



The Vermont Criminal Justice Training Council recommended training handout for Firearms Instructors who are qualifying retired law enforcement officers under the Law Enforcement Officers Safety Act

The Vermont Criminal Justice Training Council, under recommendation of the Use of Force Committee, has assembled this training handout for the convenience of Firearms Instructors who are conducting firearms qualifications under the Law Enforcement Officers Safety Act to help the people they are qualifying understand what this privilege entails. It is by no means to be construed as all encompassing nor is it legal advice. It is based on research conducted on the topic through internet searches and common teaching practices in the Vermont Law Enforcement community as it relates to the application of deadly force. This handout is broken into three sections. The first states the actual text from Federal law as it relates to retired officers under LEOSA. The second section is an FAQ pages from the LEOSA branch at the National Rifle Association (le.nra.org/leosa) and the third is a discussion on the use of deadly force as it relates to the LEOSA armed retired officer.

Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.

The Federal statute which governs the authority for a retired law enforcement officer to carry a concealed firearm under the Law Enforcement Officers Safety Act:

§ 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) separated from service in good standing from service with a public agency as a law enforcement officer;

(2) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest *or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice)*;

(3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.

(B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;

(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is--

(1) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer *that identifies the person as having been employed as a police officer or law enforcement officer and indicates* that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

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

(B) a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met--

(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

(e) As used in this section--

(1) the term "firearm"--

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

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

(C) does not include--

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

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

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

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

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The following is a copy of the text from the National Rifle Association frequently asked question page of their LEOSA website which contains a large amount of information regarding the rights of retired and active law enforcement officers. More information can be found by visiting their website at <http://le.nra.org/leosa>

FAQ on the amendments to the Law Enforcement Officers Safety Act

1. Does the agency who qualifies me need to make a record of the make, model, caliber, or serial number of the firearm I qualify with?

No. LEOSA does not require the agency to maintain this information. This is a frequent concern given the statute's use of the term "type of firearm." LEOSA authorizes the carrying of a "concealed firearm" of the same "type" the individual receives certification for. As there is no case law interpreting this wording, the word "type" should be read to conform with the dictionary definition; something distinguishable as a variety. Accordingly, "type" of firearm should be read to mean either long gun or hand gun, which would permit you to carry any type of legal long gun or hand gun based on your qualification and not one particular make, model, or caliber. As an action outside of LEOSA requirements, the creation and maintenance of a database may expose the agency to liability, as discussed below.

2. The agency who qualifies me wants me to shoot their uniformed officer course of fire, rather than an off-duty or back-up course of fire. What does the law require?

The law is not clear, and only requires an individual to meet the active duty standards for qualification. An individual exercising their rights

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under LEOSA is not provided with the authority to act as a law enforcement officer, and is simply authorized to carry a concealed firearm based on their status. Accordingly, it would be advisable for agencies to use the off-duty or back-up course of fire. Mandating the use of uniformed standards requires an individual to meet standards designed for law enforcement purposes, while an individual carrying a firearm under LEOSA is not acting as a law enforcement officer, as they are either retired, or out of their jurisdiction.

3. Do I have to prove each year that I am still eligible to qualify by submitting to a background check, or is the identification card I was provided at separation sufficient?

No. The identification card is sufficient. As addressed below, some departments are now requiring background checks before issuing identification cards. Such unwarranted overregulation exposes that department to liability. The statute does not require a background check, and when issuing an identification card the agency is only providing certification with regard to one's past employment status; a statement of fact. Any department that requires a background check is creating more than just a statement of one's employment status, which may expose the requesting agency to liability.

4. Does the agency I retired from, or the agency that qualifies me, have any liability or concerns for qualifying me?

No, LEOSA places the liability on the individual; however, many agencies are trying to impose unjustified requirements before issuing identification cards or training certification, such as background checks. Identification cards are simply a statement of fact by the agency that the individual is either an active duty or retired law enforcement officer. Requiring additional information to obtain an identification card makes it something more, and by doing so exposes the agency to liability. The same is true for agencies which perform the firearms qualification certification. Any additional procedures required by the agency other than simply meeting their active duty standards creates a situation where Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.

the agency is certifying more than the statute requires, and in some cases, the uniformed standards qualification course/test may be seen as providing training in the use of a firearm in a law enforcement role, which may expose them to liability. Remember, LEOSA is a program for CIVILIANS who used to be cops, or cops out of their jurisdiction. LEOSA should be administered like driver's licenses issued by your state; you are just certifying that a standard was met. Your state does the same with a driver's license, showing you met their standard. If you are in a wreck while driving, your state motor vehicle department isn't liable for your actions because you have their driver's license.

5. The department I retired from will not give me retirement credentials, what can I do?

This is a question we are encountering far too frequently, and regrettably there is no clear guidance that can be provided. LEOSA does not bestow either an explicit right to obtain the required identification or a federal remedy for a state agency's failure to issue one. Such refusal is foolish policy but it is a political issue, not a legal one.

6. I am active duty or retired military/DoD police. Does LEOSA apply to me?

Yes. On January 2nd, 2013 LEOSA was amended to specifically allow for active and "retired" (as defined by LEOSA) military and DoD police and law enforcement officers with UCMJ apprehension authority to qualify for the statute; however, a standard CAC or blue retiree card will not work for LEOSA purposes as the photographic ID must identify the individual as either being actively or having once been employed as a police or law enforcement officer of the agency. The DoD's LEOSA policy, [DODI 5525.12](#) (included as a link on our LEOSA homepage) was recently amended to address this issue.

Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.

7. I have a Concealed Carry Permit/License issued by my state. I am also active/retired law enforcement. Am I allowed to carry in all states?

No. A state issued concealed carry permit or license is entirely different from the ability to carry a concealed weapon under LEOSA and has no relation to your service as a law enforcement officer. Your state's permit may qualify for reciprocity with other states, but it does not qualify you to carry in all states. Check with the State Police or the State's Attorney General's Office before carrying a concealed firearm in any state exercising reciprocity with the state of your permit/license, as laws change frequently and a state which previously recognized your permit may have changed its law.

8. I left my agency after serving 11 years and did not retire. Do I qualify for LEOSA?

Yes. LEOSA previously required retirement after an aggregate of 15 years service as a law enforcement officer. The October, 2010 amendments to the statute changed the requirement for a qualified law enforcement officer to an individual that separated (not necessarily retired) from service as a law enforcement officer after serving an aggregate of 10 years or more. For medical separation/retirement, see below.

9. I completed my probationary period as a law enforcement officer, but was injured shortly thereafter and separated from the agency due to a service-connected disability. Do I qualify under LEOSA?

Yes, if your agency determined that you had a service-connected disability and you were separated after completing any applicable probationary period. You must also meet the additional requirements contained in the statute.

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10. I served three years at one agency and seven at another before separating. Do I qualify under LEOSA?

Yes. As long as your service at both agencies meets the requirements contained within the statute, you will have served an aggregate of 10 years and are considered a qualified retired law enforcement officer under the statute. The problem for you will be obtaining a retired identification card, as your current agency will likely require proof of service from your first agency which they may or may not recognize. See question 4 above regarding the issuance of identification.

11. My agency will not provide me with the required firearm certification. What can I do?

You do not need to obtain the certification from your agency. Often, it is far easier to obtain the certification from another agency in the state or a qualified firearms instructor. LEOSA requires that you have, not less than one year before the date you are carrying a concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met the active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm. If your state has not established standards, standards set by any law enforcement agency within your state to carry a firearm of the same type as the concealed firearm may be used. For "type," see question #1 above.

12. I meet all of the requirements contained in the statute, but I am a reserve officer. Do I qualify?

There are two sections of LEOSA which provide for the ability of Qualified Law Enforcement Officers and Qualified Retired Law Enforcement Officers to carry a concealed weapon in all 50 states. The first section deals with current law enforcement officers, and the second

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deals with retirees. Neither section draws a distinction between active duty and reserve officers. In October of this year, the language for the "retired" section was changed to allow for individuals that meet all of the requirements of the statute and who separated after 10 years of aggregate service as a law enforcement officer (or who separated after any applicable probationary period due to a service-connected disability, as determined by the agency) but who did not formally "retire" to be "qualified retired law enforcement officers" under the statute.

Accordingly, as long as an individual meets all of the requirements of the statute it makes no difference if they are active or reserve, and they would be qualified to carry under LEOSA.

Questions can be directed to ILALEGAL@nrahq.org.

Application of Deadly Force as it applies to the officer carrying a firearm under LEOSA

When a law enforcement officer, whether they are retired or not, makes the decision to carry a firearm under this act outside of his or her own or former jurisdiction, it is very important that they the individual thoroughly understand that the LEOSA act does not offer them any type of law enforcement authority. It is therefore very important to remember that the rules that applied to you in regards to deadly force to not necessarily apply to you in your civilian role in another jurisdiction. This law was designed for the sole purpose of affording the current or retired law enforcement officer the opportunity to protect him or herself, or another person, from the imminent threat of death or serious bodily injury when they are away from their home state. There are many states still in the United States that have what is commonly referred to as a "duty to retreat" statute, and some that have a law referred to as a "stand your ground" law. It is incumbent upon the law enforcement officer

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who carries a firearm in another jurisdiction to know the laws the state in which they choose to carry a firearm.

At its most basic form, the “duty to retreat” statute states that a person who is threatened with serious bodily injury or death may only use deadly force against an attacker as a last resort. Essentially, the person defending themselves must have used all options available to them to avoid the conflict, including but not limited to retreat, before using deadly force. Some states further require that the person who is defending themselves is “lawfully present” as a citizen. In other words, if you break into another person’s home and shoot the homeowner as a last resort when he attacks you, this law would not protect you. As of the writing of this article in January, 2015, the states that currently have “duty to retreat” laws on their books are: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Wisconsin, Hawaii and Wyoming. Remember! This is not an all inclusive list and is subject to change at any time, and is therefore very important for the LEOSA armed officer to KNOW the laws in the state(s) they intend to carry a firearm in BEFORE they go there.

In contrast to the “duty to retreat” law is the “stand your ground” law. In the states that follow this philosophy of self defense, the law is simply the opposite of the “duty to retreat” law, and is likely something as simple as indicating that a person does not have a duty to retreat from the threat of serious bodily injury or death, but may meet and overcome that threat with deadly force without resorting to other options. This is the principal that we as law enforcement officers are accustomed to conditioning our minds to respond to a threat. Interestingly, in most of these states the application of this law is an immunity to prosecution and not an affirmative defense, meaning that if you act within the scope of

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this law you will not be charged with a crime if you use deadly force to defend yourself. Currently, the states which have “stand your ground” laws on their books are: Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia. Again, it is very important to remember that this list is what was found for January, 2015, but is of course subject to change. Individual officers still need to check the laws and regulations in the jurisdictions which they visit.

You will probably notice that there are several states missing from the two lists above, including our own state of Vermont. Vermont allows the use of deadly force by an individual under title 13, section 2305, which specifically states that:

If a person kills or wounds another under any of the circumstances enumerated below, he or she shall be guiltless:

(1) In the just and necessary defense of his or her own life or the life of his or her husband, wife, parent, child, brother, sister, master, mistress, servant, guardian or ward; or

(2) In the suppression of a person attempting to commit murder, sexual assault, aggravated sexual assault, burglary or robbery, with force or violence; or

(3) In the case of a civil officer; or a military officer or private soldier when lawfully called out to suppress riot or rebellion, or to prevent or suppress invasion, or to assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty. (Amended 1983, No. 23, § 2.)

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The aforementioned paragraph is the State of Vermont's justifiable homicide statute. It neither requires an individual to retreat, nor does the law specifically allow someone to "stand their ground". In a case where an individual (whether they be a law enforcement officer or not) uses deadly force against an individual, the prosecuting attorney will balance the facts of the case against this statute when making a determination as to whether charges should be filed or not. There is no immunity clause within this statute. Furthermore, if a person does use deadly force against another and is charged with a crime, it is up to the prosecutor to prove beyond a reasonable doubt that the defendant "did not act in self defense, or that the force used...was excessive under the circumstances." This quote comes directly from the jury instructions that will be read by the judge when retiring a jury for deliberations in a homicide case which is being contested as justified. A copy of these jury instructions is attached to this pamphlet. The jury instructions also require the defendant had a reasonable belief that he or she was in imminent danger of being killed or suffering great bodily harm when they decided to use deadly force. It is important to note that these instructions also include a clause which states, "Furthermore, if he [or] she honestly and reasonably believed it was immediately necessary to use deadly force to protect himself (sic.) from an imminent threat or death or serious bodily injury, the law does not require him [or] her to retreat." While there is no statutory requirement for someone to retreat from this threat in Vermont, the jury will be instructed that they are not required to.

It is of the utmost importance that the LEOSA armed officer understand the importance of imminent fear of death or great bodily injury. Remember that imminent requires that an action is pending or is about to take place. It does not require that the opponent be striking you with the baseball bat when you use deadly force, but the threat that you are going to be hit with the baseball bat must be. Most states which are like Vermont and do not address the issue of stand or retreat are similar to ours, but again it is incumbent upon the individual LEOSA armed officer to research the states which they intend to visit before they carry their firearm in that state.

Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.



When confronted with an attacker, the LEOSA armed officer must make a determination about whether there is a presence of imminent danger of serious bodily injury or death to him or her when that situation presents itself. The state of Vermont teaches new officers a three pronged test to determine whether that imminent danger exists. All other states use this test or some variation of it when determining if an imminent threat is present. It is important to remember that all three prongs must be present at the exact moment that you use the deadly force against the opponent. The three prong test is as follows:

ABILITY: When confronted with an attacker, the officer must first make a determination as to whether the person has the ability to cause him or her serious bodily injury or death. Ability is defined simply as the means. Does the attacker possess a weapon that is capable of inflicting serious bodily injury or death, such as a gun, a knife, or a baseball bat? Additionally, a potential attacker may have a substantial size or strength advantage over the potential victim which, by its very nature, may constitute the ability for that attacker to cause the victim serious bodily injury or death. Third, the potential attacker may have a superior knowledge of fighting skills over the victim which would place the victim in fear of imminent danger. It is important to note for this third one that it

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must be known to the potential victim that the attacker possesses these skills by either display or prior knowledge.

OPPORTUNITY: The next prong that will be examined is going to be whether the potential attacker, given the ability which they possessed, had the opportunity to use that ability to cause serious bodily injury or death. It is extremely important to remember that this opportunity is ability specific. An example of this would be that you face a potential attacker at 20 yards who is armed with a baseball bat. While the attacker does have the ability to cause you serious bodily injury or death due to the possession of the bat, he does not have the opportunity because he is too far away to create that *imminent* fear of serious bodily injury or death. Conversely, if you were to put a handgun in the attackers hand instead of the baseball bat, he would now have that opportunity due to the effective range of the firearm.

JEOPARDY (sometimes called intent): Finally, the attacker must commit some sort of overt act that would place a reasonable person in fear of serious bodily injury or death. Cocking a bat over their shoulder while in close proximity to you or pointing a firearm at you within the effective range of that firearm are excellent examples of this jeopardy factor. It is also important to remember that this overt act must create for a reasonable person a fear or serious bodily injury or death. Not all people feel “fear” at the same level, and what might constitute “fear” for one person may be different for another.

Some of us may remember from our law enforcement training that there was presented within there somewhere a “reasonableness standard” which came to us under *Graham v. Connor*, and a “Fleeing Felon” statute under *Tennessee v. Garner*. Remember that the LEOSA armed officer outside of their jurisdiction IS NOT acting as a law enforcement officer, and that the guidance set forth under these rules likely will not apply to them in a deadly force situation as a civilian. The LEOSA law Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.

was designed as a way for police officers to protect themselves and their families while traveling outside of their jurisdictions and does NOT grant them any sort of law enforcement authority outside of their jurisdiction.

Please note that this pamphlet is to be used as a guideline only and should not be construed as a defense in any legal proceeding.

Reviewed and approved by the VCJTC Use of Force Committee at their 14 January, 2015 regular meeting.



Vermont Criminal Justice Training Council state qualification course for back up and off duty handguns

COURSE SYNOPSIS: This is the course of fire that is recommended by the Vermont Criminal Justice Training Council for qualifying active duty and retired law enforcement officers with back up or off duty weapons. This is not a mandatory course but is made available to Vermont law enforcement agencies as a recommended best practice for conducting qualifications for these weapon types. This course shall be considered to be a “State handgun qualification course” for qualifying retired law enforcement individuals under the Law Enforcement Officers Safety Act.

EQUIPMENT: The handgun that the officer wishes to qualify with (may be a revolver or semi automatic)

2 magazines for a semi automatic or 1 speed loader for a revolver

Holster that the officer carries their off duty/back up weapon in. The holster should be worn where it regularly would be when the weapon is carried. If the officer does not use a holster and instead carries in a pocket or on a clip, the qualification course should be conducted from that point of carry.

25 rounds of ammunition which is the ballistic equivalent of the ammunition that the officer regularly carries in the gun

TARGET: For this course, the target area shall be the same as it is for the Rule 13 annual qualification course.

RANGE: Minimum 15 yards
Items to use for cover

COURSE OVERVIEW: For this course, the shooter must achieve an overall score of 20 hits out of 25 rounds fired in order to successfully qualify. Shooters with semi automatic handguns will load their magazines with 5 rounds. Shooters will need to reload their spare magazine as they go, or carry several magazines loaded with 5 rounds. Shooters with revolvers should load their 5 round speed loader with 5 rounds, and 6 round speed loaders with 6 rounds. The shooter with the 6 round speed loader should be aware that they will eject a live round from the cylinder when they conduct a reload. Shooters will need to reload their speed loader as they go, or will need to carry several speed loaders loaded with 5 rounds. All firing should be started from the point where the shooter carries their weapon and in the condition it is normally carry in. Revolvers should be qualified double action only. Cover objects are chosen at the discretion of the instructor and no simulations should be associated with the cover. There are no time limits associated with this course.

Course of fire:

| Distance | Shooting Position | Rounds fired | Description of string |
|-----------------|---|---------------------|---|
| 3 yards | Standing, one or two hand | 2 | On the command to fire, the shooter will fire 2 rounds from the point of carry while stepping either to the left or to the right, then return the weapon to the point of carry. |
| 3 yards | Standing | 3 | On the command to fire, the shooter will fire 3 rounds from the point of carry while stepping left or right, and then will reload their weapon before returning to the point of carry. |
| 5 yards | Standing | 3 | On the command to fire the shooter will fire 3 rounds from the point of carry utilizing their strong hand only, and then go to the low ready position. |
| 5 yards | Standing | 2 | On the command to fire, the shooter will transition their weapon to their support hand and fire 2 rounds, then will conduct a one hand, support hand reload. The shooter will then return their weapon to the point of carry. |
| 7 yards | Kneeling or standing ; must be behind cover | 2 | On the command to fire, the shooter will fire 2 rounds from a standing or kneeling position from behind a cover object. If the shooter chooses to stand, the cover must be of adequate height to protect them. The shooter will stay on target at the end of this string. |
| 7 yards | Remain in position from last string | 3 | On the command to fire, the shooter will fire 3 rounds and reload from behind cover. The shooter will then return their weapon to the point of carry. |
| 10 yards | Standing or kneeling | 5 | On the command to fire, the shooter will fire 5 rounds from a standing or kneeling two handed position, reload, and return their weapon to the point of carry. |
| 15 yards | Standing or kneeling | 5 | On the command to fire, the shooter will fire 5 rounds from a standing or kneeling two handed position and return their weapon to the point of carry. |

INSTRUCTORS MAY USE THE FORM ON THE FOLLOWING PAGE TO RECORD THE QUALIFICATION.

Annual Qualification Record for Back up and Off Duty Handguns

Officer name: _____ **Date:** _____

Officer agency: _____ **SSN last 4:** _____

Weapon Make, Model and Caliber: _____

Serial Number: _____

I, _____, being a certified firearms instructor in good standing with the Vermont Criminal Justice Training Council, hereby certify that the above named individual has met the requirements of Rule 13 in regards to annual weapons qualification for the year _____.

Instructor

Date

Subscribed and sworn to before me this _____ day of _____, 20____ in the County of _____, State of Vermont.

Notary Public