

Firearms Licensing Problem Areas

by

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As most chiefs know, House bill H2259 commonly referred to as the “GOAL Bill” recently came before the Joint Committee on Public Safety. The proposed bill completely rewrites Massachusetts firearms law, and, if passed, would change a chief’s role in the licensing process dramatically. Most notable of these changes is the elimination of all discretion on the part of the chief with regards to firearms licensing.

Legislators have advised the Massachusetts Chiefs of Police Association that one of the reasons some of them have supported the proposed bill was because of a lack of uniformity in licensing practices among communities. Some legislators have pointed out what they believe is an inherent unfairness in the way licenses in some communities are issued, and feel that a few chiefs routinely exceed their authority in their role as licensing authority. To address these concerns Legislative Committee Chair, Chief Terrence Cunningham; Firearms Committee Chair, Chief Ronald Glidden; and Executive Director, Chief Wayne Sampson recently met to discuss how the Association could best work for its members to maintain the chief’s existing discretion in firearms licensing.

As a result of that meeting, the Association will propose language to counter H2259 that will improve standardization, simplify licensing and maintain a chief’s discretion. In addition, the Association will continue to work proactively with individual chiefs to assist them with firearms licensing questions and concerns as they arise. When the Association becomes aware of complaints about firearms licensing practices in individual communities, Executive Director Sampson will notify the chief so he or she can more effectively deal with those issues in a timely manner. Questions from chiefs with regards to any particular licensing practices that may be unique to their community or region should be addressed to the Association.

To help in our efforts to keep chiefs informed regarding the statutory requirements of firearms licensing, and to help all of us maintain the existing level of firearms licensing discretion, the following is offered as a reminder:

FEES

All licenses are \$100 (except renewals for applicants who are over 70 and police officers obtaining an LTC from their employer both of which are free). FID Cards for chemical sprays are \$25 for the first one and free for renewals. LEO’s applying in a place other than where they are employed (a federal officer applying to a city or town) are \$25 for a renewal. No additional charges may be imposed for fingerprints, photographs (but which need not be provided by the police department), admin fee or other costs.

FID Cards

FID Card’s are a SHALL ISSUE license. The applicant is either qualified or not in accordance with the statute. There is no chief’s discretion and no restrictions on an FID card. Any additional conditions are prohibited by statute.

LTC

LTC's are a MAY ISSUE license. The license may be issued to a suitable person who is not disqualified by statute.

LTC Suitability

Unsuitability should be determined by past behavior; preferably that has been documented. This may include a criminal record where no conviction exists, the affidavit from a vacated restraining order, internal police records like protective custody where there is no BOP or III record, failure to cooperate in a police investigation, and mental health issues (suicide attempts, etc.) where there is no DMH record or other statutory disqualification. While denial for suitability is not required in any of these cases, it is an option for the chief who believes the applicant is unsuitable. Suitability should be determined on a case-by-case basis and not by a blanket policy. Each case and circumstance affecting suitability may be different. Keep in mind that a person denied for suitability may still be eligible to receive an FID Card. Suitability SHOULD NOT be determined by an applicant meeting or failing to meet a condition not required by statute but imposed but the local licensing authority.

Additional Conditions

Additional conditions for an FID Card are statutorily prohibited. Such conditions are not specifically prohibited for an LTC because such a prohibition might interfere with a chief's discretion on suitability. However the absence of statutory language prohibiting conditions should not be seen as an open invitation to impose unlimited conditions. Such an omission in the statute simply allows the licensing authority a degree of latitude regarding the issue of suitability. It should be noted that imposing additional conditions on LTC applicants is one of the biggest causes for citizen's complaints, and an argument legislators frequently use when discussing removing a chief's discretion. Note that some regions of the state are requiring doctor's notes and other additional conditions. Just because a neighboring community has imposed an additional condition not authorized by statute does not mean it is appropriate. Regionalizing an inappropriate condition does not make it right.

Additional conditions which should NOT be imposed by a licensing authority include but are not limited to requirements to:

- obtain notarized reference letters;
- obtain a letter from a doctor;
- list the firearms owned or that the applicant intends to own;
- complete a special firearms training course (separate from state requirement);
- complete a state required Basic Firearms Safety (BFS) course only a particular PD;
- complete a state required BFS course only from a particular instructor;
- complete a qualification course that is not part of a state approved BFS course;
- join a sportsman's or gun club.

LTC Class A or Class B

It is recommended that only Class A LTC's be issued to reduce confusion with both officers and the public as to what can be owned or carried with a license to carry firearms. If the applicant is not suitable for a Class A LTC, he is probably not suitable for a Class B LTC either. The Class B LTC allows ownership of non-large capacity handguns (including many smaller semi auto pistols) and large capacity rifles (AR15's, AK's, etc.) and shotguns none of which would be good in the hands of an unsuitable person. If the purpose for issuing a Class B LTC is because the chief wants to prevent the licensee from carrying a handgun loaded and concealed, he should issue a Class A LTC restricted to "Target & Hunting." This will accomplish the same result without the confusing issue of what can or cannot be owned or possessed with a particular license. Chiefs should not issue a Class B LTC as trial or beginner license. Do not tell the person he will be issued a Class B LTC and then have him come back in a year or when he is older to obtain a Class A (for an additional \$100).

LTC Restrictions

LTC's are issued for all lawful purposes subject to the restrictions (if any) the chief deems appropriate. Note that many departments currently issue an unrestricted license. The intent is not to encourage concealed carry, but simply to place the burden for lawful behavior on the licensee. If the licensee does something inappropriate that deserves suspension, the license is suspended regardless of a restriction or lack of a restriction. Restrictions allow communities some latitude regarding licensing because some chiefs have determined that certain restrictions work best in their communities. It should be noted however that many chiefs have needlessly caused themselves considerable headaches and political problems over this issue. It should be understood, that a chief doesn't reduce his liability by issuing a restricted license. Liability is only increased by failing to comply with the statutory licensing requirements or exceeding one's authority regarding how those licenses are issued or regulated.

Additional Information on LTC restrictions

From 1984-1998 the fee for an LTC was only \$10 and was good for 5 years. There was only one LTC (no A or B). You either had one or you didn't. The license could be issued with restrictions, but there was no penalty for violating the restriction. The prevailing belief at the time was that the restriction applied to the city/town in which the license was issued and that elsewhere in the Commonwealth a license was a license. There was no fine for a violation and c.269, sec.10 did not apply. As always, the issuing chief could suspend for suitability if he or she became aware of a violation of an imposed restriction. The restriction most sought after and seldom obtained was either Protection of Life and Property or Personal Protection. In the mid 1990's the Massachusetts Chiefs of Police Association started advising people against issuing for "Protection of Life & Property" and later against "Personal Protection." The new suggested language was All Lawful Purposes. The burden then went from the licensing authority trying to control behavior to the licensee demonstrating continued lawful behavior.

In 1998 the law changed significantly. Two LTC's instead of one, a \$10,000 fine for a license restriction violation (probably never imposed) and a LTC that went from \$10 to \$25 to \$100 in just a few years. Because of the complications with the Class A & B LTC's, and because there

was now statutory language that mentioned “All Lawful Purpose” more and more departments started issuing for ALP. Several years ago the format of the LTC itself changed. It no longer says “Reason For Issue.” The new format says “Restriction.” ALP is not a restriction, so the new ALP equivalent became “None”.

At the same time, the Massachusetts Chiefs of Police Association, the Gun Control Advisory Board, and the Firearms Record Bureau worked together to come up with a list of restrictions to try to narrow what was out there. Up till that time, it is believed that over 100 different restrictions were being used in the state. It would be unlikely that every officer (or every license holder) in the commonwealth knew what all those restrictions meant or what a person could or could not do with his own LTC. The mutually agreed upon restrictions are now part of the MIRCS system. It is recommended that licensing authorities utilize one of the pre-defined restrictions (or the option titled “None”) rather than the undefined option of “Other” to keep the number of existing restriction types to a minimum.

Restrictions provide some latitude for individual communities. Communities may feel a sense of security because they can issue the type of restriction they feel is appropriate. But as most law enforcement officers know, a person with a restricted LTC or for that matter an unlicensed person who is adamant about carrying a concealed weapon is going to carry regardless of a restriction. Conversely, the vast majority of those issued an unrestricted license including police officers do not carry on a regular basis. In 1994 when chiefs first started switching from “Target & Hunting” to “All Lawful Purpose” it seemed like a major change. Some chiefs worried about liability and some licensees thought they now had a special license. Today we know there is no increased liability for issuing such licenses, and for those who now only issue unrestricted licenses, it has become no major issue in those communities. If the applicant is not suitable, he simply is denied a license.

Chiefs have to issue the restricted or unrestricted license that works for their community (at least that’s how it is at the moment until the legislature makes a change). The only problem is licensing officers are sometimes terrible judges at what works in their community. Don’t think because you do not hear complaints that everything is fine. Since 1994 we have observed several chiefs leave their jobs partially and in some cases specifically because of their licensing practices. In some cases those chiefs or licensing officers were replaced by people whose views were 180 degrees different and those communities started issuing unrestricted licenses. Some chiefs who made that change look back and wonder what all the fuss was about. No change in gun crimes, and no wild west. Nothing changed except those licensing officials have fewer headaches because they chose not to fight that particular battle.

If your community situation requires you to issue a certain type of license, then you issue it as you determine appropriate. Many chiefs have just chosen to focus on other firearms issues long ago. If you are disqualified or not suitable you don’t get a license. If you are eligible, you get one. The same one everyone else gets for the same \$100 regardless of who you are or what reasons you have for wanting a license..

Safety Courses

The state mandated Basic Firearms Safety Course (or MA Hunter Safety Education Course) is only required for first time license applicants in accordance with both statutory and CMR requirements. No such course should be required for renewals. Applicants must be allowed to complete any state approved course from any state certified instructor. Departments should not mandate a particular course or a particular instructor.

Individuals Moving to another Community

If a licensee moves to a new community, he or she is required to notify both chiefs, plus the Firearms Records Bureau in writing. In some cases the new community may issue unrestricted licenses whereas the old community issued a restricted license. The licensee's license from the old community will remain valid until it expires. If a person chooses to renew his or her license early in the new community so he or she can obtain an unrestricted license such person may legally do so by paying the \$100 license fee. However the old community must "expire" the license via MIRCS. Contact the Firearms Record Bureau for details. There are several communities who have refused to do this for their former residents. Nothing is to be gained by forcing a former resident to maintain a LTC with your restrictions once he or she moves to a new community. Expire the license and let the new community license him or her as they wish.