

[NAME OF AGENCY]

**POLICY FOR CARRYING A CONCEALED FIREARM UNDER THE
LAW ENFORCEMENT OFFICERS SAFETY ACT**

I. PURPOSE

The Law Enforcement Officers Safety Act (“LEOSA”) became Federal law on July 22, 2004. Originally introduced as House Resolution 218 (H.R. 218) and codified within the provisions of The Gun Control Act of 1968 as Chapter 44, Title 18 of the United States Code, §§ 926B and 926C, LEOSA defines two classes of law enforcement officers: currently appointed officers and separated officers. LEOSA exempts these persons from the concealed firearms carry laws of the 50 States (including the District of Columbia, Puerto Rico and U.S. Possessions), as well as the political subdivisions thereof, provided they meet LEOSA’s requirements and subject to certain exceptions. The text of LEOSA as currently in effect is reproduced in its entirety in Exhibit A hereto.

Consistent with Federal law, it is the policy of the [Name of Agency] to enhance the personal protection of current and former [Name of Agency] law enforcement officers when off-duty or following separation from service. As such, the [Name of Agency], in accordance with this Policy, shall (1) comply with LEOSA, (2) implement certain procedures in conformity with LEOSA, and (3) permit currently appointed and separated regular and reserve [Name of Agency] law enforcement officers to carry a firearm in accordance with LEOSA and the following conditions and provisions.

As used in this Policy, the term “[Name of Agency] [police officer][deputy sheriff]” or “[Name of Agency] law enforcement officer,” refers to both a regular and a reserve [Name of Agency] [police officer][deputy sheriff], interchangeably.

II. DEFINITIONS

The following definitions conform to terms as used in LEOSA:

- A. Qualified Law Enforcement Officer:** A sworn and currently appointed [Name of Agency] regular or reserve law enforcement officer who:
1. Is authorized by law when on-duty to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law;

2. Has statutory powers of arrest on-duty;
3. Is authorized by the [Name of Agency] to carry a firearm on-duty;
4. Is not the subject of any disciplinary action by the [Name of Agency] which could result in the suspension or loss of police powers;
5. Meets the standards established by the [Name of Agency] which require the officer to regularly qualify in the use of a firearm;
6. At the time of carrying a concealed firearm pursuant to the LEOSA exemption, is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance;
7. Is not prohibited by law from possessing a firearm; and
8. At the time of carrying a concealed firearm under LEOSA, possesses the [officer's][deputy sheriff's] [Name of Agency] photographic identification card.

B. Qualified Retired Law Enforcement Officer ("QRLEO"): A separated [Name of Agency] law enforcement officer who:

1. Separated from service "in good standing" (as described in subsection II.B.6. below);
2. Before such separation, served as a law enforcement officer for an aggregate of 10 years or more (including time served as a law enforcement officer with another agency), or separated due to a service-connected disability (as determined by the [Name of Agency]) after completing any applicable probationary period;
3. 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;
4. At the time of carrying a concealed firearm pursuant to the LEOSA exemption, is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance;
5. Is not prohibited by law from possessing a firearm;
6. Is a separated [officer] [deputy sheriff] who at the time of separation was "in good standing" as follows: (a) met the [Name of Agency's] standards for separating "in good standing;" (b) the separated [officer] [deputy sheriff] was

not the subject of discipline, pending discipline or an internal, administrative or criminal investigation which resulted in, or reasonably could be anticipated to have resulted in, the suspension or loss of police powers; (c) the separated [officer][deputy sheriff] was not separated from service due to a finding by a qualified medical professional employed by the [Name of Agency] that the separated [officer][deputy sheriff] was unqualified to be a law enforcement officer for reasons related to the separated [officer's][deputy sheriff's] mental health, and (d) at the time of separation, the separated [officer][deputy sheriff] had not entered into (or subsequently did not enter into) an agreement with the [Name of Agency] in which that individual acknowledges he or she is not qualified under LEOSA for reasons relating to mental health;

7. During the most recent 12-month period has met the standards for qualification in firearms training for active duty law enforcement officers as determined by the [Name of Agency], the State in which the separated officer 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 law enforcement officers within that State; and
8. At the time of carrying a concealed firearm under LEOSA possesses the separated [officer's][deputy sheriff's] [Name of Agency] photographic identification card issued to such [officer][deputy sheriff] upon or after separation together with proof of firearms qualification as required by Section II.B.7. above.

III. DETERMINATION OF LEOSA-ELIGIBILITY

- A. With respect to currently appointed [Name of Agency] [police officers][deputy sheriffs], LEOSA eligibility depends in part upon certain factual criteria having been satisfied at the time the [officer][deputy sheriff] carries a concealed firearm off-duty pursuant to LEOSA (including, by way of example and not limitation, the requirements of Sections II.A.3., 4., and 5. above). An [officer] [deputy sheriff] is responsible for ensuring such criteria are satisfied before relying on the LEOSA exemption to carry a concealed firearm. The [Name of Agency] photographic identification cards for active duty [officers] [deputy sheriffs] who are LEOSA-eligible shall have a reference to LEOSA-eligibility denoted thereon.
- B. Upon separation or anytime thereafter, a QRLEO may s u b m i t a request to the [Chief of Police][Sheriff] for a photographic identification card as required to claim LEOSA eligibility. The [Chief of Police][Sheriff] will determine the eligibility of any separated [officer] [deputy sheriff] submitting such request. It shall be the policy of the [Name of Agency] to issue photographic ID cards conforming to LEOSA to [Name of Agency] QRLEO's who are eligible under

LEOSA. The issuance of such card remains subject to the discretion of the [Chief of Police][Sheriff] and nothing contained in this Policy shall obligate the [Name of Agency] to issue such card.

- C. Agency staff shall confirm that the applicant is not prohibited by law from possessing a firearm including, without limitation, by a search of the National Crime Information Center (NCIC) database and any other background investigation as shall be necessary as determined by the [Name of Agency] in its discretion.

IV. FIREARMS QUALIFICATION PROCEDURES – QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS

1. A QRLEO may obtain the LEOSA-required firearms qualification privately from an instructor meeting the requirements set forth in Section II.B.7. above.
2. The [Name of Agency] may conduct firearms qualifications for [Name of Agency] QRLEO's (or other QRLEO's in its discretion) from time to time in conformity with the requirements of LEOSA. Any eligible QRLEO requesting such firearms qualification shall notify the [Name of Agency] of such request and the [Name of Agency] shall notify such QRLEO if and when such firearms qualification will be conducted.
3. Upon determination that a QRLEO is eligible under LEOSA, before qualifying on the [Name of Agency] firearms range, such QRLEO shall read and sign a waiver of liability in form and substance acceptable to the [Name of Agency]. Such waiver will contain provisions by which QRLEO's shall acknowledge their personal liability as private persons for all acts taken when carrying a concealed firearm as permitted by LEOSA. Such waiver shall also release the [Name of Agency] from any claim or action at law in connection with such firearms qualification.
4. QRLEO's shall provide their own ammunition when qualifying. Handguns are subject to inspection and approval by members of the [Name of Agency] firearms range staff.
5. The course of fire for firearms qualification shall be determined by the [Name of Agency] range staff in its sole discretion. Such course of fire may, but is not required to be, the same course of fire conducted for currently appointed [Name of Agency] [police officers][deputy sheriffs].

6. QRLEO's must qualify with the same type of firearm (revolver or semi-automatic) in order to carry that type of firearm under LEOSA. Upon successful completion of firearms qualification testing, the [Name of Agency] will issue to the QRLEO written proof of qualification, which must be carried by a QRLEO in order to claim the LEOSA exemption.
7. Failure by a QRLEO to satisfy the firearms qualification requirement of LEOSA within the most recent 12-month period at the time of carrying a concealed firearm under LEOSA results in the ineligibility of such QRLEO to carry a concealed firearm under LEOSA. If a QRLEO fails to satisfy the firearms qualification requirement of LEOSA, the QRLEO shall not carry a concealed firearm under the purported authority of LEOSA, nor display his or her photographic ID for such purpose.

V. LEOSA RESTRICTIONS

LEOSA is a pre-emptive Federal law which operates to supersede the concealed firearm carry laws of the 50 States (or any political subdivision thereof). LEOSA by its terms does not permit or authorize an individual to:

1. carry a machine gun, firearm silencer, or other destructive device;
2. carry a firearm in violation of any State law which permits private persons or entities to prohibit or restrict the possession of concealed firearms on their property or prohibits or restricts the possession of firearms on any State or local government property, installation, building, base, or park;
3. carry a firearm in violation of the Gun Free School Zone Act (18 U.S. Code 922(q)) or similar State law. [NOTE: LEOSA only supersedes State and local government laws concerning the carrying of a concealed firearm. Federal laws governing the carrying of concealed firearms are not superseded by LEOSA. As such, Federal laws governing the carrying of concealed firearms on Federal government property (for example, Federal courthouses, buildings, the U.S. Post Office and other Federal government property, whether owned or leased) are not superseded by LEOSA, nor is the carrying of a firearm onto aircraft permitted (unless in an on-duty capacity in compliance with "Flying Armed" federal regulations,

Title 49 CFR Section 1544.219). Certain portions of airports are also prohibited unless permitted by Federal or State law.];

4. carry a firearm which may violate State or local government magazine capacity laws. [NOTE: LEOSA governs the carrying of concealed firearms and does not address magazine capacity; as of the date of this Policy there is no authority which provides that LEOSA supersedes the magazine capacity laws of the jurisdiction in which the individual may be located when carrying a concealed firearm.]; or
5. take off-duty action in the capacity of a law enforcement officer. [NOTE: LEOSA does not itself confer law enforcement authority on a [Name of Agency] [police officer] [deputy sheriff] or any other law enforcement officer either within or outside the State of California. Any action taken by an off-duty [Name of Agency] law enforcement officer outside California is done so as a private person (unless such officer is outside California on official Department business and the jurisdiction in which such officer is located recognizes the law enforcement authority of such officer). Any off-duty law enforcement action taken within California depends upon the peace officer authority of such officer as defined in the California Penal Code and not by reference to LEOSA.]

LEOSA does not apply if at the time of carrying a concealed firearm in reliance on the LEOSA exemption the individual is under the influence of alcohol or another intoxicating or hallucinatory drug or substance. The consumption of alcohol or the use of any such substance may invalidate the availability of LEOSA as an exemption from the concealed carry laws of the location in which the officer is carrying a firearm.

VI. LEOSA INSURANCE

A qualified law enforcement officer or QRLEO carrying a firearm off-duty outside California under LEOSA (and in certain instances within California as noted above) does so in the legal capacity of a private person. Any incident involving the use of a firearm by such person may result in personal liability, the costs of which may be significant. Because such actions are outside the scope of employment, the [Name of Agency] does not bear liability for the actions of any person relying on LEOSA to carry a firearm. [Name of Agency] [police officers] [deputy sheriffs] and QRLEO's are strongly urged to consider the purchase of insurance to cover or defray such costs.

VII. DISCLAIMER OF LIABILITY

This Policy does not constitute legal advice. Each person carrying a firearm under LEOSA does so after personally determining such person's eligibility under LEOSA. LEOSA provides an affirmative defense to the person claiming an exemption under it. LEOSA is not a government-issued license or permit. Any person claiming the LEOSA exemption has the burden to prove the he or she qualifies for the exemption. Any person carrying a firearm under LEOSA is strongly advised to be familiar with LEOSA and, if desired, seek legal advice before carrying a firearm under LEOSA. The [Name of Agency] expressly disclaims all liability with respect to any information contained herein.

VIII. EFFECTIVE DATE

This Policy is effective [date].

EXHIBIT A

THE LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004, AS AMENDED BY THE LAW ENFORCEMENT OFFICERS SAFETY ACT IMPROVEMENTS ACT OF 2010 AND THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2013¹

§ 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.

I 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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(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

¹ Includes all operative statutory language and omits certain ministerial (e.g., numbering) provisions.

(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 that identifies the employee as a police officer or law enforcement officer of the agency.

(e) As used in this section, the term “firearm”—

(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(3) does not include--

(A) any machinegun (as defined in section 5845 of the National Firearms Act);

(B) any firearm silencer (as defined in section 921 of this title); and

(C) any destructive device (as defined in section 921 of this title).

(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who 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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice).”

§ 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.

I As used in this section, the term “qualified retired law enforcement officer” means 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)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) 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)(A) 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 the photographic identification as described in subsection (d)(1); or

(B) 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 the photographic identification as described in subsection (d)(1);

(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 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)(A) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that indicates the person as having been employed as a

police officer or law enforcement officer; and

(B) a certification issued by the State in which the individual resides or by a certified firearms 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 1 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--

(I) 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

(II) 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.

(e) As used in this section—

(1) the term “firearm”--

(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(C) does not include--

(i) any machinegun (as defined in section 5845 of the National Firearms Act);

(ii) any firearm silencer (as defined in section 921 of this title); and

(iii) any destructive device (as defined in section 921 of this title); and

(2) the term ‘service with a public agency as a law enforcement officer’ includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.