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Hon. Charles H. Ervin
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To: Board of Supervisors
From: Jeffrey D Bosworth
Date: 17 September 2019
Subject: Retired probation officers and concealed weapons

A fairly recent law has come in to effect that deals with retired probation officers, who were armed during the course of their employment, being immune to certain restrictions on carrying concealed firearms, in a similar way to a CCW (concealed weapon permit). As the probation department is modifying our policy in this respect, county counsel thought it would be wise to bring it before the board. It is rather complicated, so I think some extensive background is required.

Note: I have cut down the description (and in some cases just summarized) in the following code section to what I believe is the most relevant parts. I have also put some portions in bold for emphasis. The reference is given so that anyone can look up the entire section should they so desire.

Penal Code	Description
830.5	The following persons are peace officers... (a)... probation officer, deputy probation officer...
25400	Describes the crime of carrying a concealed weapon
25450	As provided in this article, Section 25400 does not apply to, or affect, any of the following: (d) Any other honorably retired peace officer who during the course and scope of his or her appointment as a peace officer was authorized to, and did, carry a firearm.
25455	(a) Any peace officer described in Section 25450 who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer retired.
25470	The issuing agency may only revoke or deny for "cause"
26305	Defines "cause"
26300	(c) (1) Any peace officer not listed in subdivision (a) or (b) who was authorized to, and did, carry a firearm during the course and

	scope of his or her appointment as a peace officer <i>shall</i> have an endorsement on the officer's identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.
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It is noted that nowhere in California law, so far as I know, is it required that the retired probation officer qualify with their weapons annually or otherwise. There is a section (25475 PC) that requires peace officers pursuant to 830.5(c) qualify annually. However, as noted above, probation officers are peace officers pursuant to a different section (830.5(a)). Consequently, because that section is specific to only one type of peace officer, it does not apply to probation officers.

The federal law, covered by an act known as LEOSA (Law Enforcement Officers Safety Act - 18 USC § 926C), is considerably more straight forward. That does require annual qualification, although not necessarily from the issuing agency (a retired officer living out of county could qualify with an agency near where they live for example).

Based upon the difference between the state and federal law, my conclusion is as follows:

- Within California: The retired peace officer is immune to laws prohibiting carrying concealed weapons within California, whether they have qualified recently or not.
- Travel to other states: In order to carry a concealed weapon in other states, where such activity is generally prohibited, the retired officer must have proof of a qualification within the last year.

The use of the word "shall" in sections 25455 and 26300 essentially makes this an entitlement for the employee. Nonetheless, the probation department believes it is incumbent upon the employee to be responsible for their own selves with regard to obeying appropriate local, state and federal laws, as well as ensuring that the probation department receives any required documentation for annual qualification. Consequently, some of the main portions of this policy (§204.5) are as follows:

- a. A former deputy with a card issued under this policy shall immediately notify the Chief Probation Officer or authorized designee of an arrest or conviction in any jurisdiction, or that the individual is the subject of a court order, in accordance with the Reporting of Arrests, Convictions, and Court Orders Policy.
- b. It is the sole responsibility of the retired officer to maintain proficiency with their weapon
- c. It is the sole responsibility of the retired officer to abide by all local, state and federal laws and regulations as they relate to the carrying of concealed weapons.
- d. The retired officer is strongly encouraged to qualify annually before a recognized law enforcement agency.
- e. The retired officer may participate in regularly scheduled probation firearms qualifications, but must bring their own weapons and ammunition.
- f. Should the retired officer elect to qualify at some other agency, it is their sole responsibility to provide copies of that documentation to the Sierra County Probation Department.

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204.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the issuance, denial, suspension, or revocation of Sierra County Probation Department identification cards to qualified former or retired law enforcement officers under the Law Enforcement Officers Safety Act (LEOSA - 18 USC § 926C) and California law (Penal Code § 25455).

204.2 POLICY

It is the policy of the Sierra County Probation Department to provide identification cards to qualified former or retired deputies to facilitate the lawful carrying of concealed weapons by those individuals.

- a. LEOSA refers to the carrying of concealed weapons over state lines
- b. California law applies to the ability to carry concealed weapons solely within the state of California.

204.3 LEOSA

The Chief Probation Officer may issue an identification card for LEOSA purposes to any qualified former deputy of this department who (18 USC § 926C(c)):

- (a) Separated from service in good standing from this department as deputy.
- (b) Before such separation, had regular employment as a peace officer for an aggregate 10 years or more or, if employed as a peace officer for fewer than 10 years, separated from service after completing any applicable probationary period due to a service-connected disability as determined by this department.
- (c) Has not been disqualified for reasons related to mental health.
- (d) Has not entered into an agreement with this department in which the deputy acknowledges disqualification to receive a firearms qualification certificate for reasons related to mental health.
- (e) Is not prohibited by federal law from receiving or possessing a firearm.

204.3.1 LEOSA CARD FORMAT

The LEOSA identification card should contain a photograph of the former deputy and identify him/her as having been employed as a deputy.

If the Sierra County Probation Department qualifies the former deputy, the LEOSA identification card or separate certification should indicate the date the former deputy was tested or otherwise found by the Department to meet the active-duty standards for qualification to carry a firearm.

204.3.2 AUTHORIZATION

Any qualified former peace officer, including a former deputy of this department, may carry a concealed firearm under 18 USC § 926C when:

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- (a) In possession of photographic identification that identifies the individual as having been employed as a peace officer, and one of the following:
 - 1. An indication from the person's former probation agency that the person has, within the past year, been tested or otherwise found by the agency to meet agency-established active-duty standards for qualification in firearms training to carry a firearm of the same type as the concealed firearm.
 - 2. A certification, issued by either the state in which the person resides or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active-duty peace officers within that state, indicating that the person has, within the past year, been tested or otherwise found to meet the standards established by the state or, if not applicable, the standards of any agency in that state.
- (b) Not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
- (c) Not prohibited by federal law from receiving a firearm.
- (d) Not in a location prohibited by California law or entity on private property if such prohibition is permitted by California law.

204.4 CALIFORNIA IDENTIFICATION CARD

The Chief Probation Officer shall issue an identification card with an endorsement to carry a concealed firearm to a person who (Penal Code § 26300):

- (a) Honorably retired following service as a full-time sworn deputy of this department who was authorized to, and did, carry a concealed firearm during the course and scope of his/her employment (Penal Code § 25455).
 - 1. Honorably retired includes all peace officers who have qualified for, and accepted, a service or disability retirement, however, it shall not include any deputy who retires in lieu of termination or who is retiring because of a psychological disability (Penal Code § 26305).
- (b) Honorably retired as a peace officer from any jurisdiction that this department now serves under the following conditions (Penal Code § 25905):
 - 1. The retiree's previous agency is no longer providing law enforcement services or the relevant government body is dissolved.
 - 2. This department is in possession of the retiree's complete personnel records or can verify the retiree's honorably retired status.
 - 3. The retiree is in compliance with all of the requirements of this department for the issuance of a Concealed Carry Weapon (CCW) Approved endorsement.
- (c) Was a qualified retired reserve officer who met the department requirements for a CCW Approved endorsement (Penal Code § 26300).

204.4.1 CALIFORNIA IDENTIFICATION CARD FORMAT

The card shall be 2 inches by 3 inches and minimally contain (Penal Code § 25460):

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- (a) Photograph of the retiree.
- (b) Retiree's name and date of birth.
- (c) Date of retirement.
- (d) Name and address of this department.
- (e) A stamped endorsement "CCW Approved" along with the date by which the endorsement must be renewed (not more than one year). In the case in which a CCW endorsement has been denied or revoked, the identification card shall be stamped "No CCW Privilege."

204.4.2 QUALIFIED RETIREES FROM INCORPORATED JURISDICTION

The Sierra County Probation Department shall provide an identification card with a CCW Approved endorsement to honorably retired peace officers from any jurisdiction that this department now serves under the following conditions (Penal Code § 25905):

- (a) The retiree's previous agency is no longer providing law enforcement services or the relevant government body is dissolved.
- (b) This department is in possession of the retiree's complete personnel record or can verify the retiree's honorably retired status.
- (c) The retiree is in compliance with all of the requirements of this department for the issuance of a CCW Approved endorsement.

204.5 FORMER DEPUTY RESPONSIBILITIES

- (a) A former deputy with a card issued under this policy shall immediately notify the Chief Probation Officer or authorized designee of an arrest or conviction in any jurisdiction, or that the individual is the subject of a court order, in accordance with the Reporting of Arrests, Convictions, and Court Orders Policy.
- (b) It is the sole responsibility of the retired officer to maintain proficiency with their weapon
- (c) It is the sole responsibility of the retired officer to abide by all local, state and federal laws and regulations as they relate to the carrying of concealed weapons.
- (d) The retired officer is strongly encouraged to qualify annually before a recognized law enforcement agency.
- (e) The retired officer may participate in regularly scheduled probation firearms qualifications, but must bring their own weapons and ammunition.
- (f) Should the retired officer elect to qualify at some other agency, it is their sole responsibility to provide copies of that documentation to the Sierra County Probation Department.

204.5.1 RESPONSIBILITIES UNDER LEOSA

In order to obtain or retain a LEOSA identification card, the former deputy shall:

- (a) Sign a waiver of liability of the Department for all acts taken related to carrying a concealed firearm, acknowledging both personal responsibility as a private person for

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all acts taken when carrying a concealed firearm as permitted by LEOSA and also that these acts were not taken as an employee or former employee of the Department.

- (b) Remain subject to all applicable department policies and federal, state, and local laws.
- (c) Demonstrate good judgment and character commensurate with carrying a loaded and concealed firearm.
- (d) Successfully pass an annual criminal history background check indicating that the individual is not prohibited by law from receiving or possessing a firearm.

204.6 DENIAL, SUSPENSION, OR REVOCATION

A LEOSA identification card may be denied or revoked upon a showing of good cause as determined by the Department. In the event that an identification card is denied, suspended, or revoked, the former deputy may request a review by the Chief Probation Officer. The decision of the Chief Probation Officer is final.

204.6.1 DENIAL, SUSPENSION, OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD

A CCW endorsement under Penal Code § 25470 for any deputy retired from this department may be denied or revoked only upon a showing of good cause. The CCW endorsement may be immediately and temporarily revoked by the Senior Deputy when the conduct of a retired peace officer compromises public safety.

- (a) In the event that a CCW endorsement is initially denied, the retired deputy shall have 15 days from the date of denial to request a formal hearing. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received.
- (b) Prior to revocation of any CCW endorsement, the Department shall provide the affected retiree with written notice of a hearing by either personal service or first-class mail, postage prepaid, return receipt requested to the retiree's last known address (Penal Code § 26315).
 - 1. The retiree shall have 15 days from the date of service to file a written request for a hearing.
 - 2. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received (Penal Code § 26315).
 - 3. Failure to submit a timely written request for a hearing shall be deemed a waiver of such right.
- (c) A hearing for the denial or revocation of any CCW endorsement shall be conducted before a hearing board composed of three members, one selected by the Department, one selected by the retiree or the retiree's employee organization and one selected jointly (Penal Code § 26320).
 - 1. The decision of such hearing board shall be binding on the Department and the retiree.

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2. Any retiree who waives the right to a hearing or whose CCW endorsement has been revoked at a hearing shall immediately surrender the identification card. The Department will then reissue a new identification card which shall be stamped "No CCW Privilege."
- (d) Members who have reason to suspect the conduct of a retiree has compromised public safety shall notify the Chief Probation Officer as soon as practicable. The Senior Deputy should promptly take appropriate steps to look into the matter and, if warranted, contact the retiree in person and advise the individual in writing of the following:
1. The retiree's concealed firearm CCW endorsement is immediately and temporarily suspended.
 2. The retiree has 15 days to request a hearing to determine whether the temporary suspension should become permanent revocation.
 3. The retiree will forfeit the right to a hearing and the CCW endorsement will be permanently revoked if the retiree fails to respond to the notice of hearing within the 15-day period.
 4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Senior Deputy should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Senior Deputy may request that a law enforcement officer from that agency act as the agent of the Department to deliver the written notification.
 5. Notification of the temporary suspension should also be promptly mailed to the retiree via first-class mail, postage prepaid, return receipt requested.
 - (a) The Senior Deputy should document the investigation, the actions taken, and, if applicable, any notification made to the former member. The memo should be forwarded to the Chief Probation Officer.