



# CALIFORNIA RESERVE PEACE OFFICERS ASSOCIATION

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## **CCW Endorsements for Retired Level I Reserve Officers (AB 703) – 2014 in Review**

*By Jim René, CRPOA General Counsel*

Assembly Bill 703, which mandates the issuance of CCW endorsements to eligible retired Level I reserve peace officers, was passed last year and became law in California on January 1, 2014. Many California law enforcement agencies employing reserve peace officers, recognizing that AB 703 mandates the issuance of CCW endorsements, have implemented policies and procedures in compliance with this law. That being said, we still are finding a number of recalcitrant agencies who resist the law, refuse to recognize it, impose their own “*ultra vires*” [meaning “beyond their authority”] requirements or otherwise make it difficult if not impossible for our retired brother and sister reserve law enforcement officers to secure a privilege which the law now requires.

With some of these agencies, particularly with respect to firearms law, this tends to be a familiar theme, namely that agencies refuse to follow the law based on their view that they have “free rein” with reserve officers and reserves have no business telling agency bosses what to do even if federal and State law say differently. Some inject their political views into the analysis. We saw this (and continue to see it) with some agencies when it comes to the rights provided by the federal Law Enforcement Officers Safety Act (LEOSA). Most have acknowledged reserve peace officers are entitled to LEOSA protections. Likewise, most have recognized AB 703. Our efforts to persuade the stragglers continue.

One agency in California, relying on a misguided City Attorney, fought us tooth and nail on its position that regardless of what AB 703 actually says, a minimum age 50 requirement is “implied” by the law because that requirement applies to full-time officers. In other words, in their view before a CCW endorsement can be issued to a retired Level I reserve officer, that officer must have reached age 50 at the time of retirement. The rationale for this belief is based on rules applicable to retirement for full-time officers (which require reaching age 50 before the payment of retirement benefits begins, again a requirement applicable only to full-time officers), which I analyze in detail below.     *✎ Dedication and Service ✎*

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The statutory language of AB 703 does not contain a minimum age 50 requirement. That agency's view was simply wrong and was another attempt - as we see so frequently, unfortunately - to add requirements into statutes where they do not exist as a way to avoid complying with a law that frankly it does not like. Another agency, which no longer has a reserve unit but with the passage of AB 703 has a number of retired reserves who now are entitled to a CCW endorsement and have asked for it, simply said, "no, not up for discussion, go away."

To help us validate that AB 703 really "says what is says," with your financial assistance we engaged the law firm Michel & Associates, arguably the leading law firm on firearms law in the State ([www.michellawyers.com](http://www.michellawyers.com)), to assist us with an expert legal opinion on the provisions of AB 703. Ultimately, their work resulted in the agency which previously imposed an age 50 requirement to implement a policy without this requirement. (I commend you to purchase Chuck Michel's book, "California Gun Laws," <http://www.calgunlawsbook.com/>, reference material I use for much of my research on firearms-related issues.)

Below is a technical analysis of AB 703 prepared with our lawyers' help and which I recommend you share with your agencies if you are having difficulty getting your CCW endorsement on the basis of the "minimum age 50" imputed requirement or any other basis which strays from the very simple provisions of this law.

**The Penal Code Does Not Provide a Minimum Age Requirement for Eligible Retired Level I Reserve Peace Officers to Be Entitled By Law to a CCW Endorsement**

Subdivisions (a) and (b) of Penal Code § 26300 explain which *full-time* peace officers are entitled by law to a CCW endorsement upon retirement. Subdivision (c) of PC § 26300 states (in pertinent part) that:

- (1) Any peace officer not listed in subdivision (a) or (b) who was authorized to, and did, carry a firearm during the course and scope of his or her appointment as a peace officer shall have an endorsement on the officer's identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.
- (2) This subdivision applies to a retired reserve officer if the retired reserve officer satisfies the requirements of paragraph (1), was a level I reserve officer as described in paragraph (1) of subdivision (a) of Section 832.6, and he or she served in the aggregate the minimum amount of time as specified by the retiree's agency's policy as a level I reserve officer, provided that the policy shall not set an aggregate term requirement that is less than 10 years or more than 20 years.

Subsection (2) was added by AB 703. The Senate Committee on Public Safety's bill analysis for AB 703 explained that:

"The purpose of this bill is to provide that a retired Level I reserve peace officer is entitled to an endorsement for a concealed weapons (CCW) permit if he or she carried a firearm during the course and scope of his or her appointment and he or she served in the aggregate the minimum amount of time specified by the retiree's agency's policy. This policy may not set an aggregate term requirement that is less than 10 years or more than 20 years."

PC § 26300(c) does not grant agencies the authority to add qualification criteria for reserve officer CCW endorsements. To the contrary, it *restricts* them to setting the required term of service to between 10-20 years. PC § 26300(c) unambiguously provides that a Level I reserve peace officer who served for the agency's required term of service (not to exceed 20 years) and was authorized to, and did, carry a firearm during the course and scope of the officer's appointment is *entitled* to a CCW endorsement (assuming "good cause" to deny an endorsement has not been determined at a hearing per PC § 26305(d)).

This should be the end of the analysis because an unambiguous statute's plain meaning controls (see *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.* (1980) 447 U.S. 102, 108). The agency which inserted into PC § 26300(c) its own minimum age requirement of 50 years for a Level I reserve officer to be eligible for a CCW endorsement upon retirement did so because it refused to accept the notion that a retired Level I reserve officer could in theory receive a CCW endorsement prior to age 50 when a retired full-time officer could not (even though the rules applicable to each had changed per AB 703). In other words, this agency would deprive a CCW endorsement to a Level I reserve officer who was appointed at age 22, served 25 years and retired at age 47 – clearly making him or her eligible for a CCW endorsement. Such a reading is not only unsupported by the statute's plain language (and, frankly, was the entire reason AB 703 was enacted in the first place), but also by the rules of statutory construction (see *People v. Gardeley* (1996) 14 Cal.4th 605, 622), stating that courts "do not lightly imply terms or requirements that have not been expressly included in a statute").

## **The Standard for Former Reserve Peace Officers to Be Entitled by Law to a CCW Endorsement Is Different from that for Former Full-Time Peace Officers**

Penal Code § 25450 provides an exemption from the prohibition on carrying a concealed and loaded firearm for “honorably retired” peace officers. Thus, for full-time peace officers to be entitled as a matter of law to a CCW endorsement they must be considered “honorably retired.” Penal Code Section § 25455 states that:

“Any peace officer described in Section 25450 who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer retired.” [emphasis added]

Prior to 1993, there was no statutory definition of the term “honorably retired,” and many agencies were denying CCW endorsements to their retired full-time officers simply because they randomly (and without explanation) decided that these officers did not meet that standard. PC § 16690 was enacted in 1993 [originally embodied in old PC § 12027(a)(1)(A) and moved to PC § 16690 when the Penal Code was re-numbered] by providing the statutory criteria by which a full-time officer would be considered honorably retired with no discretion on the part of the agency to find otherwise. That section provided that “honorably retired” includes any peace officer who has qualified for, and has accepted, a service or disability retirement.” [emphasis added] Once an officer met that standard, the agency had no discretion – a CCW endorsement had to be issued to that officer upon retirement unless the agency determined that “good cause” existed not to issue it, with corresponding due process rights on the part of the officer to challenge that determination in a hearing with the right to appeal to a court of competent jurisdiction if necessary.

As noted in the language of PC § 16690 itself, receiving a pension was not defined by the Legislature as the exclusive means by which an officer could earn “honorably retired” status – but once the officer retired with a service or disability retirement, “honorably retired” status was secured. An agency, on its own volition, could determine that an officer met the “honorably retired” standard regardless of pension eligibility, but it was not obligated to do so. This is because PC § 16690 provides that the term honorably retired “includes” an officer who receives a pension (rather than using the term “means” as it does with nearly every other defined term in that portion of the Penal Code). The use of the term “includes” in PC § 16690 and not “means” leaves the door open to others to achieve that status if the agency desires. In addition, this provision specifically excludes a category of officers from “honorably retired” status, namely officers who have agreed to a service retirement “in lieu of termination” (which means they resign rather than being fired for cause). Had

the Legislature wished to exclude other categories of officers, it could have done so but it did not.

Thus, the determination of who may be considered “honorably retired” is left up to the individual law enforcement agencies, but once an officer retires with a pension or disability retirement (other than in lieu of termination as to a service retirement), an agency is required to issue a CCW endorsement to that officer when he or she retires. Because most pension rules require officers to reach age 50 to qualify to receive pension payments upon retirement, working in tandem with PC § 16690, most agencies adopted the policy and practice that “honorably retired” status for full-time officers required them to reach age 50 before becoming eligible by law to receive a CCW endorsement.

In the case of Level I reserve officers, however, the Penal Code itself (PC § 26300(c)) now provides all of the very specific criteria they must meet to be entitled to a CCW endorsement and takes all discretion away from the agency, thereby mandating its issuance. There is no reference to being “qualified” for retirement or being “honorably retired” within the meaning of PC § 16690. Therefore, there is no discretion afforded law enforcement agencies to set their own qualifications for a retired Level I reserve officer to be entitled to a CCW endorsement beyond that which the statute specifically provides (at least 10 and no more than 20 years and subject to revocation or denial based on a retired officer violating any departmental rule, or state or federal law that, if violated by an officer on active duty, would result in that officer's arrest, suspension, or removal from the agency [per PC § 26305]).

Further to the background of AB 703, we proposed this law, and it was enacted by the Legislature and signed into law by the Governor, in large part due to the holding in *Haas v. Meisner*, 103 Cal. App. 4th 580, 587-88), in which the court (erroneously we believe) held that a retired reserve officer was not entitled to a CCW endorsement by law because he did not receive a specific type of retirement benefit. CRPOA specifically initiated the legislative process for AB 703 to fix this problem. Furthermore, it would make no sense for the Legislature, knowing that *Haas* was cited as a reason to deny reserve officers CCW endorsements, to then pass AB 703 (post-*Haas*) if it requires them to meet implied *Haas* standards. Additionally, if the Legislature wanted a minimum age 50 requirement, it could simply have written the statute that way. It did not.

As noted above, AB 703 was the legislative response to the *Haas* case. It was enacted specifically for the purpose of clarifying that PC § 16690’s “honorably retired” language would not be a bar to the issuance of CCW endorsements to retired Level I reserve officers. CRPOA worked closely with its author, Assemblyman Isadore Hall (a CRPOA member and reserve deputy sheriff for Los Angeles County), with the intention to mandate the issuance of

CCW endorsements to eligible Level I retired reserve officers by creating a separate concept of “honorably retired” status for reserves which would result in the mandatory issuance of CCW endorsements to these officers.

In sum, the California Legislature passed AB 703 to *require* agencies to issue CCW endorsements to retired Level I reserve officers after a required term of service (10-20 years) and *because* agencies were citing *Haas* as a basis to deny that privilege. Thus, the Legislature fashioned a test for determining their eligibility that is different from that applied to full-time peace officers. That test provides that reserve officers do not “honorably retire” as contemplated by PC Section 16690, *i.e.*, by receiving a pension along with its implied age 50 minimum. The only relevant factors in determining whether a retired Level I reserve officer *must* be issued a CCW endorsement are (1) whether the Level I reserve officer was authorized to and did carry a firearm on duty, (2) whether the reserve met the years of service requirement prior to separation from his/her agency, and (3) the absence of good cause to deny the CCW endorsement. If so, that officer is *entitled as a matter of law* to a CCW endorsement from that officer’s agency regardless of his or her age at the time of separation.

### **The Legislative History of AB 703 Does Not Support the View that Age 50 is a Requirement of AB 703**

The Senate Committee on Public Safety’s bill analysis for AB 703 framed the issue sought to be addressed by the bill as follows:

“Should a retired level I reserve peace officer be entitled to an endorsement for a concealed weapons permit if he or she carried a firearm during the course and scope of his or her appointment and he or she served in the aggregate the minimum amount of time specified by the retiree’s agency’s policy, as specified?”

The Assembly Committee on Public Safety’s analysis for AB 703 explained that the bill:

“Specifies that “honorably retired” peace officer includes any peace officer who has met his or her department’s years of service requirement, and has accepted a separation of service or disability retirement. ***Additionally***, this bill specifies that a retired Level I reserve peace officer is entitled to an endorsement for a concealed weapons (CCW) permit if he or she carried a firearm during the course and scope of his or her employment and he or she served in the aggregate the minimum amount of time specified by the retiree’s agency’s policy. This policy may not set an aggregate term requirement that is less than 10 years or more than 20 years.”

Neither the Assembly nor Senate analyses mention a particular age that Level I reserve officers must reach to qualify for a CCW endorsement or that they have to qualify for a pension as the *Haas* court held (with its implied age 50 minimum). In fact, the word “additionally” in the Assembly analysis (the legislative chamber of the bill’s origin) shows the Legislature understood that there are two different standards: one for full-time officers and one for reserve officers.

**Because Penal Code § 26300(c) Entitles Level I Reserve Officers Who Meet Its Criteria to CCW Endorsements, An Agency’s Additional Age Requirement Is “Preempted”**

“If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void” (see *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067). Legislation is said to “conflict with” state law if it “duplicates, **contradicts**, or enters an area fully occupied by general law, either expressly or by legislative implication.” Local action “**contradicts** state law when it is inimical to or cannot be reconciled with state law” (*O’Connell*. at p. 1068).

Any requirement that Level I reserve officers reach the age of 50 before qualifying for a CCW endorsement cannot be reconciled with PC § 26300(c). As explained above, PC § 26300(c) lays out very specific criteria for former Level I reserve officers that, if met, *entitles* them to a CCW endorsement. As noted above, it is possible for a Level I reserve officer to meet those criteria prior to reaching age 50. An agency would therefore be adding a requirement that could prevent Level I reserve officers who are otherwise qualified under PC § 26300(c) from obtaining a CCW endorsement (in other words, the agency would simply be re-writing the statute on its own). Agencies have no authority to do so (see *Agnew v. City of Culver City* (1956) 147 Cal.App.2d 144, 151: a “municipality may not impose a more stringent or additional requirement than imposed by the general law”). While some agencies may believe an age 50 requirement to qualify for a CCW endorsement is “only fair” because that is the requirement full-time officers must meet, the legislature’s mandate in PC § 26300(c), which has no such requirement, controls.

## **Conclusion**

The good news is that many agencies have adopted policies and procedures that do not contain this age 50 requirement (or any other imagined requirement). We were heartened by the recent adoption by LAPD, after much internal vetting and thorough legal analysis by its City Attorney, of a special order implementing AB 703 that did not contain such a requirement and we believe that should serve as one of the models for other agencies throughout the State. However, any policy or practice requiring Level I reserve officers to reach the age of 50 before qualifying for a CCW endorsement violates State law. Furthermore, any agency which simply declines to issue CCW endorsements to eligible retired Level I reserve officers as required by the Penal Code is also in violation of the law, subjecting it to lawsuits and reimbursement of attorneys' fees for its wrongful conduct.

If you believe your agency is violating AB 703, please share this analysis with your agency representatives and have them contact me with any questions or comments. I would also like to renew our request for more of your generous and much appreciated contributions to our Legal and Legislative Fund to help us push back and win legal and legislative victories to protect you. This includes our continued attempts to add Level II reserve officers to the AB 703 privileges in the next legislative session and other initiatives to benefit California reserve peace officers.

Please continue to send us your donations and help us continue to fight for you. You can mail your checks (payable to "CRPOA Donations") to CRPOA, P.O. Box 5622, San Jose, CA 95150-5622. Thanks for your generosity, be safe and take good care!