



# CITY OF FAIRFAX POLICE DEPARTMENT

## GENERAL ORDER

Subject <b>FIREARMS DISCHARGE</b>	Number 4-12
Effective Date August 21, 2009	Rescinds General Order 4-12, dated 8-15-01
Accreditation Standards	Authority Colonel Richard J. Rappoport Chief of Police

### PURPOSE:

To establish policy and procedure governing the reporting and investigation of the use or discharge of police firearms and munitions.

### POLICY:

Officers are responsible for the proper use of force in accordance with department directives. A written report in accordance with the procedures herein must immediately follow the use or discharge of police firearms or munitions. Incidents must be investigated, administratively reviewed and accompanied by recommendations based on sound advice from the best of sources prior to final disposition. Willfully concealing an incident of firearm discharge is considered gross misconduct and may result in dismissal.

### DISCUSSION:

The intent of this directive is to ensure that officers who unintentionally or intentionally discharge a police firearm on or off duty, or point a police firearm off duty, submit a written report of the incident.

Nothing in this directive is intended to inhibit or prohibit an officer from un-holstering, readying, pointing, or discharging their police firearm in the performance of duty and in accordance with the deadly force policy.

Nothing in this directive is intended to prohibit the discharging of police firearms during training or the use of sporting weapons for hunting or competitive events. In addition, with the exception of the Reporting Criteria, this order does not require investigations for cases involving the discharge of a firearm in order to destroy an animal that represents a threat to public safety or as a humanitarian measure following the provisions of General Order 4-11.

### PROCEDURE:

#### I. REPORTING CRITERIA

- A. A detailed written memorandum report, in addition to any other required report, is mandatory in the following instances:
  1. The unintentional discharge of a police firearm by an officer on or off duty.
  2. The intentional discharge of a police firearm by an officer on or off duty, except in on duty animal destruction cases with no complications as outlined in G.O. 4-11, in which case a PD-104 (Incident Report) shall serve as documentation.
  3. The pointing or brandishing of a police firearm by an off duty officer.
  4. Following the use of gas, munitions or specialized Emergency Services Team weapons in any incident outside of training.

- B. The unholstering, readying and pointing of police firearms during the course of normal duty is reported using the PD-104 Incident Report when a report is appropriate or if no report is required a PD-120 Use of Force form is completed. No memorandum report is necessary in these cases.

## II. OFFICER'S RESPONSIBILITY

- A. Officers are responsible for the immediate notification of the Duty Supervisor of any firearms discharge or firearms related incident while on or off duty.
- B. When off duty, a notification must be made as soon as possible and practical and contemporaneously with the notification of proper authority in the jurisdiction of the incident.
- C. The officer is responsible for maintaining the firearm in an unchanged condition except that, if not already done, it is to be decocked (if applicable). As soon as practicable the weapon will be turned over to the duty supervisor, investigating detective, I.A. Officer, or other proper authority if the incident occurred outside the jurisdiction of the city.
- D. When an incident occurs on duty, a written memorandum report must be filed prior to the end of the officer's shift.
- E. When an incident occurs off duty, a written report must be filed according to the instructions of the Duty Supervisor, who should file an interim report.

## III. DUTY SUPERVISOR'S RESPONSIBILITY

- A. Upon notification of a firearms discharge, the Duty Supervisor must:
  - 1. Respond to the scene and take charge of the incident. If the incident is off duty and out of jurisdiction, the supervisor should make every effort to respond. In these cases the supervisor should meet with the officials of the jurisdiction involved and assist whenever possible. As much information as possible should be obtained by the supervisor and documented concerning the incident, the name of the investigating officer, and any other facts. This information is filed prior to the end of the shift in written form.
  - 2. In the cases which do not involve death or injury the supervisor is to inspect the officer's weapon. The inspection should determine the general condition of the weapon (obvious damage, loaded or unloaded, whether or not it was decocked if applicable, the number of rounds remaining in the weapon), the make model and serial number of the weapon, and the make and type of ammunition in the weapon. This inspection information is to be documented in the supervisor's report. If the supervisor feels a further inspection should be done, the weapon will be exchanged using a spare pistol at headquarters (EST Equipment Room/Armory) and the weapon turned over to the Professional Standards Division (P.S.D.) Commander for inspection by a department armorer. In some cases it may also be necessary to secure the officer's extra magazines, holster, and magazine pouch (spares are located in the EST Equipment Room/Armory).
  - 3. In all cases of death or injury the officer's weapon will be exchanged by the duty supervisor, responding detective, evidence technician or P.S.D. Commander as soon as practical. The weapon is to remain unchanged except, if not already done, it is to be decocked (if applicable). The official exchanging the weapon with the officer is to document the condition of the weapon at the time of exchange as detailed in Section III.A.2. above. In addition, the officer's ammunition pouch and holster are normally also exchanged for a routine safety examination. Spare leather gear is kept in the EST Equipment Room/Armory.
  - 4. Assign responsibilities in accordance with crime scene procedures.
  - 5. Make command notifications.
  - 6. Notify the Professional Standards Division Commander (Internal Affairs Officer).

7. Make other notifications as needed.
- B. The Duty Supervisor is responsible for ensuring that the incident is properly documented prior to the end of the shift. This may require the filing of an interim report in cases where the officer who discharged the firearm is unable, for whatever reason, to file a memorandum report.
- C. If an officer causes death or injury, that officer should be removed from the scene as soon as possible.
- D. If an officer is killed or injured, any officer witnessing or close to the event should be replaced at the scene as soon as relief can be provided. Experience has shown that performance decreases rapidly when the original officers are left on the scene. The Duty Supervisor and command officials should consider this in deployment and call-out plans.

#### IV. COMMAND RESPONSIBILITY

- A. Upon notification of discharge, command officials are responsible for:
  1. Response to the scene where appropriate.
  2. Taking charge of operational concerns within the scope of their authority.
  3. Arranging for any additional resources which may be necessary.
  4. The planning of post-incident review measures for officers within their division.
- B. The Chief of Police ensures unity of purpose in the use of each division toward protection of and integrity of the scene, handling of evidence and witnesses, proper post shooting review and officer's psychological follow-up by competent medical authority.

#### V. INVESTIGATION

- A. The investigation of a firearms discharge normally has two major components:
  1. Internal Affairs investigation (conducted in all cases).
  2. Criminal investigation (conducted in all cases in which a weapon is fired by an officer with the intention of striking any person and injury or death results).
- B. The Internal Affairs investigation is handled by the Professional Standards Division {also see General Order 1-19}. Review of a discharge occurs for the primary purpose of establishing the appropriateness of the action in view of department policy, procedure and training principles. The review is also to identify deficiencies in policy, procedures, rules and regulations, or training, and recommend any corrective action to be taken.
- C. When both an Internal Affairs investigation and a criminal investigation are called for, they may be conducted in a parallel fashion.
  1. In such cases the assigned investigator works in conjunction with the Internal Affairs Officer.
  2. The sole purpose of the criminal investigation is to determine if the involved officer committed any criminal act.
  3. With the exception of the involved officer, witnesses and others with knowledge of the incident may be interviewed jointly, or as otherwise deemed necessary. To expedite the information and documentation process various members of the Criminal Investigations Division and Patrol Division may be used by the Internal Affairs Officer and criminal investigator to conduct interviews and to gather and document information.

4. The involved officer is initially interviewed by the criminal investigator only, in order to protect the officer's Miranda rights. After taking the officer's statement, the criminal investigator then briefs the Internal Affairs Officer concerning the officer's statement (the Internal Affairs Officer may review written and taped statements but shall not be present during the actual interview). After the criminal violation determination the Internal Affairs Officer may take a separate statement from the involved officer.
  5. If the criminal investigator concludes at any time that no criminal violation occurred then the investigator advises the Internal Affairs Officer immediately. The Internal Affairs Officer, after consulting with the Chief of Police, will decide whether the criminal investigator is to close the criminal aspect of the case, to continue, or to modify the investigation.
  6. During a criminal investigation any evidence collection or scene documentation should be conducted by a separate investigator or evidence technician. This will allow the criminal investigator to focus on the incident investigation.
- D. In cases of injury or death, criminal investigation procedures are used to collect and document evidence even when preliminary indications tend to show no criminal violations occurred. Crime scene procedures include documentation of the scene by notes, sketches, and photographs.
- E. In cases where no death or injury took place, any necessary testing of the firearm is normally done by a qualified armorer within the department. In cases involving injury or death, the firearm is normally submitted to the Bureau of Forensic Science for any necessary tests.
- F. The investigation of any associated crimes involved with the original incident are conducted by the department section which would normally be responsible for such investigation, unless the Chief or Internal Affairs Officer determine that a different response is appropriate.
1. The officer involved in the use of force shall not be responsible for the investigation and any subsequent arrest of any suspects. However, if an immediate on-scene arrest is necessary, the officer may make the arrest.

#### VI. BRIEFING OF COMMONWEALTH ATTORNEY

- A. In cases where a weapon is fired by an officer with the intention of striking a person, and injury or death results, a member of the Commonwealth Attorney's Office should be briefed concerning the incident. The briefing should:
1. Normally be presented within four days of the incident.
  2. Be presented by the Internal Affairs Officer, the Criminal Investigator, or other designee as determined by the Chief of Police.
  3. Present the known facts, and preliminary investigation results.
  4. Seek a verbal decision as to whether the Commonwealth Attorney's Office requires any other information.
  5. Provide the name of a contact person for the Commonwealth Attorney's Office to call upon should they have questions at a later time.

#### VII. ADMINISTRATIVE LEAVE / REINSTATEMENT

- A. When an officer discharges a firearm resulting in the injury or death of another person, the officer is relieved of duty without loss of pay until such time as their return to duty is deemed appropriate by the Chief of Police. No inference is to be drawn from this procedure that an officer acted improperly.
- B. The appropriate Division Commander, or Internal Affairs Officer is responsible for making official notification of the relief of duty and the conditions thereof. A report is forwarded to the Chief of Police

indicating the date and time the administrative leave took effect and instructions that were given the officer. This report becomes a part of the official Internal Affairs file.

- C. The following procedures and conditions are considered routine during the administrative leave process following a shooting:
1. While relieved of official police duties, the officer's departmental duties are determined by the Chief of Police.
  2. The officer must be available at all times for official inquiry and statements regarding the case and is subject to recall to regular duty at any time.
  3. The officer must not discuss the case with anyone except the prosecuting attorney, city attorney, personal attorney, personal or city physicians, psychiatrists, psychologists or counselors, religious counselor, and authorized departmental personnel.
  4. The officer receives psychiatric or psychological debriefing and counseling using the Employee Assistance Program (see General Order 3-15) or other agency at city expense. A report is forwarded to the Chief of Police and considered in the decision to return the officer to regular duty status.
  5. If returned to work prior to the completion of an investigation, the officer may be placed in assignments not requiring the exercise of police powers.
  6. The Chief of Police considers the investigation and all related reports concerning the incident to determine if disciplinary action is necessary and the conditions for reinstatement to full duties. Included options are:
    - a. The officer may, once cleared, be reinstated.
    - b. Discipline may be effected prior to reinstatement.
    - c. If the actions of the officer are pending before the criminal court (Grand Jury, etc.), disciplinary action may be deferred until adjudicated.
    - d. The officer may remain on duty in a non-sworn capacity.
- D. The Chief of Police is responsible for making official notification of reinstatement or other action resulting from review of the investigation.

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Colonel Richard J. Rappoport / Chief of Police

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