain or restore control of a prison or correctional facility when the officer reasonably believes that the intended subject of the deadly force is participating in a disturbance in a manner that threatens the safety of the officer or another person.
- VII. In the prison context, warning shots may be fired within or in the immediate environs of a secure facility if there is no apparent danger to innocent persons: (A) If reasonably necessary to deter or prevent the subject from escaping from a secure facility; or (B) if reasonably necessary to deter or prevent the subject's use of deadly force or force likely to cause serious physical injury.

APPLICATION OF THE POLICY

- VIII. This Policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.