AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# IMPLEMENTATION OF THE "LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004" (PUB. L. NO. 108–277) AND ADDITIONAL LEGISLATIVE EFFORTS AIMED AT EXPANDING THE AUTHORITY TO CARRY CONCEALED FIREARMS

## HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

SEPTEMBER 6, 2007

**Serial No. 110–120**

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

37–602 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
LINDA T. SANCHEZ, California
STEVE COHEN, Tennessee
HANK JOHNSON, Georgia
BETTY SUTTON, Ohio
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

PERRY APELBAUM, *Staff Director and Chief Counsel*
JOSEPH GIBSON, *Minority Chief Counsel*

---

## SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

ROBERT C. "BOBBY" SCOTT, Virginia, *Chairman*

MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
JERROLD NADLER, New York
HANK JOHNSON, Georgia
ANTHONY D. WEINER, New York
SHEILA JACKSON LEE, Texas
ARTUR DAVIS, Alabama
TAMMY BALDWIN, Wisconsin
BETTY SUTTON, Ohio

J. RANDY FORBES, Virginia
LOUIE GOHMERT, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California

BOBBY VASSAR, *Chief Counsel*
MICHAEL VOLKOV, *Minority Counsel*

# CONTENTS

SEPTEMBER 6, 2007


Page

OPENING STATEMENT

The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security ..... 1

The Honorable J. Randy Forbes, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security ..... 3

WITNESSES

Chief Scott Knight, Firearms Committee Chairman, International Association of Chiefs of Police, Alexandria, VA

Oral Testimony ..... 5

Prepared Statement ..... 8

Sheriff Craig Webre, President, National Sheriff's Association, Alexandria, VA

Oral Testimony ..... 18

Prepared Statement ..... 20

Mr. Thomas Penoza, National Treasurer, Grand Lodge, Fraternal Order of Police, Washington, DC

Oral Testimony ..... 21

Prepared Statement ..... 24

APPENDIX

Material Submitted for the Hearing Record ..... 39

# IMPLEMENTATION OF THE "LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004" (PUB. L. NO. 108–277) AND ADDITIONAL LEGISLATIVE EFFORTS AIMED AT EXPANDING THE AUTHORITY TO CARRY CONCEALED FIREARMS

---

**THURSDAY, SEPTEMBER 6, 2007**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:08 a.m., in Room 2237, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Sutton, Forbes, and Coble.

Staff present: Bobby Vassar, Subcommittee Chief Counsel; Ameer Gopalani, Majority Counsel; Mario Dispenza, (Fellow) BATFE Detailee; Veronica Eligan, Majority Professional Staff Member; Michael Volkov, Minority Counsel; Caroline Lynch, Minority Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Subcommittee will come to order. The Subcommittee on Crime, Terrorism, and Homeland Security welcomes you to today's hearing on the implementation of the Law Enforcement Officers Safety Act of 2004 and additional legislative efforts aimed at expanding the authority to carry concealed firearms.

As part of today's hearing, the Subcommittee will examine several important issues. First, we will hear testimony about how the Law Enforcement Officers Safety Act of 2004 is currently being implemented. Second, the Subcommittee will examine arguments in favor and against expanding the scope of the bill through H.R. 2726, the "Law Enforcement Officers Safety Act of 2007."

Finally, the Subcommittee will examine proposed legislation that would allow Federal judges, prosecutors, and other Department of Justice employees to carry concealed weapons under circumstances that would be specified by the attorney general. In 2004, the 108th Congress enacted the Law Enforcement Officers Act of 2004, which amended the Federal criminal code and authorized qualified, active duty, and retired law enforcement officers to carry concealed firearms at all times, including in jurisdictions in which they are not employed as officers.

During our Committee's past consideration of the measure, several concerns were pointed out, namely, highlighting the overly-broad definition of "law enforcement officer," which was written to include corrections, probation, and parole, and judicial officers. It also included police, sheriff, and other law enforcement officers who had or have statutory arrest power, or who are engaged in the prevention, detection, investigation, supervision, and incarceration of alleged violators of law.

The second concern I raised centered around the overall message that legislation seemed to send. The measure seemed to suggest, if not also encourage, law enforcement officers to assist in protecting the public in jurisdictions outside of the State in which they are employed. At that time, several concerns were mentioned, and we highlighted instances whereby even within the same jurisdiction off-duty, plain clothes law enforcement officers had shot other off-duty officers in gun battles where those in plain clothes were mistaken for criminals. Today we will submit additional articles.

Finally, it was pointed out with regard to types of concealed firearms which kinds of firearms would be brought into the jurisdiction by out-of-State officers and how these weapons were managed. But, unfortunately, those concerns were not considered appropriately back in 2004.

H.R. 2726, the "Law Enforcement Officers Safety Act of 2007," will make certain changes. Turning away from the focus of our previous debates and on the new ones, we are here to consider the bill introduced by my friend and Virginia colleague, Mr. Forbes, H.R. 2726, the "Law Enforcement Officers Safety Act of 2007, which would expand the bill and expand the law in two significant ways.

First, it would add Amtrak active duty and retired officers to the definition of qualified law enforcement officer. Second, it would amend the language in such a way to add officers who don't retire from a particular law enforcement agency, but merely depart from it having served 15 years, to qualify as a qualified law enforcement officer and obtain a permit to carry a concealed weapon, provided they satisfy other limited criteria.

The bill also fixes a problem that some officers are finding in seeking to take advantage of the law. Some States have not developed a certification process called for in the law to allow retired officers to carry concealed weapons interstate. We don't have a particular problem with that part of the bill, although we do have concerns with others.

And finally, the last topic to be taken up involves the carrying of concealed weapons by attorneys and Federal judges in Federal courthouses. A number of incidences over the past few years, including the murders of family members of a Chicago judge in 2005, the killing less than 2 weeks later of a State judge, a court reporter, and a sheriff's deputy in an Atlanta courthouse have prompted this Committee to consider various legislative proposals to strengthen security in State and Federal courthouses.

In fact, during the course of one of the Committee's recent debates during our consideration of H.R. 660, the "Court Security Improvement Act of 2007," the gentleman from Iowa, Mr. King, offered an amendment that would authorize judicial officers, U.S. attorneys, and other employees of the Department of Justice, whose

duties include representing the United States in a court of law, to carry firearms in both private and public places, subject to regulations promulgated by the attorney general. Today we will hear testimony about the proposal and whether or not it is needed at this time.

With that, it is my pleasure to recognize the Ranking Member of the Subcommittee, my Virginia colleague, Mr. Forbes, who represents Virginia's 4th Congressional District.

Mr. FORBES. Thank you, Chairman Scott. I want to thank you for scheduling this hearing to examine implementation of the Law Enforcement Officers Act of 2004 and Congressman King's proposal to authorize Federal judges and prosecutors to carry firearms.

Law enforcement officers are never off duty. They are sworn to uphold public safety, whether or not they are in uniform or on duty, and serve in the front lines of our communities against terrorists, gangs, and other criminals.

Congress recognized this in 2004 when it passed the Law Enforcement Officers Safety Act, which authorized retired law enforcement officers to carry firearms, particularly when traveling outside of their jurisdiction. By doing so, Congress intended to promote public safety by increasing the number of active and retired qualified law enforcement officers authorized to carry firearms.

There are approximately 800,000 sworn law enforcement officers currently serving in the United States. While a police officer may not remember the name and face of every criminal he or she has locked behind bars, criminals often have long memories. Law enforcement officers are targeted in uniform and out, active or retired, on duty or off.

Since enactment of the Law Enforcement Officers Safety Act it has become clear that some jurisdictions have sought to prevent qualified retired officers from complying with the law. In many cases, retired officers have experienced significant frustration in getting certified to lawfully carry a firearm. That is why I introduced H.R. 2726, the "Law Enforcement Officers Safety Act of 2007."

Under current law, qualified retired law enforcement officers must carry required documents and a State-issued identification verifying the officer's firearms qualification. Some States have simply refused to issue identification verifying the officer's firearm qualifications in order to frustrate Congress' intent.

To address this issue, my legislation would provide an alternative to a State-issued document, require law enforcement officers to carry a certification, from a firearms instructor, that they meet the active duty standards for qualifications in firearms training, as established by the State or a law enforcement agency in that State. This will ensure that qualified retired law enforcement officers will no longer be prevented from carrying their firearms over what is simply a paperwork issue.

In addition to these adjustments, the bill also makes clear that Amtrak officers, along with officers of the executive branch of the Federal Government, are covered by the law. Though these changes broaden the reach of the law, the requirements for eligibility still include a 15-year term of service for a retired officer to qualify.

Federal judges and prosecutors also should be authorized to carry firearms. Congressman King's proposal to authorize the carrying of such firearms is a common sense solution to an increasingly dangerous job, prosecuting and administering justice in the Federal justice system.

Congressman King's proposal was enacted by Congress in the 109th Congress and would authorize judges and attorneys to carry a firearm subject to specific requirements, training, and certification in the use of firearms. Threats against Federal judges continue at a disturbing rate. Prosecutors handling dangerous cases are threatened, shot at or otherwise attacked. Current Department of Justice policies and procedures authorizing a prosecutor to carry firearms through a special deputation process are entirely too slow and ineffective.

I look forward to hearing from today's witnesses and to working with my friend, Mr. Scott, on these important issues.

Mr. SCOTT. Thank you, Mr. Forbes.

We have a distinguished panel of witnesses here today to help us consider the important issues which are before us. Our first witness is Police Chief Scott Knight, chairman of the firearms committee of the International Chiefs of Police.

Chief Knight has over 30 years of law enforcement experience and has served as the Chaska, Minnesota chief of police since January 2000. He has also served as a faculty member for the William Mitchell College of Law, Centers for Law Leadership and the Upper Midwest Community Policing Institute.

Our second witness will be Sheriff Craig Webre, president of the National Sheriff's Association. He was elected sheriff of Lafourche Parish, Louisiana in 1991, and began his law enforcement career over 25 years ago as the police officer in the city of Thibadaux, later served as deputy sheriff and a State Trooper for the Louisiana State Police. He holds a B.A. degree in criminal justice and a J.D. from Loyola University School of Law.

Our final witness will be Tom Penoza, national treasurer for the Paternal Order of Police. He is a retired captain from the Newark, Delaware Police Department, where he served for over two decades. And the last 13 years he has held the position of special investigator for the Delaware State's attorney general's office. The primary role in this office is to investigate white collar crime. He also attended and graduated from the 150th session of the FBI National Academy.

Each of our witnesses' written statements will be entered into the record in its entirety. I would ask each of our witnesses to summarize his testimony in 5 minutes or less. And to help you stay within that time is the timing device right in front of us. The light will start with green. It will switch to yellow when there is 1 minute left in the 5 minutes. When the light turns red, it signals that the witness' 5 minutes have expired.

Chief Knight?

**TESTIMONY OF CHIEF SCOTT KNIGHT, FIREARMS COMMITTEE CHAIRMAN, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, ALEXANDRIA, VA**

Mr. KNIGHT. Very good. Thank you. Thank you, Chairman Scott, Mr. Forbes, and all present today. I am pleased to be here this morning to present the views of the International Association of Chiefs of Police on the Law Enforcement Officers Safety Act and the proposed changes that are under consideration.

The IACP is the world's oldest and largest association of law enforcement executives with more than 22,000 members in 100 countries. Before I address our concerns, I would like to express my gratitude to you for your support of our Nation's law enforcement agencies and our law enforcement officers.

As you know, the IACP strongly opposed to the Law Enforcement Officers Safety Act during its consideration in the 109th Congress and is opposed to H.R. 2276, which would amend current language. Our opposition was, and is, based primarily on the fundamental belief that States and localities should determine who is eligible to carry firearms in their communities.

Over the years, the IACP has consistently opposed any Federal legislative proposals that would either pre-empt and/or mandate the liberalization of an individual State's laws that would allow citizens of other States to carry concealed weapons in that State without meeting that State's requirements. The IACP believes it is essential that State governments maintain the ability to regulate who is carrying weapons in our communities and what type of weapons they are. This applies to laws that cover private citizens as well as active or former enforcement personnel.

The IACP also believes that each State should retain the power to determine whether it wants police officers that are trained and supervised by agencies outside their State to carry weapons in their jurisdictions. In addition, authority for police officers to carry firearms when off duty, use-of-force policies, and firearms training standards vary significantly from State to State. Why should a police chief who has employed the most rigorous training program, a strict standard of accountability, and stringent policies be forced to permit officers who may not meet those standards to carry a concealed weapon in his or her jurisdiction?

In addition to these fundamental questions over the preemption of State and local firearms laws, the IACP is also concerned with the impact that this legislation may have on the safety of our officers and our communities. There can be no doubt that police executives are deeply concerned for the safety of our officers. There is no doubt.

We understand that the proponents of this law contend that police officers need to protect themselves and their families while traveling, and that undercover officers may be targets if recognized on vacation or travel. These are considerations, but they must be balanced against the potential dangers involved.

One of the reasons that this legislation is especially troubling to our Nation's enforcement executives is because they could, in fact, threaten the safety of police officers by creating tragic situations where officers from other jurisdictions are wounded or killed by

local officers wherein events unfold in seconds and identities are unknown and tragic results ensue.

Police departments throughout the Nation train their officers to respond as a team to dangerous situations. This teamwork requires months of training to develop and provides the officers with an understanding of how their fellow officers will respond when facing different situations. And it can be so detailed as to code words that they all know will disclose who is undercover and who is not.

Injecting an armed, unknown officer, who has received different training and is operating under different assumptions, can turn an already dangerous situation deadly. Further, the IACP is concerned that the law specifies that only an officer who is not subject to a disciplinary action is eligible. Since passage, this provision has raised several concerns for law enforcement executives as they have struggled to comply with the provisions of the law.

For example, what types of disciplinary actions does this cover? Does this provision apply only to current investigations and actions? How are officers to ascertain that an out-of-State law enforcement officer is subject to a disciplinary action and therefore ineligible to carry a firearm?

Additionally, while the law does contain some requirements to ensure that retirees qualify to have a concealed weapon, they are insufficient and would be difficult to implement. The law and subsequent proposals to amend it has failed to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that may not have risen to the level of mental instability.

Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problems that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a police management in what we call early warning systems to ferret out any problems.

Finally, the IACP is also concerned over the liability of law enforcement agencies for the actions of an off-duty officer who uses or misuses their weapon while out of State. If an off-duty officer uses or misuses his or her weapon while in another State, it is surely likely that his or her department will be forced to defend itself against liability charges in that other State. The resources that mounting this defense would require would be better spent serving our communities, the communities we serve.

I am sorry. I see the red light. Thank you.

Before I conclude, I would like to speak briefly about the IACP's concern with H.R. 2726. Particularly troubling to the IACP are provisions that appear to weaken severely the ineligibility, or the eligibility and training requirements for retired police officers to carry concealed weapons.

In particular, the IACP is deeply troubled that provisions proposed in section 2 (b) of H.R. 2726 would effectively eliminate the ability of States and localities to determine what firearm standards a retired law enforcement officer must meet before qualifying to carry a concealed firearm in his or her jurisdiction. Specifically, the provisions of section 2 (b) would appear to mandate that, in the ab-

sence of any State standard, the standards set by any police department within the State would become the de facto standard for the entire State.

Additionally, the IACP is concerned that by weakening the current definition of eligibility from retired to departed, problems could arise when a law enforcement officer leaves the policing profession and embarks on an entirely new career. Definitions of departed, what led to the departing—all those things are of great concern and are not defined.

As I stated earlier, the ability of law enforcement agencies to establish, implement, and maintain firearms standards and training requirements varies greatly from State to State and from jurisdiction to jurisdiction. Some jurisdictions have developed rigorous training programs and have established strict standards of accountability and stringent firearms polices, while, frankly, other jurisdictions have not. This legislation would undercut the ability of State, tribal and local enforcement agencies to determine what standards best meet the needs of the departments and the communities we serve.

This does conclude my statement. And I am happy to take any questions. And I thank you for this opportunity.

[The prepared statement of Mr. Knight follows:]

PREPARED STATEMENT OF SCOTT KNIGHT

*INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE*

# TESTIMONY

**Statement of**

**Chief Scott Knight**
**Firearms Committee Chairman**
**Of the**
**International Association of Chiefs of Police**

**On the Law Enforcement Officers Safety Act**

**Before the**

**Subcommittee on Crime, Terrorism and Homeland Security**
**Committee on the Judiciary**
**U.S. House of Representatives**

**September 6, 2007**

515 N. WASHINGTON STREET
ALEXANDRIA, VA 22314
703-836-6767
WWW.THEIACP.ORG

Good Morning Chairman Scott and Member of the Subcommittee:

I am pleased to be here this morning to present the views of the International Association of Chiefs of Police on the Law Enforcement Officers Safety Act and proposed changes currently under consideration. The IACP is the world's oldest and largest association of law enforcement executives, with more than 22,000 members in 100 countries. Before I address our concerns with this law and its proposed modifications, I would like to express my gratitude and the gratitude of the IACP to this committee for your continuing support of this nation's law enforcement agencies and law enforcement officers.

As you know, the IACP strongly opposed to the Law Enforcement Officers Safety Act during its consideration in the 109th Congress and is opposed to H.R. 2276, which would amend the current LEOSA language. Our opposition was, and is, based primarily on the fundamental belief that states and localities should determine who is

eligible to carry firearms in their communities. Over the years, the IACP has consistently opposed any federal legislative proposals that would either pre-empt and/or mandate the liberalization of an individual state's laws that would allow citizens of other states to carry concealed weapons in that state without meeting its requirements. The IACP believes it is essential that state governments maintain the ability to legislate concealed carry laws that best fit the needs of their communities. This applies to laws covering private citizens as well as active or former law enforcement personnel. The IACP also believes that each state should retain the power to determine whether it wants police officers that are trained and supervised by agencies outside their state to carry weapons in their jurisdictions.

In addition, authority for police officers to carry firearms when off-duty, use-of-force policies, and firearms training standards vary significantly from state to state. Why should a police chief who has employed the most rigorous training program, a strict standard of accountability, and stringent policies be forced to permit officers who may not meet

those standards to carry a concealed weapon in his or her jurisdiction?

However, in addition to these fundamental questions over the preemption of state and local firearms laws, the IACP is also concerned with the impact that this legislation may have on the safety of our officers and our communities.

There can be no doubt that police executives are deeply concerned for the safety of our officers. We understand that the proponents of LEOSA contend that police officers need to protect themselves and their families while traveling, and that undercover officers may be targets if recognized on vacation or travel. These are considerations, but they must be balanced against the potential dangers involved. In fact, one of the reasons that this legislation is especially troubling to our nation's law enforcement executives is because they could in fact threaten the safety of police officers by creating tragic situations where officers from other jurisdictions are wounded or killed by the local officers. Police departments throughout the nation

train their officers to respond as a team to dangerous situations. This teamwork requires months of training to develop and provides the officers with an understanding of how their fellow officers will respond when facing different situations. Injecting an armed, unknown officer, who has received different training and is operating under different assumptions, can turn an already dangerous situation deadly.

In addition, the IACP is concerned that the law specifies that only an officer who is not subject to a disciplinary action is eligible. Since passage, this provision has raised several concerns for law enforcement executives as they have struggled to comply with the provisions of the law. For example, what types of disciplinary actions does this cover? Does this provision apply only to current investigations and actions? How are officers to ascertain that an out-of-state law enforcement officer is subject to a disciplinary action and therefore ineligible to carry a firearm?

Additionally, while the law does contain some requirements to ensure that retirees qualify to have a concealed weapon, they are insufficient and would be difficult to implement. The law, and subsequent proposals to amend it, has failed to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of "mental instability." Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problems that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a police management structure, what we call "early warning systems," that identifies such problems in current officers.

Finally, the IACP is also concerned over the liability of law enforcement agencies for the actions of an off-duty officer who uses or misuses their weapon while out of state. If an off-duty officer uses or misuses his or her weapon while in

another state, it is likely that his or her department will be forced to defend itself against liability charges in another state. The resources that mounting this defense would require could be better spent serving the communities we represent.

Before I conclude, I would like to speak briefly about the IACP's concerns with H.R. 2726. Particularly troubling to the IACP are provisions that appear to weaken severely the eligibility and training requirements for retired police officers to carry concealed weapons. In particular, the IACP is deeply troubled that provisions proposed in Section 2 (b) of H.R. 2726 would effectively eliminate the ability of states and localities to determine what firearm standards a retired law enforcement officer must meet before qualifying to carry a concealed firearm in his or her jurisdiction. Specifically, the provisions of Section 2 (b) would appear to mandate that, in the absence of state standards, the standards set by ***any*** police department within the state would become the de facto standard for entire state.

Additionally, the IACP is concerned that by weakening the current definition of eligibility from "retired" to "departed," that problems could arise when a law enforcement officer leaves the policing profession and embarks on a new career.

As I stated earlier, the ability of law enforcement agencies to establish, implement, and maintain firearms standards and training requirements varies greatly from state to state and from jurisdiction to jurisdiction. Some jurisdictions have developed rigorous training programs and have established strict standards of accountability and stringent firearms polices while other jurisdictions have not. This legislation would undercut the ability of state, tribal and local law enforcement agencies to determine what standards best meet the needs of the departments and the communities they serve.

This concludes my statement. I will be pleased to answer any questions you may have.

| The International Association of Chiefs of Police, Inc. | | | | | | |
|---|---|---|---|---|---|---|
| Grants Summary | | | | | | |
| Beginning October 1, 2004 to the Present | | | | | | |
| Agency | CFDA Number | Project Title | Grant Number | Total Funding | Grant Start Date | Grant End Date |
| **U.S. Department of Justice Grants:** | | | | | | |
| BJA | 16.580 | IACP Law Enforcement Policy Center | 2000-DD-VX-O020 | $1,153,379 | 06/01/00 | 08/31/07 |
| BJA | 16.580 | Volunteers in Policing | 2002-DD-BX-0010 | $3,479,514 | 04/01/02 | 09/30/07 |
| BJA | 16.580 | Law Enforcement IT Standards Council | 2003-MU-BX-0068 | $1,739,496 | 10/01/03 | 09/30/08 |
| BJA | 16.580 | Law Enforcement's Role in Offender Reentry Project | 2005-MU-MU-K012 | $525,115 | 05/01/05 | 10/31/07 |
| BJA | 16.580 | VIPS -Yr 4 - To Enhance the Capacity of State and Local Law Enforcement to Utilize Volunteers | 2005-DK-BX-K025 | $1,588,565 | 10/01/05 | 03/31/08 |
| BJA | 16.580 | Cutting Edge of Technology | 2005-DE-BX-K001 | $699,705 | 09/01/05 | 08/31/07 |
| BJA | 16.580 | IACP Gun Crime Trafficking Interdiction | 2005-GP-CX-K002 | $1,099,476 | 10/01/05 | 09/30/07 |
| BJA | 16.580 | SACOP Crime Prevention Outreach Program | 2005-LD-BX-K158 | $85,830 | 10/01/05 | 09/30/07 |
| BJA | 16.580 | Citizen Involvement in Sex Offender Management | 2005-DK-BX-K002 | $210,448 | 08/01/05 | 10/31/07 |
| BJA | 16.580 | Services, Support and Technical Assistance to Smaller Police Departments/New Police Chief Mentoring | 2005-LD-BX-K206 | $1,050,000 | 10/01/05 | 09/30/07 |
| BJA | 16.580 | National Law Enforcement Policy Center | 2006-DG-BX-K004 | $175,000 | 09/01/06 | 02/29/08 |
| BJA | 16.580 | Law Enforcement Information Technology Standards Council - Phase III | 2006-LD-BX-K005 | $249,940 | 04/01/07 | 03/31/08 |
| BJA | 16.580 | Citizen Involvement in Sex Offender Management | 2006-WP-BX-K005 | $399,994 | 07/01/06 | 12/31/07 |
| COPS | 16.710 | CPC Phase 10A COPS Award | 2003-CK-WX-K045 | $4,000,000 | 08/01/03 | 06/30/08 |
| COPS | 16.710 | TTAP COPS 2004 Technology Grant | 2003-CK-WX-0024 | $2,498,981 | 01/23/04 | 01/22/09 |
| COPS | 16.710 | Leadership Summit | 2004-HS-WX-0004 | $154,610 | 08/01/04 | 08/01/05 |
| COPS | 16.710 | COPS Methamphetamine Project | 2004-CK-WX-0626 | $377,997 | 09/01/04 | 08/31/05 |
| COPS | 16.710 | CPC Project Safe Neighborhoods (PSN) Initiative CPC Phase XA | 2004-CK-WX-K029 | $249,997 | 09/01/04 | 06/30/08 |
| COPS | 16.710 | Community Policing Consortium Phase XI | Sub through PERF | $239,329 | 01/01/05 | 01/31/06 |
| COPS | 16.710 | COPS-Recruitment Toolkit Training and Technical Assistance (TTA) Policy Integrity | 2005-HS-WX-K003 | $200,010 | 05/01/05 | 12/31/07 |
| COPS | 16.710 | National Reentry Summit | 2005-HS-WX-K002 | $247,715 | 07/01/05 | 02/28/07 |
| COPS | 16.710 | Less Lethal Website Contact Program, Policy Support and Evaluation (PPSE) | 2005-HS-WX-K016 | $107,700 | 09/01/05 | 01/31/08 |
| COPS | 16.710 | Forensic Video Analysis Regional Concept for Public Safety | 2006-CK-WX-0001 | $442,881 | 11/22/05 | 11/22/08 |
| DEA | N/A | IACP Narcotics and Dangerous Drugs Committee Meeting | N/A | $80,000 | 10/01/04 | 09/30/07 |
| NIJ | 16.560 | University of Maryland CapWIN Program Sub from NIJ | Subcontract #Z956103 | $199,403 | 05/01/02 | 12/31/07 |
| NIJ | 16.560 | Forensic Committee Mid-Year Meeting | Sub thru NFSTC | $53,842 | 03/11/05 | 12/31/07 |
| NIJ | 16.560 | University /Law Enforcement Partnership: Phase II | 2005-IJ-CX-0060 | $49,997 | 04/01/05 | 02/28/07 |
| NIJ | 16.560 | Electronic Control Weapon Unexpected In-Custody Death Study | 2006-IJ-CX-K046 | $257,638 | 06/01/06 | 05/31/08 |
| NIJ | 16.560 | IACP Research Advisory Committee (RAC): Proposed Collabration with the National Institute of Justice | 2006-IJ-CX-0031 | $125,000 | 07/01/06 | 10/31/07 |
| ODP | 97.005 | IACP Weapons of Mass Destruction Training | Sub through MSU | $85,133 | 10/01/04 | 12/31/05 |
| OJJDP | 16.541 | OJJDP Training and Technical Assistance - Phase 6 | 2005-JK-FX-K014 | $999,659 | 10/01/05 | 09/30/07 |
| OJJDP | 16.541 | Delinquency Prevention CIS Initiative: Adding Value for Law Enforcement Agencies | 2005-MU-FX-K013 | $498,897 | 10/01/05 | 09/30/07 |
| OVC | 16.582 | OVC Victim Oriented Policing - National Strategy Development | 2003-VF-CX-K004 | $1,960,000 | 09/30/03 | 05/31/08 |
| OVW | 16.528 | PRVAW Technical Assistance, Phase IV | 2005-WT-AX-K077 | $719,363 | 10/01/04 | 09/30/07 |
| OVW | 16.589 | Leadership Initiative on Violence Against Women | 2003-WT-BX-K033 | $3,800,000 | 10/01/03 | 01/31/08 |
| | | | **DOJ Grants total** | **$29,804,614** | | |

| The International Association of Chiefs of Police, Inc. | | | | | | |
|---|---|---|---|---|---|---|
| Grants Summary | | | | | | |
| Beginning October 1, 2004 to the Present | | | | | | |
| Agency | CFDA Number | Project Title | Grant Number | Total Funding | Grant Start Date | Grant End Date |

**Catalog of Federal Domestic Assistance (CFDA) Program Descriptions:**

| | | |
|---|---|---|
| BJA | **16.580** | Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary Grants Program |
| COPS | **16.710** | Public Safety Partnership and Community Policing Grants |
| NIJ | **16.560** | National Institute of Justice Research, Evaluation, and Development Project Grants |
| ODP | **97.005** | State and Local Domestic Preparedness Training Program |
| OJJDP | **16.541** | Part E - Developing, Testing and Demonstrating Promising New Programs |
| OVC | **16.582** | Crime Victim Assistance/ Discretionary Grants |
| OVW | **16.528** | Enhanced Training and Services to End Violence and Abuse of Women Later in Life |
| OVW | **16.589** | Rural Domestic Violence and Child Victimization Enforcement Grant Program |

Mr. SCOTT. Thank you.

We have been joined by the gentlelady from Ohio, Ms. Sutton, and the gentleman from North Carolina, Mr. Coble.

Sheriff Webre?

**TESTIMONY OF SHERIFF CRAIG WEBRE, PRESIDENT, NATIONAL SHERIFF'S ASSOCIATION, ALEXANDRIA, VA**

Mr. WEBRE. Good morning, Mr. Chairman, Members of the Committee. My name is Craig Webre. I am the elected sheriff of Lafourche Parish, LA, located about 50 miles southwest of the city of New Orleans, a post I have held for 15 years. And I am appearing here in my capacity as the president of the National Sheriff's Association, representing over 3,000 of America's elected sheriffs and a membership of over 21,000, making us one of the largest law enforcement associations in the country.

We appreciate the opportunity to address your Committee. And our written comments have been submitted for the record and for your review.

I am appearing this morning to testify against the proposed amendments to the Law Enforcement Officers Safety Act of 2007, which is codified in 18 U.S.C. Section 926 (C). In particular, our association is strongly opposed to the modifications to section C, which would greatly broaden and enhance the category of retired law enforcement officer. Under the current legislation, the 2004 version, a retired qualifying law enforcement officer must meet two criteria. They have to have been employed for at least 15 years, regularly employed as a law enforcement officer, and they must have earned a nonforfeitable right to a benefit and be in good standing.

The amendment would eliminate the requirement of a benefit, a nonforfeitable right to a benefit in good standing. And the Senate version would further weaken this legislation by reducing the requisite period of time from 15 years to 10 years.

If enacted, we believe that this would compromise the integrity of the Law Enforcement Officers Safety Act. It would further complicate the implementation of the act, and it would be a tremendous disservice to the actual bona fide retired law enforcement officers across this country who have truly sacrificed and are committed to public safety.

Let me briefly address each point for the Committee. With respect to a clear definition and understanding, all of us in law enforcement understand and have credentials for active law enforcement.

Similarly, we understand and have credentials for bona fide retired police officers who have rights to a pension. In most cases, the agency that they retire from will provide them with a photograph identification commission card that they will carry with them to identify them as a police officer. To deviate from that standard and to reduce it from 15 to 10 years invites a category or a class of people that we will know very little about in terms of background, suitability or history of employment.

My experience and the experience of the colleagues that I have spoken to about this issue suggests that the 10- to 15-year time period is a threshold event in a police officer's career. By that I mean

most officers who are going to leave law enforcement leave before 10. If they reach 10, then they are in for the long haul.

Those who leave in that 10-to 15-year period are often forced to leave or leave because they are a problem officer. And they move from agency to agency to agency. So we believe it is a greater probability that officers falling within that timeframe and who don't officially retire may have separated under less than ideal circumstances.

In addition, you may have an officer, as the chief mentioned, who went to work in 1970 or 1975 for 10 years or 15 years, left law enforcement, and now here we are 25, 30 years later, and we have advanced in laws and changes to the criminal justice system that these officers have not kept abreast of. More particularly, we believe that CEOs, chiefs, sheriffs, and law enforcement managers will be more concerned from the liability standpoint if a person who did not retire with their agency is now calling upon them to provide some sort of verification of employment. So we believe there are far too many what ifs and unknowns to broaden the category of retired law enforcement officer qualifications under LEOSA.

My second point is the implementation complications. The stated goals and purposes, as was mentioned, are to enhance public safety, to provide for police officer safety, and an added benefit and coming from south Louisiana where we experienced the Katrina tragedy, is when officers come into our jurisdiction, they come with the ability to bring a weapon without violating laws. However, we can't say that those other goals have been achieved or realized to the extent that the original act hoped that they would.

We know that the implementation has been very problematic. I mentioned that I have been a sheriff for 15 years. We have 250 sworn officers in the Lafourche Parish Sheriff's Office who would qualify under this act.

Since its implementation, not a single deputy has ever presented himself for the right to carry out-of-State concealed pursuant to LEOSA, nor have any of the retirees asked to be trained or sought credentials to provide themselves or avail themselves of the privileges of this act. Nor am I aware of any law enforcement officer from another jurisdiction coming into our area.

Mr. Chairman, I see I am out of time. May I continue?

Mr. SCOTT. Yes.

Mr. WEBRE. Thank you. So despite this statute, we see that it is not being implemented, at least in our region.

One of the other things that would happen is if an officer were allowed to aggregate their time without retiring, say they worked for three agencies for 5 years each, which agency do they get certification from? Do they go to three agencies and get three identification cards? Do they go to one agency that certifies the other two agencies?

Is there an issue of forum shopping where they will go to the agency that they had the best record and avoid the agencies where they may have had disciplinary records? Do they run into the situation of creating falsified or counterfeit credentials?

If they come into Lafourche Parish and a deputy encounters them and that deputy has to make a decision whether this person

should be arrested or released, and they don't have the ability on the weekend or at night to verify their credentials, it puts them in a dilemma, as well. Actually, if the Congress chooses to create a national concealed carrier permit, then it probably ought to be a federalized process much in the way that we do gun checks or gun checks are done for Brady bill and purchase of guns.

And my final point is the point I made earlier. I think we do a tremendous disservice to the men and women, the thousands of police officers across our country who have truly put in 15, 20, 25, 30 and beyond years who have earned the right to carry a retired commission and receive a benefit and now would have the right under this benefit if we extend it to those who don't retire.

Thank you on behalf of the National Sheriff's Association for this opportunity. And like my colleague, the chief, I am happy to answer questions.

[The prepared statement of Mr. Webre follows:]

PREPARED STATEMENT OF CRAIG WEBRE

Mr. Chairman and members of the Committee, my name is Craig Webre and I currently serve as the Sheriff of Lafourche Parish, Louisiana and President of the National Sheriffs' Association. The National Sheriffs' Association represents over 3,000 elected sheriffs across the country and over 22,000 law enforcement professionals making us one of the largest law enforcement associations in the nation. I am pleased to have this opportunity to appear before you today to express my concerns with the proposed measure that would amend the federal criminal code to authorize certain categories of current and retired law enforcement officers to carry concealed firearms.

As you may be aware, sheriffs play a unique role in our criminal justice system. In addition to providing traditional policing within their respective counties, sheriffs also manage local jails and are responsible for providing court security. Over 99% of the sheriffs are elected and oftentimes serve as the chief law enforcement officer of their counties. Consequently, we have a keen understanding of the needs of our criminal justice system as well as of the local communities we serve.

The Law Enforcement Officers Safety Act (LEOSA), enacted in 2004, allows two classes of persons—the "qualified law enforcement officer" as defined in 18 U.S.C. § 926 (B) and the "qualified retired law enforcement officer" as defined in § 926 (C)—to carry a concealed firearm in any jurisdiction in the United States, regardless of any conflicting state or local law, with certain exceptions.

The National Sheriffs' Association supported the Act in the 108th Congress based on the premise that allowing trained, active-duty and retired law enforcement officers to carry firearms could only enhance public safety. It would also allow current and former officers to defend themselves against revenge attacks by those they once brought to justice.

However, as a practical matter, it has been difficult for states to implement the Act. For example, LEOSA's preemption of state and local concealed carry prohibitions can take effect without any action by state or local officials as long as the individual police officer in question meets all the requirements of the Act. Yet, many local agencies have said they will not issue the necessary credentials or attest that a given retired officer has fulfilled that agency's training requirement. These agencies are understandably concerned about the potential liability they may face if they issue concealed-weapon credentials to an officer who later uses his or her weapon without justification.

Further, the Act is confusing to officers traveling across state lines because they lack sufficient information about the concealed carry laws of other jurisdictions. What's more, the law has yet to show that it has produced any benefit to public safety. In fact, rather than a reduction in the rate of violent crime—which we had hoped LEOSA would facilitate—we have instead seen a dramatic increase in the exact type of criminal activity the Act was intended to prevent. Given these disappointing results, I am here to express our reservations about the proposed measure, the Law Enforcement Officers Safety Act of 2007 (S. 376, H.R. 2726), which would amend 18 U.S.C. § 926 (C). We believe that the proposed amendment unnecessarily expands the term "qualified retired law enforcement officer" who can carry a concealed firearm.

Specifically, we are concerned with the proposed revision that strikes paragraph (4) of § 926 (C) which would eliminate the requirement that the officer "has a non-forfeitable right to benefits under the retirement plan of the agency." In addition, the Senate bill, S. 376, would change the requisite 15 years or more of law enforcement service to 10 years to be considered as a "qualified retired law enforcement officer" under this section. Similarly, the House bill, H.R. 2726, eliminates the requirement that a qualified retired law enforcement officer in fact be "retired." Rather, under these proposed measures, a law enforcement officer who has "departed" from service would qualify to carry a concealed firearm anywhere in the nation under the previously defined "qualified retired law enforcement officer."

The Senate and House bills therefore seems to imply that any certified officer who is separated from his or her position as a law enforcement officer, regardless of whether they meet the longevity requirement needed to qualify for retirement benefits, would qualify as "retired" under the amended law. Once grouped into the "retired" category, these officers would have just as much right to carry a concealed firearm as officers with many more years of law enforcement experience. We believe that such a change would be contrary to the intentions of LEOSA's drafters.

It was not mere semantics that led LEOSA's drafters and supporters to require that an officer be "retired," rather than simply a "former" officer before being granted nationwide concealed-carry rights. The Act's drafters did not intend that any officer who has received basic training and been employed for the minimum period of time to become certified be allowed to carry a concealed weapon. We believe that carrying a concealed firearm is a privilege that should be bestowed only upon those retired law enforcement officers who have extensive experience, have dedicated their lives to protect the safety of our citizens, and have demonstrated through their past conduct that they are deserving of such a responsibility. We strongly believe that when considering the expansion of such a privilege we must not act hastily, but must instead closely examine the potential unintended consequences of such a change.

At this time, we are not convinced the proposed changes being considered by this Committee are necessary, or that the potential benefits would outweigh the unintended negative consequences. Before expanding the current law, we believe that further study to determine the practical effects of the Act would be a prudent next step. The proposed amendment to LEOSA is an attempt to find a simple solution to a complex problem. Simply enabling more people to carry concealed firearms is not a solution to providing additional public safety or addressing the recent dramatic increase in violent crime.

I want to thank the Chairman and members of this Committee for conducting this hearing and listening to the concerns of the law enforcement community before taking action on this bill. As an elected official and a law enforcement officer, I am dedicated to ensuring the well-being and safety of all citizens, including my fellow men and women in uniform. With that in mind, I ask for your full consideration of my comments today.

Mr. SCOTT. Thank you.

Mr. Penoza?

## TESTIMONY OF THOMAS PENOZA, NATIONAL TREASURER, GRAND LODGE, FRATERNAL ORDER OF POLICE, WASHINGTON, DC

Mr. PENOZA. Good morning, Mr. Chairman and distinguished Members of the Subcommittee on Crime, Terrorism, and Homeland Security. My name is Tom Penoza. I am here this morning at the request of Chuck Canterbury, the national president of the Fraternal Order of Police, which is the largest law enforcement labor organization in the United States, representing more than 325,000 members in every region of the Nation. I am the national treasurer of the FOP and the longest-serving board member that serves on its executive board right now.

I want to begin by thanking you, Mr. Chairman, for holding this hearing and giving the FOP an opportunity to talk about the implementation of the Law Enforcement Officers Safety Act, or LEOSA, and the need to amend it by adopting H.R. 2726, a bill that goes

by that same name. One of the chief concerns with the implementation of the current law is fairness to retired officers.

Under current law, qualified retired law enforcement officers must carry photographic identification issued by the agency from which they were employed, and they have to carry documentation that certifies that they have met active duty standards for qualification with a firearm. This document must be issued by the retired officer's former agency or from the State in which he resides.

Right now States which have not or have refused to adopt a procedure or mechanism for retired officers to qualify with their weapon are effectively preventing these retired officers from complying with the document requirements of Federal law. This issue was specifically addressed during the full Committee markup on H.R. 218 3 years ago in an exchange between then Chairman Sensenbrenner and Representative Ric Keller, which made it clear that the qualification document requirement was not intended as a way for a State to get around the Federal law.

Unfortunately, despite the clarity of the exchange, there are some States and agencies doing exactly this. To address this issue, the FOP strongly supports the adoption of H.R. 2726, which would provide that a certified firearms instructor could conduct and qualify retired law enforcement officers using the active duty standards for qualification in firearms training in those cases where States have chosen not to qualify the officers themselves.

For example, my home State of Delaware does not have a procedure in place for retired officers who served outside the State and who now reside in Delaware. And we get a lot of them in our beach areas.

If H.R. 2726 were adopted, these officers could be qualified by firearms instructors certified by the State of Delaware, and it would be based on our own State's standards. Under existing law, these officers have to return to their own agencies to get requalified.

If, for example, a State does not recognize a state-wide standard, the instructor would be able to certify a retired officer based on an existing standard from a law enforcement agency within that State. This will ensure that retired officers are treated equitably under our current law and can no longer be prevented from carrying under LEOSA over what is simply a paperwork issue.

The FOP would also like to advise the Committee of several other implementation problems that have come to our attention. The first of these is the requirement that an officer have a nonforfeitable right to benefits under the retirement plan of his agency.

This has been problematic in agencies which do not offer any retirement benefit plan for their officers, and it seems to have disproportionately affected deputy sheriffs. The receipt of a retirement benefit after an officer has left the service of his agency should not affect his authority to carry a firearm, which supports the language in H.R. 2726, which would delete this language.

The FOP also advocates expanding the definition of qualified active retired law enforcement officers include officers employed by the Amtrak Police Department. Now, let me emphasize this point.

This is the only expansion of the current law which we support at this time.

Amtrak is, under title 49, not a department, agency or instrumentality of the United States government. Therefore, police officers employed by Amtrak do not meet the definition in LEOSA, which requires them to be an employee of a Government agency. Yet, the Amtrak Police Department has been, and in many cases is, treated as a Federal law enforcement agency by the Federal Government.

In fact, it is listed as a Federal law enforcement agency by the Bureau of Justice Statistics in the Justice Department. For this reason, the FOP supports the expansion of the current definition to include officers employed by the Amtrak Police Department.

We also feel strongly that the implementation of the law is not being fairly applied to Federal law enforcement agencies. Clearly, any Federal law enforcement officer classified as a GS-0083 who is employed by the executive branch meets the definition of qualified active or retired law enforcement officer in the current statute.

Yet it has come to our attention that certain Federal law enforcement agencies within the Department of Defense have informed law enforcement officers in their employ that they do not have statutory powers of arrest. They have the power of apprehension, and thus cannot carry under LEOSA.

As a matter of law, it is not clear that the Federal law enforcement officers employed by the DOD have powers of arrest or apprehension, nor is it clear that there is any legal difference between these two terms. My 5 minutes is up. Can I go ahead and finish?

Mr. SCOTT. Yes, continue making your point.

Mr. PENOZA. It is, however, certain that these officers can and do take suspected offenders into custody, book them, investigate the offenses, and testify in court. The only question is whether the individual they took into custody was arrested or apprehended and whether there is any distinction between those terms.

If there is a genuine distinction, Congress should make it clear that it did not intend to exclude large numbers of Federal law enforcement officers from LEOSA. Congress adopted LEOSA to help make law enforcement officers safer. The problems have been encountered to date are primarily those of equitable treatment for retired officers. And I hope the Committee will help us address them.

In conclusion, I would like to thank Representative Forbes for his leadership on this issue.

And, Mr. Chairman, I would like to thank you for holding this hearing. And I will answer any questions you may have of me.

[The prepared statement of Mr. Penoza follows:]

# TESTIMONY

**of**

**Thomas Penoza**
**National Treasurer**
**Grand Lodge, Fraternal Order of Police**

**on**

**the Implementation of the "Law Enforcement Officers Safety Act of 2004" (Pub. L. No. 108-277) and Additional Legislative Efforts Aimed at Expanding the Authority to Carry Concealed Firearms**

**before the**
**House Subcommittee on Crime, Terrorism, and Homeland Security**
**Committee on the Judiciary**

**6 September 2007**

Good morning, Mr. Chairman and distinguished members of the Subcommittee on Crime, Terrorism and Homeland Security. My name is Tom Penoza, and I am here this morning at the request of Chuck Canterbury, National President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 325,000 members in every region of the nation. I am the National Treasurer of the FOP and the longest-serving member of its Executive Board.

I want to begin by thanking you, Mr. Chairman, for holding this hearing and giving the FOP an opportunity to talk about the implementation of the Law Enforcement Officers' Safety Act, or LEOSA, and the need to amend it by adopting H.R. 2726, a bill that goes by the same name. This legislation, authored by Representative Forbes, makes needed improvements to the provisions to the Federal statute which exempts qualified active and retired law enforcement officers from State and local prohibitions on the carriage of firearms.

Since this Subcommittee considered and approved the original bill three years ago, the FOP has identified some issues with the way the law has been implemented–issues which we believed at the time to have been adequately answered during the full Committee mark-up in June 2004, but which regrettably persist in several States and jurisdictions. These implementation problems have created real inequities, especially for retired law enforcement officers, and it is something we need to address legislatively by adopting H.R. 2726.

Under current law, qualified retired law enforcement officers must carry the photographic identification issued by the agency for which they were employed ***and*** documentation which certifies that they have met, within the most recent twelve-month period, the active duty law enforcement standards for qualification for a firearm of the same type as the one they intend to carry. This document must be issued by the retired officer's former agency ***or*** from the State in which he resides. Right now, States which have not or have refused to adopt a procedure or mechanism for retired officers to qualify with their weapon are effectively preventing the ability of these officers to comply with the documentary requirements of Federal law.

During the mark-up of the legislation before the House Judiciary Committee in June 2004, this point was specifically addressed in a colloquy between Representatives F. James Sensenbrenner, Jr. (R-WI), who chaired the Committee at that time and authored the amendment requiring the State or former agency to issue a document certifying that the officer had qualified with the firearm, and Representative Ric Keller (R-FL). The exchange between these two Members made it clear that the amendment was ***not*** intended to be a means by which a State could "get around" the Federal law. I have included below an excerpt from the transcript of the hearing, taken from House Report 108-560:

> ***Mr. KELLER.*** *Mr. Chairman, I want to engage in a little colloquy just to clarify my understanding.*
>
> *The gist of the language as it reads now in the base bill is, during the most recent 12-month period, they have to show that the individual, at his expense, has met the standards for training and qualification for active law enforcement officers to carry firearms. And your amendment just says, you have a photo ID proving that?*

***Chairman SENSENBRENNER.*** *If the gentleman would yield, the answer is `yes.'*

***Mr. KELLER.*** *It wouldn't, for example, have the effect of gutting the bill by saying that if your State doesn't allow police officers to carry firearms, that they would be exempt, because in that particular case, those States where they are not allowed to require them, they wouldn't be able to get a photo ID saying they met the requirements of using this particular gun and carrying a concealed weapon permit.*

***Chairman SENSENBRENNER.*** *To my knowledge, no.*

***Mr. KELLER.*** *I yield back.*

This was an important exchange on an important point–that being that a State or agency cannot thwart Federal law by refusing to provide a retired officer a document or the opportunity to obtain that document. Unfortunately, despite the clarity of this exchange, there are States and agencies doing exactly this.

To address this issue, H.R. 2726 would provide that a "certified firearms instructor" could conduct and qualify retired law enforcement officers using the active duty standards for qualification in firearms training as established by the State; or if the State has not established or recognized such standards, standards set by any law enforcement agency within that State. This would enable any certified firearms instructor to qualify a retired officer using the standards set either by the State in which the instructor is certified and the officer resides, or, in the absence of such standards (or the recognition of such standards), using the standards of any law enforcement agency in the State. This will ensure that qualified retired law enforcement officers will no longer be prevented from carrying their firearms under the Law Enforcement Officers' Safety Act (LEOSA) over what is simply a paperwork issue.

The legislation also proposes to make a few additional minor changes to the definition of "qualified retired law enforcement officer." The first of these is to strike language requiring that a "qualified retired law enforcement officer" have a "nonforfeitable right to benefits under the retirement plan of the agency." This has been very problematic in agencies which do not offer any retirement benefit plan to their officers and has disproportionately affected deputy sheriffs. The receipt of a retirement benefit after an officer has left the service of his agency should not be determinative as to his authority to carry a firearm, so H.R. 2726 deletes this particular language.

The legislation also proposes to revise language in the definition of "qualified retired law enforcement officer" with respect to the requirement to qualify with the firearm that the officer intends to carry while traveling outside his jurisdiction and make that language consistent with the revisions proposed to 926C(d), which are outlined above.

The legislation would expand the definition of "qualified active law enforcement officer" and "qualified retired law enforcement officer" by including officers who are or were employed by the Amtrak Police Department. Because Amtrak is, under Title 49, "not a department, agency,

or instrumentality of the United States Government," police officers employed by Amtrak do not meet the definition in LEOSA, which requires them to be an "employee of a governmental agency." Yet, the Amtrak Police Department has been, and is in many cases, treated as a Federal law enforcement agency by the Federal government. For instance, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) previously ruled that officers of that department should be exempt from Section 922(w) of Violent Crime Control and Law Enforcement Act of 1994 which prohibited the transfer or possession of large capacity ammunition feeding devices, except by law enforcement officers employed by a governmental agency. The ruling stated, in part that the Amtrak Police Department is "deemed to be a governmental agency for the purposes of 18 U.S.C. 922(w)." These same conclusions which led ATF to deem Amtrak a Federal agency for the purposes of 18 USC 922(w) apply in the case of 18 USC 926B and 926C. I have attached a copy of that ruling to this testimony and ask that it be included in the record.

The Amtrak Police Department, first accredited in 1992, has been reaccredited twice--in 1997 and 2002 by the Commission on Accreditation for Law Enforcement Agencies (CALEA). The department has a K-9 team, a Drug Enforcement Unit, an Aviation Unit, and a Mobile Command Center. Amtrak police officers are assigned to the Federal Bureau of Investigation's (FBI) Joint Terrorism Task Force (JTTF) and Joint Operations Center in Washington, D.C. In 1999, Congress amended the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the FBI's National Academy for Law Enforcement Training and, to date, several Amtrak officers have successfully completed that program.

Further, in the most recent report on Federal law enforcement officers available, entitled *Federal Law Enforcement Officers, 2004*, the U.S. Department of Justice, Bureau of Justice Statistics listed the Amtrak Police Department as a Federal law enforcement agency.

Given all of this information, it seems clear that the officers of the Amtrak Police Department are treated for all intents and purposes as Federal law enforcement officers and, but for the language in Title 49, would clearly meet the definition in LEOSA. It is for this reason that H.R. 2726 would expand the definitions in 926B and 926C to include the officers employed Amtrak Police Department. I want to emphasize that this is the only expansion of the current law that the FOP supports at this time.

In addition to the Amtrak Police Department, certain law enforcement agencies within the Executive Branch of the Federal government are uncertain as to whether or not the civilian law enforcement officers meet the definition of "qualified active law enforcement officer" and "qualified retired law enforcement officer" in current law. The FOP feels this is an area that requires further clarification because, in our view, all Federal law enforcement officers who are classified by the Office of Personnel Management (OPM) as GS-0083, the "Police Series," should be included in the LEOSA definitions.

In support of this view, I offer the OPM publication, *Grade Evaluation Guide for Police and Security Guard Positions in Series GS-0083/0085*, which states the following:

> *This series includes positions the primary duties of which are the performance or supervision of law enforcement work in the preservation of the peace; the prevention,*

*detection, and investigation of crimes; the arrest or apprehension of violators; and the provision of assistance to citizens in emergency situations, including the protection of civil rights. The purpose of police work is to assure compliance with Federal, State, county, and municipal laws and ordinances, and agency rules and regulations pertaining to law enforcement work.*

In further describing the nature of "police work," the aforementioned publication states the following:

*The primary mission of police officers in the Federal service is to maintain law and order. In carrying out this mission, police officers protect life, property, and the civil rights of individuals. They prevent, detect, and investigate violations of laws, rules, and regulations involving accidents, crimes, and misconduct involving misdemeanors and felonies. They arrest violators, assist in the prosecution of criminals, and serve as a source of assistance to persons in emergency situations.*

*Police services are provided in Federal residential areas, parks, reservations, roads and highways, commercial and industrial areas, military installations, Federally owned and leased office buildings, and similar facilities under Federal control. Within their jurisdictions, police officers enforce a wide variety of Federal, State, county, and municipal laws and ordinances, and agency rules and regulations relating to law enforcement. They must be cognizant of the rights of suspects, the laws of search and seizure, constraints on the use of force (including deadly force), and the civil rights of individuals.*

*Police officers are commissioned, deputized, appointed, or otherwise designated as agency and/or local law enforcement officers by statute, delegation, or deputization by local governments, or other official act. Arrest and apprehension authority includes the power to formally detain and incarcerate individuals pending the completion of formal charges (booking); requesting and serving warrants for search, seizure, and arrest; testifying at hearings to establish and collect collateral (bond); and/or participating in trials to determine innocence or guilt.*

*Police officers carry firearms or other weapons authorized for their specific jurisdictions. They wear uniforms and badges, use military style ranks (private, sergeant, lieutenant, etc.), and are commonly required to refamiliarize themselves with authorized weapons periodically and demonstrate skill in their use.*

It has come to the attention of the FOP that certain Federal law enforcement agencies within DoD have informed the GS-0083 Federal law enforcement officers in their employ that they do not meet the definition of "qualified active law enforcement officer" and "qualified retired law enforcement officer" because they do not have statutory powers of arrest. As a matter of law, it is not clear that Federal law enforcement officers employed by the DoD have powers of arrest or apprehension, nor is it clear that there is any legal difference between these two terms. It is, however, certain that these officers can and do take suspected offenders into custody, book them, investigate the suspected offenses, and participate in court proceedings seeking to convict those

whom they took into custody for the suspected offense. All that is it at issue is whether this authority is that of "arrest" or that of "apprehension" and whether a distinction exists. If there is such a distinction, then it is up to Congress to make clear that it was their intent in passing the LEOSA that Federal law enforcement officers designated as GS-0083 employees (or any subsequent successor to that series) do meet the definitions in that law.

To provide further information on this point, the Committee offers that, in the Manual for Courts-Martial, Rule 302(a)(1) defines "apprehension" as "the taking of a person into custody." The Discussion under this definition reads as follows:

> *Apprehension is the equivalent of "arrest" in civilian terminology. (In military terminology, "arrest" is a form of restraint. See Article 9; R.C.M. 304.)*

Rule 302(b)(1) states that apprehensions can be made by:

> *persons designated by proper authorities to perform military criminal investigative, guard, or police duties, whether subject to the code or not, when in each of the foregoing instances, the official making the apprehension is in the execution of law enforcement duties;*

The Discussion under Rule 302(b)(1) states that:

> *Whenever enlisted persons, including police and guards, and civilian police and guards apprehend any commissioned or warrant officer, such persons should make an immediate report to the commissioned officer to whom the apprehending person is responsible.*

This information seems to indicate that the distinction between "arrest" and "apprehension" is largely one of usage within the DoD and military community and not a distinction with a factual or legal basis. The suspect, after all, is in taken into custody by a lawful authority and whether that suspect was arrested or apprehended seems to be an issue of semantics, not of substance.

In further support of this interpretation, the Committee would offer that the DoD issued a Directive, DoD Directive 5210.56, on 24 January 2002 which clearly presumes that GS-0083 law enforcement officers employed by the Department of Defense do have the authority to make arrests or apprehensions. Specifically, E2.1.2.3.6. of that document authorizes the use of deadly force against any individual if it "reasonably appears to be necessary to arrest or apprehend a person who, there is probable cause to believe," has committed one of the offenses specified in the Directive.

The Department of the Army implements the entirety of DoD Directive 5210.56 in Army Regulation 190-14, paragraph 3-2(*f*)(5) and the Department of the Navy implemented the entirety of DoD Directive 5210.56 by issuing SECNAV INSTRUCTION 5500.29C, on 27 August 2003.
Like the DoD Directive, both AR 190-14 the SECNAV INSTRUCTION authorizes its GS-0083 law enforcement officers to use deadly force if it is "reasonably necessary to arrest, apprehend,

or prevent the escape of a person who, there is probable cause to believe," has committed one of the offenses specified in the regulation.

The language included in H.R. 2726 clarifies that any Federal law enforcement officer classified as a GS-0083 (or any successor to that series) who is employed by the Executive Branch also be deemed to meet the definitions of "qualified active law enforcement officer" and "qualified retired law enforcement officer" in the current statute without addressing the issue of defining the difference, if any, between the terms "arrest" and "apprehend" with the Defense Department. This is merely the exercise of common sense, as the FOP believes that the difference in these two terms is one of usage and not one of fact or law. Further, the legislation would also add the words "or apprehension" in both 926B and 926C in the definitions for "qualified active" and "qualified retired law enforcement officer[s]."

When the FOP was working with Congress and the Administration to enact LEOSA, we made it our top priority because it is an officer safety issue. It remains an officer safety issue, and the problems that we have encountered in its understanding and implementation are matters of equitable treatment regardless of duty status and the attitudes of an individual State or agency toward the existing Federal law.

In conclusion, I would like to thank Representative Forbes for his leadership on this issue and to you, Mr. Chairman, for holding this hearing. I would now be pleased to answer any questions that members of the Subcommittee may have.

Mr. SCOTT. Thank you. Thank you very much.

We will now have questions. And we will try to comply with the 5-minute as best we can.

Mr. Penoza, on the present law, what does an officer have to do to get qualified to carry the weapons interstate? He has to go through a process of certification.

Mr. PENOZA. Yes, he has to go through whatever that State requires.

Mr. SCOTT. Whatever the State requires? That could be just firearms training?

Mr. PENOZA. Well, whatever they require for firearms training.

Mr. SCOTT. And——

Mr. PENOZA. Like my State has a specific criteria you have to meet as a law enforcement officer every year.

Mr. SCOTT. And so, to carry the weapon, you would have to go through, get recertified every year?

Mr. PENOZA. Yes, sir.

Mr. SCOTT. If the officer were in a different jurisdiction, a different State, how would the other State know whether he had qualified or not?

Mr. PENOZA. If he was in my State and got qualified?

Mr. SCOTT. No, if an individual shows up in your jurisdiction and says he can carry a firearm, how do you know if he is, in fact, eligible to carry a firearm?

Mr. PENOZA. He would have to have the card that certifies he qualified in that other State.

Mr. SCOTT. And that has——

Mr. PENOZA. That is set out in the bill.

Mr. SCOTT. And that has an expiration date?

Mr. PENOZA. Yes, once every year. That has to be done every year.

Mr. SCOTT. And do you have to go back to your former employer to get that certification?

Mr. PENOZA. You would unless the State that you are living in would qualify you.

Mr. SCOTT. They would have to verify your employment.

Mr. PENOZA. Yes, sir, there would be a—I assume there would be some kind of forms. That is what we have in Delaware. Or that is what we are proposing.

Mr. SCOTT. And what weapons are you allowed to carry?

Mr. PENOZA. The weapon that you qualify with.

Mr. SCOTT. So if you qualify with a machine gun in one State, you can carry the machine gun in another State?

Mr. PENOZA. Well, under this law, whatever weapon you qualify with you would have to carry that weapon. Machine guns are excluded.

Mr. SCOTT. Chief Knight, what is wrong with having officers from other States come into your State carrying firearms if they need those weapons to protect themselves?

Mr. KNIGHT. Firstly, if they are on duty and actually working in the capacity and they are in my jurisdiction, they are in concert with us typically, and certainly, they need to be armed to protect themselves. If they are on vacation, I think that whether or not they need to carry that weapon is certainly debatable.

You know, earlier we talked about police officers. There was reference made honorably that officers are never off-duty. I submit that I, my colleagues, sheriff try very, very hard to make sure that when our officers are off duty they are off duty, and for a host of mental health reasons and balance of life issues. You are never off duty when you are carrying a gun. You shouldn't be.

You have to have an elevated sense of hyper-vigilance when you are handling and carrying a weapon. The problem we have is if someone were to come into my city, my officers don't know them. We don't know what level of training they have or haven't had.

If the State doesn't provide it, they can go to the lowest common denominator in the particular State where they are from. And we don't know what that is. We don't know how often they qualify with that weapon.

We don't know if that is the weapon, indeed, they qualified with. Perhaps they purchased another, or, as is common, officers have multiple weapons. So the problem is the unknown and who is then in an enforcement capacity, potentially, armed, taking action in jurisdictions locally.

Mr. SCOTT. Do the officers carrying these firearms check in with the local police when they show up?

Mr. KNIGHT. No, they don't.

Mr. SCOTT. Wouldn't they know whether they need protection rather than the local police?

Mr. KNIGHT. Well, I think again that is debatable. I think we all have our perceptions, and we all have a feeling of our own personal security and safety. I can tell you I had no concerns about coming here unarmed. And when I am on vacation I don't feel I need to be armed. And I have worked in a number of capacities. And in my entire career, I have probably carried a gun off-duty maybe five times.

Mr. SCOTT. I think one of you mentioned the question of civil liability if an officer gets into a situation where there is a lawsuit. Has that ever happened? Anybody? Has that ever happened?

Mr. KNIGHT. You know, I don't know that answer. I know it has not happened with my jurisdiction. But I would find it hard—I think it would be easily discovered that perhaps there has been something like that, and, indeed, it has happened.

Mr. SCOTT. My time is just about up. Do you know of examples when officers have gotten in trouble dealing with officers from other jurisdictions, Chief Knight?

Mr. KNIGHT. Certainly. From my department, no, I don't. I know from my colleagues in larger cities that, indeed, they have. In fact, they have had that issue with their own undercover people when things are unfolding fast and furiously not knowing who is who.

Mr. SCOTT. If your association has documentation for those incidents, we would appreciate you forwarding them.

Mr. KNIGHT. Absolutely.

Mr. SCOTT. Thank you.

Mr. FORBES. First of all, let me thank you all for being here and for what you do to keep us all safe. And let me be clear of a couple of things as we come to the hearing today. First of all, both Chief and Sheriff, I know that your organizations were against the Law Enforcement Officers Safety Act of 2004. Is that correct?

Mr. KNIGHT. That is correct.

Mr. WEBRE. That is not correct, Congressman.

Mr. FORBES. Before that act.

Mr. WEBRE. The NSA did support LEOSA 2004.

Mr. FORBES. All right. And, Chief, your organization was against it?

Mr. KNIGHT. We did oppose, correct.

Mr. FORBES. But you both understand that is the law, that is the policy. It was passed by the House of Representatives, by the Senate, signed by the President. We are not here to debate that policy today.

What I would want you to laser in on——

Mr. SCOTT. Speak for yourself.

Mr. FORBES. Mr. Chairman can put in legislation to repeal it. That is not before us. You know?

I encourage him to do that if that is what he would like to do. But what we are lasering in on is H.R. 2726, the "Law Enforcement Officers Safety Act of 2007."

Sheriff, let me ask you. Have you read that act?

Mr. WEBRE. Yes, sir, I have.

Mr. FORBES. And you are familiar with that? The questions I had asked you pertaining to that you could answer for me? Is that correct?

Mr. WEBRE. I would do my best.

Mr. FORBES. Now, if that act has been passed—and you have just heard Mr. Penoza indicate that some States are just saying, "No, we don't care what the policy was that Congress established, the Senate established, the President established. We are just not going to issue those documents." You think that is appropriate for the State to do?

Mr. WEBRE. If the State has a legitimate legal argument based on either a preemption issue or separation of powers, they certainly can advance that.

Mr. FORBES. Have you heard in any such legal argument that has been put forward?

Mr. WEBRE. I have read in various documentations concerns that States' rights issues have been raised with respect to this Federal legislation preempting their ability to regulate concealed carrying, yes.

Mr. FORBES. We have documents that you talked about that some of your deputies get that suggest that they have certain retirement benefit rights, that they are given a certification in that. Could the State just come out and say, "No, we are not going to issue that?"

Mr. WEBRE. I can't give you an answer on that.

Mr. FORBES. But if it would, it would kind of be inappropriate for the State to just say we are not going to issue it?

Mr. WEBRE. If there is a Federal law that requires a State to issue a document, it would seem to suggest that they would issue it.

Mr. FORBES. And that is what Mr. Penoza is basically coming here and saying. He said this policy has been established. Chief, you lost the fight. You might have been against it. You lost the fight. You guys enforce laws all the time that you don't particularly

agree with and you don't particularly—wouldn't have passed if you had have had the choice to do it.

Mr. Penoza's saying that is the law. They are just simply looking us in the face and saying we are not going to issue the document. It has nothing to do with whether our people are qualified to carry the firearm. They are just not going to issue the documents.

Chief, have you ever had a death threat?

Mr. KNIGHT. Absolutely.

Mr. FORBES. Have you ever had any threats to your family?

Mr. KNIGHT. Not directly.

Mr. FORBES. Have any of the people under you and under your employ ever had death threats?

Mr. KNIGHT. Yes, they have.

Mr. FORBES. Have they had threats to their families?

Mr. KNIGHT. I am not aware.

Mr. FORBES. How many would you say, percentage-wise, of officers that were under your employ have had such threats made to them at some point in time in their career?

Mr. KNIGHT. Serious, legitimate threats?

Mr. FORBES. Any threats. I mean, I think it depends. A threat to you may not be serious to me.

Mr. KNIGHT. Exactly.

Mr. FORBES. A threat to me becomes very serious.

Mr. KNIGHT. Exactly. I would say the bona fide, serious threats is a very small percentage.

Mr. FORBES. Very small percentage.

How about you, Sheriff? Have you ever had a threat to your life?

Mr. WEBRE. Absolutely.

Mr. FORBES. Have any of your deputies ever had threats to their lives?

Mr. WEBRE. Yes, sir, they have.

Mr. FORBES. Now, we are sitting in here trying to strike this balance that, Chief, you talked about. You couldn't come up with a single situation where that was a problem with an officer who had just not had the proper identification. You said you had read about some of them, but you never had one.

Sheriff, did you have any in your jurisdiction where you had a problem in identifying another officer with a firearm that was in your jurisdiction?

Mr. WEBRE. No, I have testified no one has ever presented themselves in our jurisdiction.

Mr. FORBES. Neither of you have had those problems. But both of you have had problems where you have had people under your employ who have had threats to their family. We have got law enforcement officers out there.

Mr. Penoza, how many people do you have in your organization that have had threats that have been made to them or to their families?

Mr. PENOZA. I don't know how many, but I am sure it is a lot.

Mr. FORBES. A lot of them. And so, when we are trying to strike that balance, you know, one of the things that we are very much concerned with is when you talk about a police officer being off duty, the officers that we have had come to us in support of this legislation and the previous legislation say, you know, when I am

on duty and I have these threats and the threats to my family, I have an obligation to try to protect my family, to try to protect me. I am trained to be able to do that.

But you have pulled that gun, that weapon that I have been trained to be able to utilize to protect myself and to protect my family. You have taken it away from me. And you can't come up with a single situation except the hypotheticals, the things that we have read, where we have the problems with the I.D. problems that you suggest.

But we can come up with documentation after documentation of law enforcement officers, people under your employ, who have had problems and threats to them and to their family. That is one of the things that we were very concerned about when we passed this legislation initially.

Now, let me look at this particular piece of legislation with just the requirements that are in here. Let us look at the retirement versus leaving employment.

And, Sheriff, you indicated—I think I quoted you right—that we were doing a grave disservice to people who had served 20 to 25 years by giving it to people who had only served 15.

Mr. WEBRE. People who did not achieve a retirement benefit, people who were not bona fide retirees.

Mr. FORBES. All right. Do you really think this legislation was designed to reward somebody and that was the purpose of this legislation, that it was designed to be a reward if you pulled a certain number of years in service?

Mr. WEBRE. I believe the legislation was designed to acknowledge or identify those people who were committed to law enforcement, who lived a law enforcement officer's life, and who received a bona fide retirement. I don't believe it was designed for the officer who jumps from agency to agency to agency and has a spotty work history and simply comes up with 10 or 15 years of combined service and says I am a police officer.

Mr. FORBES. You are not going to suggest that just because somebody had 15 years versus 20 years that they had a spotty work history or jumped from agency to agency, are you?

Mr. WEBRE. I am going to suggest that if they have ever got to a point of a legitimate, bona fide law enforcement retirement, then they are not as committed to the profession.

Mr. FORBES. Do you have deputies that are in your organization that have no retirement benefits?

Mr. WEBRE. All of the deputies that meet our criteria under Louisiana law will receive retirement.

Mr. FORBES. Under Louisiana. I am talking about under your association. Do you have deputies that do not have retirement benefits?

Mr. WEBRE. No, sir. If——

Mr. FORBES. So every deputy that is covered under your organization has a retirement benefit?

Mr. WEBRE. Every officer who meets the 12-year threshold for vesting rights will get a benefit. In fact, in Louisiana, participation in the retirement system is a condition of employment.

Mr. FORBES. Mr. Penoza, your testimony was that there were certain officers that never reached a retirement benefit, didn't have it available to them. Is that correct?

Mr. PENOZA. That is why I have been there so long—that 401(k).

I am sorry. I know people around the country that don't have a retirement plan, they don't get a pension when they retire. They have some sort of investment plan of their own. And the department or the State doesn't have a retirement plan.

Mr. FORBES. Sheriff, you are not familiar with any of those people that Mr. Penoza is talking about?

Mr. WEBRE. No, sir, I am not.

Mr. FORBES. Chief, are you familiar with anybody in your whole organization? I am not talking about just your local organization. But I am talking about under the chief's association, any of the law enforcement people who have no retirement benefit.

Mr. KNIGHT. No, not any.

Mr. FORBES. All right. The last question because my time is out is do you think the Amtrak officers should be covered under this legislation. And if not, tell me how you differentiate, Sheriff, if you would.

Mr. WEBRE. We have no objection to that provision.

Mr. FORBES. So you don't have any objection to that.

Chief, how about you?

Mr. KNIGHT. No.

Mr. FORBES. So you don't have any. So you don't object to the Amtrak provision? The main objection you have, Chief, as I understand it, under the legislation proposed, not under the previous legislation, was the fact that you think that vesting someone with retirement benefits makes them in a safer position to carry a firearm. Is that correct?

Mr. KNIGHT. It provides an opportunity to get documentation that is acceptable, credentials that are common in the industry, and a commitment as opposed to the officer who may have been terminated or resigned under duress and hopped from agency to agency to agency and never had a commitment to the extent that they would gain any kind of a status.

Mr. FORBES. And, Chief, your position is the same?

Mr. KNIGHT. That is correct.

Mr. FORBES. You don't have a problem with Amtrak. You just think that people ought to have a retirement benefit. Is that correct?

Mr. KNIGHT. Well, I hope we all have retirement benefits.

Mr. FORBES. Yes, I am talking about as far as the qualifications to carry firearms.

Mr. KNIGHT. That is correct.

Mr. FORBES. And you want to explain why you think the qualification to retirement benefit helps somebody carry a firearm in a more safe manner?

Mr. KNIGHT. Certainly, absolutely. First, let me say you are absolutely correct. We lost the fight. But, you know, we are all cops, and one thing we learn is we keep standing up, we keep coming back.

In regards to the retirement, it shows a period of tenure, investment, and that it has not been a situation where someone has put

in a minimum amount of time and perhaps changed careers. That is as simply as I can state that.

Mr. FORBES. And 15 years wouldn't be a minimum amount of time?

Mr. KNIGHT. Fifteen years is substantial, but there is discussion about the tenure period.

Mr. FORBES. The bill before us says 15 years.

Mr. KNIGHT. All right, then. Fifteen?

Mr. FORBES. You are comfortable that that establishes a minimum commitment to service, the 15-year period?

Mr. KNIGHT. Yes.

Mr. FORBES. Okay.

Mr. Penoza, any response to that? I mean, how do you feel about that, the retirement benefit? Does that give any assurances that you are going to be able to carry a firearm in a——

Mr. PENOZA. I don't think it should make any difference. I didn't know people 3 years ago—I didn't know there were people that didn't have some sort of retirement. Because from my area of the country, everybody I work with does. But since this has been enacted, that is one of the issues that has come up.

Mr. FORBES. People have contacted your association saying they have had a problem because——

Mr. PENOZA. Yes.

Mr. FORBES [continuing]. They have had their 15 years, they just were not covered by a retirement benefit and they still wanted to carry the firearm under the act?

Mr. PENOZA. Yes, sir.

Mr. FORBES. But they were being denied the privilege to do this. Is that correct?

Mr. PENOZA. Yes, sir.

Mr. FORBES. Thank you.

Mr. SCOTT. Thank you.

And, Mr. Coble?

Mr. COBLE. I will be very brief because I know we are on a tight timeframe here. I don't think this has been asked.

Gentlemen, are you all aware of any instances where a law enforcement officer possessed a firearm pursuant to the Law Enforcement Officers Safety Act where someone was harmed, a, or, b, where a crime was prevented and perhaps a criminal apprehended? Are you familiar with either of those situations?

Mr. KNIGHT. First to me?

Mr. COBLE. Either of you.

Mr. KNIGHT. The answer is no to the first and—I am sorry. You want to know is this——

Mr. COBLE. If anyone was harmed, any innocent bystander harmed, a, or, b, was a crime prevented or an arrest or a criminal apprehended.

Mr. KNIGHT. I know of no one being harmed. I don't know of any crime that has been thwarted.

Mr. WEBRE. I know of neither a or b.

Mr. PENOZA. The same answer. I don't.

Mr. COBLE. I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

And I thank our witnesses for being with us today. This has been very helpful. And we look forward to considering the bill.

Mr. WEBRE. Thank you.

Mr. KNIGHT. Thank you.

Mr. SCOTT. We stand adjourned.

[Whereupon, at 10:59 a.m., the Subcommittee was adjourned.]

# APPENDIX

---

## Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Hearing Statement
of Chairman John Conyers, Jr.
on the
Implementation of the "Law Enforcement Officers Safety Act of 2004," and Additional Legislative Efforts Aimed at Expanding the Authority to Carry Concealed Firearms
September 6, 2007

Today's hearing proposes to examine several important issues. Namely, how is the "Law Enforcement Officers Safety Act of 2004" currently being implemented? Has the three year old law undermined public safety and led to a substantial increase in the number of firearms ending up in our streets and communities?

Second, we plan to consider two legislative proposals aimed at expanding the general authority to carry concealed firearms. The first of the two proposals, HR 2726, was introduced by Rep. Randy Forbes. HR 2726 seeks to expand the "Law Enforcement Officers Safety Act of 2004" by including a larger number of current and former law enforcement officials under the scope of existing law. The measure also seeks to allow individuals to obtain conceal and carry permits from firearms instructors instead of state certification boards.

Third, we plan to examine legislative proposals aimed at allowing Federal judges and attorneys to carry concealed weapons in Federal courthouses. Concepts such as this one are currently embodied in HR 2325, the "Court and Law Enforcement Protection Act of 2007" and identical language was also included in last year's "Court Security" bill. Each of these two measures were both introduced by Rep. Louie Gohmert.

The decision to permit judges and prosecutors to carry concealed weapons should be given careful thought and consideration. Carrying a firearm can be dangerous even for highly-trained officers as we have

heard about in several "blue on blue incidents".

- In 2005, for example, an off duty police officer in Orlando Florida mistakenly shot and killed a University of Florida police officer because he thought that officer was participating in violence when in fact he was trying to quell it.

- In a 2006 tragedy, a Norfolk, Virginia officer shot and killed one of his fellow officers because he didn't recognize the officer who responded in plain clothes to a chaotic scene.

These "blue on blue" incidents are not uncommon and it happens even between highly-trained officers within the same department, which is why before the "Law Enforcement Officers Act of 2004" was passed, the International Association of Chiefs of Police and other law enforcement organizations argued against it.

Unfortunately, the voices of reason didn't prevail back in 2004. This time around, however, we expect a different outcome. Hopefully, we will give adequate consideration to the advice and input offered by our friends representing the National Sheriffs Association and the International Association of Chiefs of Police. After all, they're tasked with the awesome responsibility of managing the vast majority of this nation's countless number of state and local law enforcement officers.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman for holding this hearing. I am confident that working together with all members of the subcommittee we can address and resolve the real challenges regarding the safety and security of the nation's law enforcement personnel and the public.

The purpose of today's hearing is three-fold. First, we seek to receive testimony from our witnesses regarding the effectiveness of the Law Enforcement Officers Safety Act of 2004, which was enacted in the 108th Congress as Pub. L. 108–277. Second, during this hearing we will consider whether the scope of the privileges and responsibilities contained in that legislation should be expanded. Finally, we will hear testimony from our witnesses on the subject of whether federal judges, prosecutors and other Department of Justice employees whose "duties include representing the U.S. government in a court of law" should be permitted to carry concealed weapons in Federal courthouses and other public and private places.

Let me extend a warm welcome to each of our witnesses:

- Chief Scott Knight, Firearms Committee Chairman, International Association of Chiefs of Police
- Sheriff Craig Webre, President, National Sheriff's Association
- Thomas Penoza, National Treasurer, Grand Lodge, Fraternal Order of Police

Mr. Chairman, I was a co-sponsor of the Law Enforcement Officers Safety Act of 2003, which authorized qualified off-duty and retired law enforcement officers to carry concealed weapons in any jurisdiction. On balance, I was persuaded that such authorization could have many beneficial effects in our efforts to curtail crime in our communities.

Before reaching this conclusion, I held several discussions with several members of the Texas Fraternal Order of Police and the Houston Police Patrolmen's Union. Law enforcement officers in my district strongly supported the legislation, which I was proud to co-sponsor.

I was not alone. The legislation garnered more than 290 cosponsors and was strongly supported by the Law Enforcement Alliance of America, the Fraternal Order of Police, the National Troopers Coalition, the National Association of Police Organizations, the International Brotherhood of Police Officers, and many law enforcement organizations.

One of the reasons the legislation attracted broad support is because it offered the promise of an immediate, no-cost benefit to communities by simply allowing trustworthy officers to carry a concealed firearm full-time. Further, the life-saving benefits extended to the officers as well. *Unlike law enforcement officers, active criminals are "on duty" around the clock, 24–7. Many even knowingly targeted police officers and their families, recognizing that the officer was likely to be unarmed at home.* The legislative record documented several instances which illuminated the need for the Law Enforcement Officers Safety Act:

- In Orlando, Florida, a quick-thinking off-duty deputy sheriff picking relatives up at a bus terminal killed an armed suspect. After seeing the subject shoot at another person outside the bus station, the plainclothes deputy confronted the shooter who then turned his gun on the officer. Finding himself in a life-threatening situation, the deputy fired his gun, saving his own life but fatally wounding the assailant.
- In Long Island, N.Y., a retired officer was at the right place at the right time when a man in a black hood decided to rob a bank. The robber waved around a realistic-looking toy gun and ordered the customers to lie on the floor. The retired officer followed the robber as he fled to a nearby gas station, and attempted to apprehend him. Suddenly, the gunman turned his weapon on the officer. Left with no other option, the ex-officer shot the robber who then fled in a vehicle and crashed into a tree about 100 yards away.
- In Brooklyn, New York, an off-duty police sergeant was beaten by a teen armed with a hammer shortly after midnight. The sergeant, who had just used an ATM, refused to hand his money over when the attacker decided to use force. This alert 13-year police veteran was able to ward off his assailant by shooting him in the leg.
- A Staten Island robber was fatally shot in the chest by an off-duty New Jersey officer. Three men reportedly try to rob the officer as he walked with a friend down the street shortly after 3 a.m. The officer says he felt a gun in

his back as the robbers demanded money; the officer spun around and responded with deadly force; the other two suspects fled.

As I stated, I supported the legislation in the 108th Congress and I am very interested in hearing from our witnesses how effective this legislation has been in achieving its intended purposes and whether circumstances warrant an additional legislative response, be it expansive or restrictive.

Thank you again, Mr. Chairman, for convening this hearing. I yield back my time.

DIN T. WHETSEL
Police Department
Oklahoma

ATE PAST PRESIDENT
LVESTER DAUGHTRY, JR.
es Police Department
ro, North Carolina

T PRESIDENT
AVID G. WALCHAK
Police Department
New Hampshire

VICE PRESIDENT
ARRELL L. SANDERS
Police Department
Illinois

ICE PRESIDENT
EBY D. MOODY
Police Department
a, Georgia

VICE PRESIDENT
ONALD S. NEUBAUER
Police Department
Missouri

E PRESIDENT
R. MICHAEL D. ROBINSON
State Police
ng, Michigan

E PRESIDENT
ACK D. GLASSCOCK
e Department
as

TIONAL VICE PRESIDENT
HETABLE
HADFIELD, QPM
nds Police
n, England

T
COMMISSIONER
FORCEMENT
KLEINKNECHT
ration and
ion Service
n, DC

CHAIRMAN
OF STATE ASSOCIATIONS OF
POLICE
LIE A. SHARROCK
Police Department
Minnesota

CHAIRMAN
OF STATE AND
AL POLICE
IONER MAURICE J. HANNIGAN
Highway Patrol
y, California

ECRETARY
T G.A. (JACK) PECORARO
ssioner of State Police
Illinois

ND ANNUAL
IACP CONFERENCE
TOBER 14-19, 1995
MIAMI, FLORIDA

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
515 NORTH WASHINGTON STREET • ALEXANDRIA, VA 22314-2357 • CABLE ADDRESS: IACPOLICE
(703) 836-6767 • 1-800-THE IACP • FAX: (703) 836-4543

EXECUTIVE DIRECTOR
DANIEL N. ROSENBLATT

DEPUTY EXECUTIVE DIRECTOR
EUGENE R. CROMARTIE

August 2, 1995

Felix L. Perez
Inspector
Amtrak Police
30th St Station, 2nd Floor, North Tower
Philadelphia, PA 19104

Dear Inspector Perez:

Please find attached a copy of a letter I received today from the Director of the Bureau of Alcohol, Tobacco and Firearms. The letter clarifies the application of Section 110103 of the Violent Crime Control and Law Enforcement Act of 1994, imposing a ban of large capacity ammunition feeding devices, upon Amtrak railroad police officers.

ATF makes it perfectly clear in the attached letter that this exemption applies only to sworn officers employed by Amtrak. Other employees of Amtrak or other railroads will have to deal with the ATF directly in that this exception is not a blanket exemption for all railroad police.

I hope you find this information useful. The IACP was pleased to be of assistance to you in this matter. Please convey this ATF letter to the appropriate Amtrak officials.

Sincerely,

Daniel N. Rosenblatt
Executive Director

cc: Chuck Crandall, Amtrak Philadelphia

DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

AUG 1 1995

CC-45,194 FE:TGF

Mr. Daniel N. Rosenblatt
Executive Director
International Association of Chiefs of Police
515 North Washington Street
Alexandria, Virginia 22314-2357

Dear Dan:

This is in response to your letter concerning application of the provisions of the Violent Crime Control and Law Enforcement Act of 1994 (the Act) to railroad police officers, including officers employed by Amtrak. Specifically, you ask whether such officers may purchase large capacity ammunition feeding devices for official use.

You state that most railroad police officers are sworn peace officers in the States in which they are employed, having the authority to make arrests and enforce the law. You further state that railroad police officers, including Amtrak police, require large capacity ammunition feeding devices to ensure public safety on the Nation's railways. For this reason, you request that the Bureau of Alcohol, Tobacco and Firearms (ATF) reconsider its determination that officers employed by Amtrak's Railroad Police Division may not purchase large capacity ammunition feeding devices.

As you are aware, the Act amended the Gun Control Act of 1968, 18 U.S.C. Chapter 44, to make it unlawful to transfer or possess a large capacity ammunition feeding device. 18 U.S.C. § 922(w)(1). The term "large capacity ammunition feeding device" is defined as a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. Section 922(w)(3)(A) provides the following exception from the prohibition of section 922(w)(1):

> (3) This subsection shall not apply to--
> (A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political

> subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty); (emphasis added).

In the case of officers purchasing large capacity ammunition feeding devices with their own funds, ATF interprets the above exception as requiring that (1) the officer is employed by a government agency; and (2) the officer is a law enforcement officer, i.e., the officer is a "peace officer."

Amtrak was created by the Rail Passenger Service Act, 45 U.S.C. § 501, et seq. The law authorizes the creation of a National Railroad Passenger Corporation to be operated and managed as a for profit corporation. The incorporators are appointed by the President, with the advice and consent of the Senate. The incorporators serve on the board of directors along with the Secretary of Transportation. The law also states that the corporation will not be an agency of the United States Government. 45 U.S.C. § 541.

Although the law is clear that Amtrak is not an agency of the United States for purposes of Title 45, we believe it may be deemed to be a Government agency for purposes of 18 U.S.C. § 922(w). This conclusion is supported by the fact that Amtrak was created by Federal statute, has members of its board of directors appointed by the President, has the Secretary of Transportation as a director, and the Federal Government is involved in its management. Accordingly, for purposes of 18 U.S.C. § 922(w), ATF will treat Amtrak as an agency of the Federal Government.

Section 28101, Title 49, U.S.C., provides that a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property. Thus, Amtrak police who are certified or commissioned as police officers under the laws of the State where they are employed may purchase large capacity ammunition feeding devices for official use.

Mr. Daniel N. Rosenblatt

Please note that this interpretation of the law is limited to police officers employed by Amtrak. We have not addressed the purchase or possession of large capacity ammunition feeding devices by officers employed by other rail carriers since we lack sufficient information to determine their status under the law.

Sincerely yours,

John W. Magaw

John W. Magaw
Director

Hampton Roads Pilot Online
Apartments | AutoPilot | CareerConnection | Classified | RealEstate | Shopping | Yellow

# Norfolk police officer shot and killed by another officer, sources say

By MATTHEW ROY AND MATTHEW JONES, The Virginian-Pilot
© May 22, 2006
Last updated: 2:09 AM

**Flowers lay on the walkway of the courtyard where a Norfolk police officer was shot and killed in the 400 block of Nicholson Street in the Young Terrace neighborhood of Norfolk.** Photo by Genevieve Rose / The Virginian-Pilot

NORFOLK — In an unusual move, Virginia State Police have been called in to investigate a shooting in which a police officer fatally wounded a colleague Sunday night during a fast-moving and chaotic chain of events at a public housing complex.

Seneca Darden, 25, , who had been on the force for four years and was with the 3rd Precinct, died after being shot multiple times. He was married, had a 5-year-old daughter and lived in Portsmouth.

The department did not release the identity of the officer who shot Darden, but multiple sources identified him as Gordon Barry, a canine officer. Police said the officer was placed on administrative leave while the case is investigated.

Darden was the nephew of Shelton L. Darden, who retired last year after rising through the police ranks. He served as interim chief prior to the hiring of the current chief, Bruce P. Marquis.

Witnesses said that Seneca Darden was shot during a chaotic disturbance in the courtyard of Young Terrace, a public housing complex near Virginia Beach Boulevard. They said he had a weapon drawn and was in jeans and a T-shirt. He had been working a burglary detail in another part of the city before arriving at Young Terrace.

Darden was with several uniformed officers who were trying to control a crowd after a shooting that had occurred

there earlier Sunday night. Many people were yelling as Darden was shot, witnesses said, and police were using pepper spray.

Marquis and police brass, somber and weary after being up all night, held a news conference at noon Monday.

Marquis gave this account:

Late Sunday, officers responded to the 500 block of Nicholson St. on a reported shooting. They found a man who had been shot, and he was taken to Sentara Norfolk General Hospital, where he remained Monday.

Meanwhile, a suspect was located a short while later on Virginia Beach Boulevard and was taken into custody. Officers recovered two handguns from Milton Green, 50, and later charged him with malicious wounding and a weapons offense, said Officer Chris Amos, police spokesman.

Officers still at the Norfolk housing complex were told about a second gunshot victim inside a home in the 400 block of Nicholson St. The officers at that scene reported a "large crowd" in the courtyard there and requested back up.

Five uniformed officers responded. One of the officers saw a man in the crowd in a white T-shirt and blue jeans, holding a handgun. That person turned out to be Seneca Darden. An officer commanded him to drop the gun. The officer then fired at Darden, who was hit "multiple times."

Darden was pronounced dead a short while later at Sentara Norfolk General Hospital.

Amos said the other shooting victim at that address was eventually found and had superficial wounds.

Witnesses interviewed Monday described the scene much as the police.

It all started at about 11:20 p.m., when Rahmel Humbert was shot while riding a bicycle in the 500 block of Nicholson St. on the way to a store nearby, several residents said.

Humbert, 24, lives in Virginia Beach and often visits relatives in Young Terrace after his cooking job at the nearby Radisson, said his aunt, Linda Humbert.

She heard about the shooting from her daughter, who called Humbert at work. Humbert found them loading her nephew into an ambulance. She returned to her home in the 400 block of Nicholson St . People gathered outside, asking about her nephew.

There also were rumors the shooter was nearby, and the courtyard soon filled with dozens of people trading bits of information, according to Humbert and several other witnesses.

Marq Lyles, Humbert's next-door neighbor, watched the rest unfold from his front porch. Chaos ensued, he said, with police yelling at people to get on the ground and using pepper spray.

Lyles, 18, said Darden was standing on the sidewalk leading to his apartment, wearing a white T-shirt and baggy blue jeans. His gun was drawn and he was ordering a man to the ground.

Two uniformed officers were with Darden, Lyles said – one facing Darden across Lyles' front yard and one to Darden's left. The officers had their guns drawn as well and were yelling at the same man.

Lyles said an officer with a police dog then approached Darden from behind and shot him multiple times. He pointed to indicate a distance, roughly 10 feet.

Lyles said the courtyard was well lit from lights on front porches and on the apartment walls overhead.

After the shooting, police were everywhere, Lyles said. Some tried to perform CPR on Darden while others sent out an "officer down" alert on their radios.

Humbert said she saw Darden before the shooting as well. As she walked along the courtyard's sidewalk, heading to her car to visit her nephew in the hospital, she passed Darden and several uniformed officers going the other way.

As she rounded the corner, Humbert heard gunshots. She ducked behind a building and spoke by cell phone with her frightened teenage daughter, who was still in their apartment. By the time she made it back around, Darden was lying on his back on the sidewalk leading to her apartment, she said.

Darden's body has been turned over to the medical examiner's office.

At a news conference, his voice nearly breaking at times, Marquis expressed sympathy to Darden's loved ones.

"I do ... wish to extend my heartfelt sympathies to the family and friends of Officer Seneca Darden," he said. "I would ask that we all keep this family in our thoughts and prayers as they deal with Seneca's tragic death."

Answering questions from reporters, Marquis said Darden had been working in plain clothes on a burglary detail in another part of the city. Asked why he was in that area, Marquis said, "That's something we're looking at internally."

Marquis said he had briefed Commonwealth's Attorney Jack Doyle and Cassandra M. Chandler, the special agent in charge of the FBI in Norfolk, on the shooting.

Marquis was asked if the officer who fired ever warned Darden to drop his weapon. "It is initially my understanding that he did that several times," he said.

At the news conference, Doyle said he wi ll review the case after the state police investigation. In recent months, Doyle has found that several police shootings of suspects were justified. In one case still not resolved, he asked for a special prosecutor to handle the review.

"An officer has a duty to use deadly force in order to protect the officer's life or the life of others from imminent harm," Doyle said. Officers have to make an on-the-spot decision, he said.

"We'll be looking at all the facts and circumstances of this case ... and making a legal analysis of the officer's actions," he said.

Harry Twiford, the president of the local Fraternal Order of Police lodge, said the incident was tragic. "It's something that's beyond words," he said. "The members of the department are going to have to bind together and not let this divide the department."

Darden's death comes on the heels of a ceremony last week marking those killed in the line of duty on the force. The ceremony recalled the killing last fall of Officer Stanley C. Reaves, 33, of Chesapeake.

Reaves was shot as he checked on a suspicious person in Park Place. Four days later, police arrested Thomas Alexander Porter, 30, in White Plains, N.Y., at the home of an ex-girlfriend, and charged him with killing Reaves. Porter is awaiting trial.

Meanwhile, Rahmel Humbert, having been shot twice in the stomach, was in stable condition Monday at Sentara Norfolk General Hospital, his aunt said .

When Linda Humbert was visiting her nephew at the hospital Sunday night, she ha d run into Darden's family.

Having seen Darden stretched out on the pavement outside her front door, she knew the outcome. All she could do was hug them, she said.

"There's nothing you can say."

Monday morning, a Young Terrace maintenance man marked the spot where Darden was shot with a half dozen red roses.

*Staff Writers Steve Stone, Duane Bourne and Michelle Washington and news researcher Ann Kinken Johnson contributed to this account.*

- *Reach Matthew Roy at (757) 446-2540 or matthew.roy@pilotonline.com.*
- *Reach Matthew Jones at (757) 446-2949 or matthew.jones@pilotonline.com.*

**Norfolk police officers stand at the scene in the 400 block of Nicholson Steet in Norfolk this morning, where a Norfolk police officer was killed late Sunday night after responding to a call that a shooting had occurred.** Photo by Steve Earley / The Virginian-Pilot.

**Norfolk police officers at the scene where a police officer was shot and killed late Sunday in front of this complex in the 400 block of Nicholson Street in Norfolk.** Photo by Steve Earley / The Virginian-Pilot.

© 2007 HamptonRoads.com/PilotOnline.com

SFGATE HOME • BUSINESS • SPORTS • ENTERTAINMENT • TRAVEL

Search SFGate Web by Google

San Francisco Chronicle

# Oakland Police Rookies Kill Fellow Officer

Eric Brazil, Matthew Yi and Jonathan Curiel
Friday, January 12, 2001

SHARE COMMENTS (0) FONT | SIZE: veri on

**(01-12) 04:00 PDT OAKLAND** -- An undercover Oakland narcotics officer was shot and killed by two rookie policeman while he was arresting a car theft suspect last night.

William Wilkins, 29, a seven-year veteran of the department, was the 46th Oakland policeman to die in the line of duty since 1867 but the first killed by friendly fire.

Wilkins, a member of the Alameda County Narcotics Task Force, had caught a car theft suspect after chasing him through backyards in the 9100 block of D Street in East Oakland, police said.

Just what caused the two uniformed officers to fire at Wilkins, who was wearing civilian clothes, is unclear.

Kim Davis, who witnessed the aftermath of the shooting, said the uniformed officers were overcome with grief when they realized what they had done.

"Willie! Willie! .'.'. Just keep on breathing!," Davis said she heard one officer say. "We're going to get you some help."

But it was too late.

The shooting was reported at 11:14 p.m. Wilkins died of his wounds at 2:20 this morning at Highland Hospital.

Oakland City Manager Robert Bobb said the hospital's trauma team made heroic efforts to save him.

Police Chief Richard L. Word and chief homicide investigator Paul Berlin, both of whom appeared overwhelmed by Wilkins' death, responded brusquely at a mid-morning press conference and left many questions hanging in the air, saying that the investigation had only just begun.

Police said Wilkins, who was working on a narcotics case, had evidently seen a speeding car and, realizing it was stolen, gave chase. In the end, Wilkins collared the suspect before the two uniformed officers, who were on the same mission, arrived.

Berlin said investigators found 11 spent shell casings at the scene of the shooting. He would not say how many times Wilkins had been shot, other than to say it was more than once.

The two uniformed officers, whose names were not released, are both in their 20s, and neither has more than a year on the force, Berlin said.

The officers are "very traumatized, and we are giving them time to collect themselves" before they are interrogated, Berlin said.

Berlin said he did not know whether the uniformed officers warned Wilkins before they fired.

Nor did he know whether Wilkins fired. "We haven't examined his weapon yet," he said.

Berlin also acknowledged that the department isn't sure whether the uniformed officers knew that Wilkins had responded to the report of a stolen car Š and won't until investigators examine radio tapes that figure to shed more light on the incident.

Exactly how the uniformed officers and Wilkins came into contact is murky, and neither Word nor Berlin clarified the situation.

Larry Jetton, who lives near the scene of the shooting, said the chase for the car thief went right through his backyard.

He said the tragedy was caused "by a couple of trigger-happy young fools" who had to have known that Wilkins was a law officer.

Davis, 41, who also lives in the area, said she had just gone to bed when she heard gunshots.

"All I know is that I was sleeping and heard all these gunshots Š boom, boom, boom, boom, boom. The shots were so intense that I thought they were coming through my house," she said.

Davis ran out to the living room, and when she looked out her front window, she saw a man wearing blue jeans and a coat with a T-shirt underneath in her driveway. He fell to the ground as she watched. She said she saw a uniformed officer standing to his rear, with his gun trained on Wilkins.

"I don't think (the uniformed officers) knew that the man was an officer," Davis said. "But they soon figured out."

Other officers soon converged on the scene, stripping off Wilkins' clothes, attempting CPR and applying pressure where he was bleeding.

"I saw a bullet hole in his side," Davis said.

This morning, Davis was sweeping up her living room. At least one bullet from last night's shooting hit a wall, and a slug fell out of a quilt that had been on her sofa.

"This is scary," she said. "Normally at that hour I would be sitting here with my kids watching TV."

In the aftermath of what every police officer regards as one of the worst possible consequences of responding to a crime scene, Sgt. David Walsh summed up the department's mood: "This is not a good day."

Fernando Wilkins, the dead officer's father, said that his son would often tell his family how proud he was to work for the Oakland Police Department.

"He loved his job," Wilkins said. "He wouldn't do anything else. He wouldn't change for another career."

Wilkins' son, William Randolph, does not know of his father's death. "He's too young to understand," Fernando Wilkins said, of the 10- month-old baby.

William Wilkins grew up in Hayward and Union City. At age 17, he followed his father's footsteps and joined the same National Guard unit that his father had belonged to.

The elder Wilkins, who grew up in Panama, emigrated to the United States in 1964. As a National Guardsman, William Wilkins had tours of duty in Korea, Honduras and Panama.

Although his son was killed by friendly fire in the line of duty, Fernando Wilkins said he had no hard feelings toward the police department.

"We have the best regard for them," he said. "They have put everything at our disposal."

Oakland Mayor Jerry Brown extended his sympathy to Wilkins' family and said that "this is the kind of tragedy we hope never happens Š but in the course of human events, they do happen."

City Manager Bobb, who went to Highland Hospital and watched the trauma team's effort to keep Wilkins alive, said he was touched that "they worked so hard to save his life" and by Wilkins' own struggle to survive.

The last time an Oakland police officer died in a situation involving the department was June 2, 1950. In that incident, Officer James Weir, 33, was killed when the ambulance he was riding in on the way to a robbery collided with a police car at an intersection.

Berlin declined to release the name of the auto theft suspect, but indicated that he may face more serious charges as a result of the fatal shooting of Wilkins.

Wilkins is survived by his wife, Kelly, William Randolph, his parents, a brother, Fernando Jr., and a sister.

Fernando Wilkins said the funeral for William will probably take place next Thursday.

Chief Word said that a departmental memorial service will be held for Wilkins, but that the time and place have not yet been set.

(0)

**Be the first to share your thoughts on this story.**

Add Your Comment View Comments

**Ads by Google** What's This?

**Law Enforcement Ringtone**
Send this ringtone to your phone right now!
RingKingMobile.com

**Police Exam**
Exam for over 35 NH and ME police departments--Put yourself upfront
www.mcintoshcollege.edu

**Make $4500 Cash Every Mo.**
Get paid $25-100/hr to take surveys Free to start, see if you qualify.
SurveyLot.com

Get up to 50% off home delivery of the Chronicle for 12 weeks!

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,*

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

**SECTION 1. SHORT TITLE.**

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

**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.

O

<Back | Home

# UCF officer shot dead before Marshall game

**By: Sean Lavin**

**Posted: 9/26/05**

A reserve Orlando police officer mistakenly shot and killed an undercover UCF officer who witnesses said opened fire only seconds earlier amid rowdy tailgaters outside the Citrus Bowl before the football game against Marshall on Saturday.

UCF Police spokesman Sgt. Troy Williamson confirmed that another person was shot during the altercation, which occurred about an hour before the 6 p.m. game.

Mario Jenkins, 29, who was dressed in plain clothes and patrolling for underage drinkers in the parking lots, died after being shot in the back by Orlando Officer Dennis Smith.

Witnesses said Jenkins had just fired shots into the air to stop an altercation with fans from escalating.

Nearby tailgaters crawled under vehicles for cover.

"People starting running," senior Brittany Resmann said. "I didn't know what was going on. All of these cops starting running around with guns out.

"People were crying everywhere," Resmann said, adding that "there was a cop crying on the ground next to me right after it happened."

Some witnesses reported seeing Jenkins fire into the air. Rusty McCormick, a recent UCF alumnus, said he had seen Jenkins shoot UCF student Mike Young, his former roommate.

"Mike Young just came to see what was going on, and he walked up on the back of an undercover cop," McCormick said, while stressing that "[Young] didn't know he was an undercover cop."

When Young put his hand on Jenkins' shoulder, Jenkins "just turned around and shot him," McCormick said.

McCormick said that Smith then shot Jenkins "three times - boom, boom, boom - right in the back."

The Florida Department of Law Enforcement is investigating the double shooting but would not comment on details leading up to the shooting.

"FDLE is making a full investigation to figure out exactly what happened with all the stories,"

Williamson said. "In the next couple months, they'll come to a conclusion of what happened."

Williamson said eyewitness accounts will have to be verified, especially since so many people in the area may have been intoxicated.

Just after the shooting, "people were throwing beer bottles and cans," Williamson said. "It was a melee."

Jenkins likely died almost immediately, said Neal Rodgers, a physician at Orlando Regional Medical Center who was nearby and tried to resuscitate Jenkins with CPR.

Rodgers said Jenkins had no pulse and was not breathing by the time he reached him, just seconds after the shots were fired.

Sunday, UCFPD was reeling from the death of Jenkins, who was married.

In recent months, he had served as a canine officer for the UCF police and cared deeply about his police dog named Myki, Williamson said.

"It's tough," Williamson said. "We had the sheriff officers out here to cover calls for us. It's such a small-knit department. We consider ourselves brothers and sisters, and they've come to our rescue to take calls so we can grieve."

Jenkins, a four-year UCFPD veteran, had been working with state officials from the Department of Alcoholic Beverages and Tobacco to crack down on underage drinking.

University President John Hitt told the Orlando Sentinel that UCF would study the program, which sends officers such as Jenkins undercover to stop illegal drinking.

"I think it was an abuse of their power to whip out their guns and start shooting - on both parts," UCF alumna Amy Ridge said. "You should use a gun as a last resort, and that wasn't their last resort.

"There are far more worse problems in the world right now than underage drinking, and I understand they want to keep it regulated."

Ridge said she thought the effort to curb illegal drinking was excessive.

"Look what happened: They went to bust some underage drinkers, and a UCF police officer is now dead," Ridge said. "Was it worth it?"

© Copyright 2007 Central Florida Future

IIB

109TH CONGRESS
1ST SESSION

# H. R. 1751

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 2005

Received; read twice and referred to the Committee on the Judiciary

# AN ACT

To amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

## SEC. 28. AUTHORITY OF FEDERAL JUDGES AND PROSECUTORS TO CARRY FIREARMS.

(a) In General- Chapter 203 of title 18, United States Code, is amended by inserting after section 3053 the following:

**`Sec. 3054. Authority of Federal judges and prosecutors to carry firearms**

`Any justice of the United States or judge of the United States (as defined in section 451 of title 28), any judge of a court created under article I of the United States Constitution, any bankruptcy judge, any magistrate judge, any United States attorney, and any other officer or employee of the Department of Justice whose duties include representing the United States in a court of law, may carry firearms, subject to such regulations as the Attorney General shall prescribe. Such regulations shall provide for training and regular certification in the use of firearms and shall, with respect to justices, judges, bankruptcy judges, and magistrate judges, be prescribed after consultation with the Judicial Conference of the United States.'.

(b) Clerical Amendment- The table of sections for such chapter is amended by inserting after the item relating to section 3053 the following:

`3054. Authority of Federal judges and prosecutors to carry firearms.'.

I

110TH CONGRESS
1ST SESSION

# H. R. 2726

To amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2007

Mr. FORBES (for himself, Mr. GOHMERT, Mr. SMITH of Texas, Mr. CHABOT, Mr. BUCHANAN, and Mr. BOOZMAN) introduced the following bill; which was referred to the Committee on the Judiciary

---

# A BILL

To amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes.

*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 2007".

**SEC. 2. AMENDMENTS TO LAW ENFORCEMENT OFFICER SAFETY PROVISIONS OF TITLE 18.**

(a) IN GENERAL.—Section 926B of title 18, United States Code, is amended—

1 (1) in subsection (c)—

2 (A) in paragraph (1), by inserting "(or ap-
3 prehension)" after "arrest"; and

4 (B) in paragraph (3), by inserting "which
5 could result in suspension or loss of police pow-
6 ers" before the semicolon;

7 (2) by striking subsection (e) and inserting the
8 following:

9 "(e) As used in this section, the term 'firearm' has
10 the same meaning as defined in section 921 of this title
11 and is deemed to include ammunition and accessories the
12 possession of which is not expressly prohibited by Federal
13 law, or which are not subject to the provisions of the Na-
14 tional Firearms Act, but does not include—

15 "(1) any machinegun (as defined in section
16 5845 of the National Firearms Act);

17 "(2) any firearm silencer (as defined in section
18 921 of this title); or

19 "(3) any destructive device (as defined in sec-
20 tion 921 of this title)."; and

21 (3) by adding at the end the following:

22 "(f) For purposes of this section, a law enforcement
23 officer of the Amtrak Police Department or a law enforce-
24 ment or police officer of the executive branch of the Fed-
25 eral Government qualifies as an employee of a govern-

1 mental agency who is authorized by law to engage in or
2 supervise the prevention, detection, investigation, or pros-
3 ecution of, or the incarceration of any person for, any vio-
4 lation of law, and has statutory powers of arrest (or appre-
5 hension).".
6 (b) RETIRED LAW ENFORCEMENT OFFICERS.—Sec-
7 tion 926C of title 18, United States Code, is amended—
8 (1) in subsection (c)—
9 (A) in paragraph (1), by striking "retired
10 in good standing from service with a public
11 agency" and inserting "departed in good stand-
12 ing from service with a public agency after com-
13 pleting an aggregate of at least 15 years of
14 service with the agency";
15 (B) in paragraph (2)—
16 (i) by striking "retirement" and in-
17 serting "departure" ; and
18 (ii) by inserting "(or apprehension)"
19 after "arrest";
20 (C) by striking paragraphs (4) and (5) and
21 inserting the following:
22 "(4) during the most recent 12-month period,
23 has met, at the expense of the individual, the stand-
24 ards for qualification in firearms training for active
25 law enforcement officers as set by the officer's

former agency, the State in which the officer resides or a law enforcement agency within the State in which the officer resides;"; and

(D) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively;

(2) in subsection (d)—

(A) in paragraph (1), by striking "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" and inserting "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"; and

(B) in paragraph (2)(B), by striking "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." and inserting "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—

1 "(i) the active duty standards for qualification
2 in firearms training as established by the State to
3 carry a firearm of the same type as the concealed
4 firearm; or
5 "(ii) if the State has not established such
6 standards, standards set by any law enforcement
7 agency within that State to carry a firearm of the
8 same type as the concealed firearm.";
9 (3) by striking subsection (e) and inserting the
10 following:
11 "(e) As used in this section, the term 'firearm' has
12 the same meaning as defined in section 921 of this title
13 and is deemed to include ammunition and accessories the
14 possession of which is not expressly prohibited by Federal
15 law, or which are not subject to the provisions of the Na-
16 tional Firearms Act, but does not include—
17 "(1) any machinegun (as defined in section
18 5845 of the National Firearms Act);
19 "(2) any firearm silencer (as defined in section
20 921 of this title); or
21 "(3) any destructive device (as defined in sec-
22 tion 921 of this title)."; and
23 (4) by adding at the end the following:
24 "(f) In this section, the term 'service with a public
25 agency as a law enforcement officer' includes service as

1 a law enforcement officer of the Amtrak Police Depart-
2 ment or as a law enforcement or police officer of the exec-
3 utive branch of the Federal Government.".

○



○