

12.550 DISCHARGING OF FIREARMS BY POLICE PERSONNEL

Reference:

Manual of Rules and Regulations - 1.23, 1.24, 1.25
Ohio Revised Code Section 2901.01
Procedure 12.545, Use of Force
Procedure 19.105, Sick/Injured With Pay & Special Leaves
Tennessee vs. Garner, 471 US 1 (1985)

Policy:

The most serious act in which a police officer can engage is the use of deadly force. The authority to carry and use firearms in the course of public service also carries with it the highest level of responsibility. Respect for human life requires that police officers exhaust all other reasonable means before resorting to the use of firearms and then only when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from the risk of serious physical harm or loss of life.

In considering the use of firearms, understand that you are responsible for your acts and that you may be required to justify your acts in a court of law. The Hamilton County Prosecutor's Office will determine the legality of actions taken. You are not required to retreat in lieu of the justifiable use of deadly physical force.

The safety of innocent persons is of paramount importance. Where there is substantial risk to the safety or life of an innocent citizen, the safety of the citizen should take precedence over the apprehension of the suspect.

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the officer or others. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

Police officers may not use deadly force merely to prevent escape in misdemeanor cases. The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another.

Where the suspect poses no immediate threat of death or serious physical harm to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. If an officer uses unnecessary and/or excessive force, or acts wantonly and maliciously, he could be found guilty of assault, even of culpable homicide if he kills the person he is attempting to arrest.

At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm, **with finger outside the trigger guard** and have it ready for self-defense. **The finger is only to be placed on the trigger when on target and ready to engage a threat.**

An officer has a duty to intervene to stop, prevent and report the use of excessive force by another officer when it safe and reasonable to do so.

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

Warning Shots: Officers should only use warning shots if convinced a warning shot will possibly save a life or alleviate the need of taking a life. As with any shot an officer fires, the officer must know it will not endanger innocent bystanders. Supervisors should report and investigate warning shots as outlined in Section A.

Felonies: When all other reasonable means at the officer's disposal have failed, the use of firearms is authorized, only under the following circumstances, as a last resort to apprehend a fleeing felon:

- The officer has probable cause to believe the suspect has committed or is committing a felony, and
- The suspect presents an immediate risk of death or serious physical harm, either to the officer or another person if not immediately apprehended.
- If possible, the officer will give verbal warning before using the firearm.

By itself, notification by Emergency Communications Section (ECS) resulting from a general information broadcast or computer query that a subject is wanted will not provide authority for the police officer to use a firearm.

All Other Felonies and Misdemeanors: In all other felonies or misdemeanors, police personnel will not fire shots even if the perpetrator attempts or succeeds in his attempt to flee.

Juveniles: A police officer will not discharge a firearm at a person known to be or suspected of being a juvenile (person less than 18 years of age) except under circumstances which come within the provisions of the self-defense policy.

Moving Vehicles: Officers shall not discharge their firearms at a moving vehicle or its occupants unless the occupants are using deadly physical force against the officer or another person present, by means other than the vehicle.

A member of the Department involved in a police intervention shooting incident must demonstrate to Police Training Section their readiness to resume patrol duty functions through a live-fire exercise at the CPD Target Range and complete Firearms Training Simulator (FATS) scenarios at the Police Academy (as outlined in Section G. of this procedure) prior to returning to duty.

Shots Fired at Animals: An officer may, when reasonable, use their firearm to prevent an undomesticated wild animal from inhumane suffering or to protect themselves and others from a dangerous animal. If possible, use one of the following alternative solutions:

- Call the Society for the Prevention of Cruelty to Animals (SPCA). This organization has equipment to handle most animals safely.
- In some instances, Cincinnati Zoological Society personnel will respond upon request.
- The use of chemical irritant is effective on many animals.

Information:

The Police Chief has authorized a comprehensive review of critical firearm discharges by Department employees. A Critical Firearm discharge is defined as:

All shots fired by Department employees with the exception of:

- Beanbag Rounds.
- 40mm foam rounds.
- At animals.
- While hunting.
- Training accidents when proper safety procedures were followed.

The review will begin at the Police Chief's direction. If a criminal investigation is warranted, the review will commence after the completion of any criminal investigation or court proceedings into the matter.

To facilitate this process, the Police Chief has established a Firearm Discharge Board (FDB) to conduct all such reviews. The Board's review will include Criminal Investigations Section (CIS) and Internal Investigations Section (IIS) investigative files and interviews of the principal CIS and IIS investigators. The review will be concluded within 90 days of commencement. The FDB will act as a quality control mechanism for all critical firearm discharges, with responsibility to return to the Police Chief all incomplete or mishandled shooting or firearm discharge investigations. The FDB will have the authority and responsibility to recommend to the Police Chief investigative protocols and standards for all critical firearm discharge investigations.

The core members of the board will consist of a CPD command staff officer, the Police Training Section Commander, the SWAT & Tactical Coordination Unit Commander, the affected bureau commander, and an attorney from the Solicitor's Office. All appointments will occur on or about the first day of January and be effective for one year.

The Inspections Section Commander will serve as the chairperson of the FDB. The chairperson is responsible for coordinating all meetings and ensuring all relevant material compiled during any criminal or administrative investigation is reviewed. The chairperson is also responsible for submitting a written report to the Police Chief within the established timelines.

The Police Chief may appoint additional FDB members as needed. The Police Chief will appoint a replacement member in the event a board member retires, or is no longer able to fulfill membership duties. The Police Chief may disqualify a FDB member at anytime.

All efforts will be made to conclude reviews within the established timelines. If the Police Chief determines extenuating circumstances exist, the Police Chief may extend the established timelines.

Proceedings by the FDB are to be conducted informally, directed towards the issues of the appropriateness of Department policies and procedures, member's judgment, and the training adequacies with respect to the member's knowledge, skill, and resources. The chairperson will determine what evidence is relevant and reliable, without regard for technical or formal rules of evidence. The chairperson will determine the need to call witnesses and may order witnesses to be separated during the review.

The chairperson will prepare a final report to the Police Chief that will become part of the investigation file. The report will include a description of the incident (including all uses of force), a summary and analysis of all relevant evidence, proposed findings and analysis to support those findings. In particular, the board will determine: a) whether all uses of force during the encounter were consistent with Department policy and training, b) whether the officer(s) involved employed proper tactics, and c) whether lesser force alternatives reasonably were available.

On or before the first day of February, the FDB chairperson will prepare and present to the Police Chief a summary report reviewing each closed critical firearm discharge from the preceding year. This report will include analysis of patterns and problems discovered during the review.

Procedure:

A. Shots Fired

1. Report all shots fired by police personnel to an on-duty supervisor immediately regardless of the circumstances. Personnel having knowledge of a shot fired by another officer will report the incident to an on-duty supervisor immediately. This includes:
 - a. Shots fired at or taking effect against an individual.
 - b. Warning shots.
 - c. Shots fired at animals.
 - d. Accidental discharges.
 - e. Shots fired from any firearm by off-duty personnel except:
 - 1) Target or competition shooting.
 - 2) Hunting.
 - 3) Military service.

2. Personnel are not required to report shots fired while participating in department authorized firearms training.
 3. The investigating supervisor will notify ECS.
 4. ECS will notify the appropriate personnel on the Situational Occurrences Notification List.
- B. Shots Fired at Individuals:
1. The investigating supervisor will:
 - a. Ensure protection of the scene.
 - b. Notify ECS.
 - 1) ECS will notify the Criminal Investigation Section (CIS) desk officer who will make CIS notifies according to CIS SOP. ECS will then notify the appropriate personnel listed on the Situational Occurrences Notification List.
 - c. No one will take the officer(s') pistol, Body Worn Camera (BWC), or gun belt at the scene. The officer(s') pistol will remain in his holster and the officer will wear his gun belt and BWC until possession is transferred to a Homicide Unit supervisor.
 - 1) Under no circumstances will the officer(s') pistol be examined or unloaded. If safety is an issue, a Homicide Unit supervisor will be immediately contacted for instructions.
 - 2) If an officer(s) is transported to the hospital for treatment, a district/section/unit supervisor will respond and take possession of the officer(s') pistol, gun belt and BWC. That supervisor will document the date, time, location, and from whom the officer(s') equipment was obtained and contact a Homicide Unit supervisor.
 - 3) A supervisor will be assigned to take control of the officer(s) involved in a shots fired that take effect. They will remain at the scene. At the direction of a Homicide Unit supervisor, a district supervisor(s) will transport the involved officer(s) to CIS and remain with the officer(s) until relieved by a CIS supervisor.
 - a) No one will be permitted access to the officer(s') pistol, gun belt or BWC without the approval/consent of a Homicide Unit supervisor.
 - b) When multiple officers are involved, a separate supervisor will be assigned to each officer. If there is a need, request a supervisor(s) from another district(s).
 - d. Locate witnesses to the incident. If possible, separate the witnesses and have them held at or near the scene until they have conferred with a Homicide Unit supervisor or a Personal Crimes Squad supervisor. Ensure their transportation to CIS for interview by CIS and IIS.

- e. Conduct a preliminary fact finding investigation at the scene.
 - 1) Do not publicly comment about the propriety of the action taken.
 - f. Brief the Homicide Unit and IIS investigators.
2. The CIS Commander, Homicide Unit Commander, Personal Crimes Squad Commander, and IIS Commander will respond to the scene. The Homicide Unit Commander and IIS Commander will conduct independent, parallel investigations of the incident. The involved officer(s) unit of assignment will assist CIS and IIS with the investigation. The Major Offenders Unit Commander will respond to the hospital or Coroner's office if an injury or death has occurred.
 3. Homicide Unit/IIS investigators will:
 - a. Conduct an investigation and report per their standard operating procedure (SOP). All investigations will include, to the extent possible, appropriate crime scene analysis, review of the BWC(s), gunshot residue tests, and ballistic tests including bullet trajectory tests.
 - 1) Investigators will ensure, to the extent possible, that the investigation accounts for all shots and the locations of all officers who discharged their firearms.
 - b. Collaborate in preparing a Form 18F, Supervisor's Use of Force Investigation, without a conclusion, with IIS completing the Form 18F.
 - 1) The original Form 18F will remain with the involved officer's unit of assignment.
 - c. Immediately fax the Form 18F to the following locations:
 - 1) Police Chief's Office
 - 2) Internal Investigations Section
 - 3) Patrol Bureau
 4. The district/section/unit commander will respond to the scene and coordinate the activities of the field personnel at the scene.
 5. IIS will respond and coordinate the Department investigations.
- C. Shots Fired at Animals
1. Notify ECS
 - a. ECS will notify the appropriate personnel on the Situational Occurrences Notification List.
 2. The investigating supervisor will complete a Form 18A, Supervisor's Preliminary Investigation: Weapons Discharge at an Animal, including review of the BWC, if applicable.
 - a. Fax the Form 18A to Inspections Section.

3. If the shots take effect, and the animal is known or suspected of having bit a human, notify the SPCA to pick up the dead animal pending a later examination by the Board of Health.
 4. If the animal is not suspected of biting a human:
 - a. Notify Ohio Department of Transportation (ODOT) to pick up the dead animal if located on an expressway.
 - b. Notify the Department of Public Services to pick up the dead animal if located on a city street.
 5. Refer also to Procedure 12.115, Handling Wild/Exotic Animals, Dangerous/Vicious Dogs, and Animal Reports.
- D. Personnel Injured by Department Authorized Firearms During Training Exercises
1. The OIC will immediately notify ECS.
 - a. ECS will notify the appropriate personnel on the Situational Occurrences Notification List.
 - 1) The command officer notified will determine IIS involvement.
 2. A Firearms Training Squad supervisor will investigate all firearms related, non-serious harm injuries:
 - a. That occurs during firearms training.
 - b. Where all safety rules and procedures have been followed.
Example: A person is struck and injured by a piece of lead that has blown back from a target.
 - c. For reporting, refer to Procedure 19.105, Sick/Injured with Pay and Special Leaves.
 - d. A Firearms Training Squad supervisor will immediately notify ECS for Situational Occurrences Notification and Personnel Management of injuries which require medical attention at a hospital.
 3. Life threatening or serious injuries, injuries due to intentional acts, or injuries that occur as a result of violations of safety rules and/or procedures:
 - a. Follow Section B. of this procedure.
 - b. If the incident occurs outside of the city limits, the criminal investigation will be made by the law enforcement agency in whose jurisdiction the incident occurred.
 - c. CIS may assist the law enforcement agency in its investigation.
- E. Unintentional Discharge
1. Unintentional discharges which are the proximate result of an officer's conduct during a tactical situation will be investigated as outlined in Section B. and presented to the Firearm Discharge Board for review.

2. Unintentional discharges associated with the care and maintenance of a firearm will be thoroughly investigated by the district/section/unit commander. A Form 17 will be prepared and forwarded to the Police Chief giving a full account of the incident, including a recommendation for disposition and closure.

F. Firearm Discharge Board

1. The Police Chief will review and forward to IIS the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The IIS Commander will notify and arrange a meeting between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.
2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.
3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure changes. References to specific policies, procedures, or training will be included in all recommendations.

G. Return to Duty Process Following Police Intervention

1. In an effort to ensure any officer involved in a police intervention shooting is fully prepared to return to duty, Police Training Section will conduct the following evaluations:
 - a. The officer must complete the minimum firearms qualification course at the CPD Target Range under the guidance of a Firearms Training Squad instructor.
 - 1) Afterwards, the instructor will encourage the officer to shoot as many additional rounds as the officer feels is necessary.
 - 2) These exercises are to ensure the officer is capable, comfortable, and confident in the handling of their Department issued firearm.
 - b. The officer must visit the Police Academy to participate in three "Shoot/Don't Shoot" Firearms Training Simulator (FATS) scenarios to demonstrate they are tactically prepared to return to duty.
 - 1) The Firearms Training Squad, will develop six to eight scenarios to be utilized for this purpose.
 - 2) To avoid creating a negative emotional response or putting officers in a position of second guessing their actions, scenarios resembling the actual officer involved incident will not be used.