

202 Firearm Discharge Situations

202.1 PURPOSE AND SCOPE

The purpose of this order is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This order is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this order can only form the basis for departmental administrative actions.

202.1.1.2 POLICY

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances. [Officers are reminded of the Department's Philosophy, which states: The protection of life is the primary core value and guiding principle of the Austin Police Department. As such, all employees will strive to preserve human life while recognizing that duty may require the use of deadly force, as a last resort, after other reasonable alternatives have failed or been determined impractical.](#)

- (a) An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):
 1. Protect themselves or others from what they reasonably believes would be an imminent threat of death or serious bodily injury.
 2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
 - (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
 - (b) The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.
- (b) To stop a dangerous and aggressive animal:
 1. In circumstances where officers encounter any animal which reasonably appears to pose an imminent threat of bodily injury to officers or others, officers are authorized to use objectively reasonable force up to and including deadly force (when lesser means would be impractical) to neutralize the threat. If time and distance permit, an officer may consider using the following less-lethal options:
 - (a) Fire Extinguisher
 - (b) Oleoresin Capsicum spray
 - (c) TASER Device
 - (d) Assistance of Animal Control
 2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g., dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g., fire extinguisher, TASER Device, oleoresin capsicum (OC) spray, assistance of animal control). Nothing in this order shall prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impracticable.
 3. In the event force is used against an animal by an officer and the animal is injured or there is a reasonable belief the animal was injured, regardless of whether visible injury exists, officers shall make a reasonable attempt to ensure the animal receives care for its' injuries. This may include but is not limited to:

- (a) Contacting the owner to arrange private treatment in an appropriate time frame.
 - (b) Contacting Animal Control to have the animal collected and treated
 - (c) Arranging transport of the animal to a veterinary facility
 - (d) Transporting the animal to a veterinary facility
- (c) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impracticable.
- (d) For target practice or recreational shooting at an approved range or any area where firing a weapon would be safe and not a violation of law.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible. When feasible, warnings or orders should be given by one officer to avoid conflicting orders or talking over each other, rendering the orders incomprehensible. Warnings or orders should be given in a clear and understandable manner.

202.3 DEFINITIONS:

Unintentional Discharge- The discharge of a firearm that the shooter did not intend to occur.

Preventable Discharge- An unintentional discharge that constitutes a gross deviation from Department training received prior to the incident or a discharge which exhibits a failure to exercise the care that a reasonably prudent employee would have exercised in similar circumstances.

Firearm – For the purposes of this policy, a firearm is any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use (e.g. handgun, rifle, shotgun, less lethal shotgun).

Department Used Firearm – Any firearm used by an officer, whether personally owned or owned by the Department, in the course and scope of being a peace officer.

Personally Used Firearm – Any firearm not owned by the Department and used outside the course and scope of the duties of being a peace officer.

202.1.24 WARNING SHOTS

202.1.35 MOVING VEHICLES

This order is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

(a) Officers are prohibited from Discharging a firearm at a moving vehicle unless the officer reasonably believes that:

1. a person in the vehicle is immediately threatening the officer or other person with serious bodily injury or death by means other than the vehicle itself (e.g., driver firing at the officer or others with a firearm); or
2. the person operating the vehicle intends to strike the officer or other person(s), and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

~~(a)~~(b) Officers shall exercise good judgment and will not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

~~(b)~~(c) Unless it reasonably appears that it would endanger officers or the public, officers will make every reasonable attempt to move out of the path of any approaching vehicle.

- ~~(e)~~(d) When encountering a vehicle being operated in a threatening manner, officers may leave a position of cover only:
1. to utilize an avenue of escape
 2. to move to a position of better cover, or
 3. if the need to apprehend the suspect or stop the threat outweighs the danger imposed to the officer or any other person.

~~(d)~~(e) Disabling a vehicle by use of a firearm will only be attempted under extraordinary circumstances. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

(f) Officers should be aware of the following:

1. Firearms discharged at moving motor vehicles are unlikely to stop the vehicle's movement.
2. If the vehicle operator is incapacitated, the vehicle could crash and cause injuries to officers/and/or other innocent bystanders.

(g) Officers shall not discharge a firearm from inside a moving vehicle unless the officer reasonably believes that:

1. deadly force is necessary to protect the officer or others from an imminent threat of death or serious bodily injury; and
2. no other reasonable alternative exists.

202.4.46 DISPLAY OF FIREARMS

202.2.7 REPORTING OF INTENTIONAL FIREARM DISCHARGE AGAINST A PERSON

202.3.8 REPORTING OF INTENTIONAL FIREARM DISCHARGE AGAINST AN ANIMAL

202.38.1 REPORTING A FIREARM DISCHARGE FOR THE HUMANE DESTRUCTION OF A SERIOUSLY INJURED ANIMAL

202.38.2 REPORTING A FIREARM DISCHARGE AGAINST A DANGEROUS AND THREATENING ANIMAL

202.4.9 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE

This section is written to cover the reporting procedures for ~~the following~~ unintentional firearm discharge situations:-

- ~~(a) While at the APD firearms range.~~
- ~~(b) While at an approved firearms training site.~~
- ~~(c) While on-duty.~~
- ~~(d) While off-duty.~~

- (a) If an unintentional discharge involves a Department used firearm and there is a possible mechanical malfunction, the firearm shall be seized and turned over to the Training Academy for inspection.
- (b) Any unintentional discharge of any firearm that does not result in injury, or only injury to self, shall be reported to the involved officer's supervisor as soon as practicable. The supervisor will determine if the unintentional discharge will be handled as a Class B Investigation under General Order 902 (Administrative Investigations).
- (c) Any unintentional discharge of any firearm that results in injury or death to another shall be handled as a Level 1 Force incident. The involved firearm may be seized by the investigating agency.

202.9.1 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE ON-DUTY

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while on-duty.

- (a) While in Training at the APD Firearms Range or at a Department Approved Training Site.
 - 1. If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).
 - 2. If there is no injury or the injury is only to self:
 - (a) Employees will report the discharge immediately to range personnel and request emergency medical assistance, if needed.
 - 1. The Learned Skills sergeant will be notified immediately.
 - 2. Employees may be immediately disqualified and placed on restricted duty depending on the severity of the incident.
 - (b) The Learned Skills Unit will:
 - 1. Notify the involved employee's immediate supervisor regarding the incident.
 - 2. The training instructor will complete a UD/PD form and forward it to the Learned Skills sergeant.
 - 3. The Learned Skills sergeant will review the UD/PD form and make the determination on whether the firearms discharge was unintentional or preventable. The Learned Skills sergeant will prepare a memorandum addressed to the employee's immediate supervisor regarding the incident and send a copy to the Learned Skills Lieutenant.
 - 4. The Learned Skills Lieutenant will review the prepared memorandum and complete an Internal Affairs complaint and forward it to Internal Affairs.
 - (a) An unintentional or preventable discharge under this section shall be handled as a Class B investigation as outlined in General Order 902 Administrative Investigations. Internal Affairs will advise the involved officer's chain-of-command if the incident is eligible for the OFCA process.
 - (c) The Training commander will be notified as soon as practicable.
- (b) While Not in Training
 - 1. If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).
 - 2. If there is no injury or the injury is only to self:
 - (a) Employees will report the situation immediately and request their immediate supervisor to respond to the scene.
 - (b) If the unintentional discharge did not occur at a Department/City facility, Internal Affairs will be notified immediately or as soon as practical.
 - (c) Employees may be placed on restricted duty.
 - (d) The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
 - 1. An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System or Evidence.com.
 - 2. The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.
 - 3. The employee's chain-of-command will determine what, if any, corrective action is needed.
 - (e) If the incident occurs out of city, the proper law enforcement authority having jurisdiction must be notified. The employee's supervisor will coordinate with the agency responsible for any outside investigation.
 - (f) The Training commander will be notified as soon as practical.

202.9.2 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE OFF-DUTY

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while off-duty.

- (a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).
- (b) If there is no injury or the injury is only to self and the unintentional discharge involves a department used firearm:
 1. If the incident occurs:
 - (a) Within the City of Austin - Employees will report the situation and immediately request an on-duty supervisor to respond to the scene.
 - (b) Outside the City of Austin – The employee will report the situation immediately to their supervisor, and the proper law enforcement authority. The employee’s supervisor will coordinate with the agency responsible for any outside investigation.
 2. Internal Affairs will be notified immediately or as soon as practical.
 3. The involved employee(s) may be placed on restricted duty.
 4. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
 - (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System or Evidence.com.
 - (b) The employee's immediate supervisor has investigative responsibility for the incident.
 - (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
 5. The Training Commander will be notified as soon as practical.
- (c) If there is no injury or the injury is only to self, and the unintentional discharge involves a personally used firearm, whether inside or outside the City of Austin:
 1. Employees will report the situation immediately to their supervisor.
 2. The employee’s supervisor shall make a determination if Internal Affairs will be notified and if the incident should be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations).
 3. If Internal Affairs is notified of the unintentional discharge of a personally used firearm the incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
 - (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System or Evidence.com.
 - (b) The employee's immediate supervisor has investigative responsibility for the incident.
 - (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
 - (d) Employees may be placed on restricted duty.

202.9.3 PROCEDURES FOR FIREARMS SEIZED AS THE RESULT OF AN UNINTENTIONAL DISCHARGE

If a firearm has been seized by the involved officer’s chain of command, as a result of an unintentional discharge, the following procedures shall be adhered to.

- (a) **Department Issued Handgun** – In the event the involved officer’s department issued handgun is seized for a possible mechanical malfunction and turned over to the Training Academy for inspection, the following actions shall occur:
 1. The involved officer will be placed on an Administrative Duty status with their unit.
 2. The involved officer’s supervisor shall send an email notification to the Learned Skills sergeant and coordinate an inspection of the handgun.
 3. The Learned Skills sergeant shall confirm receipt of the email notification and ensure delivery of the firearm to the Training Academy

4. The Learned Skills sergeant shall ensure that an inspection is completed of the firearm as soon as practicable by the Learned Skills Unit at the Training Academy.
 5. If the handgun passes an inspection by the Learned Skills Unit:
 - (a) The Learned Skills sergeant shall facilitate the return of the firearm to the originating supervisor.
 - (b) Upon receipt of the handgun, the originating supervisor shall ensure the firearm is returned to the involved officer.
 - (c) The involved officer may return to Full Duty status.
 6. If the handgun does not pass an inspection by the Learned Skills Unit:
 - (a) The Learned Skills Unit shall replace the handgun as soon as practicable.
 - (b) Once replaced, the involved officer shall qualify with the replacement handgun as soon as practicable, and prior to returning to Full Duty status.
 - (c) Once the involved officer has successfully qualified with the replacement handgun, they may return to Full Duty status.
- (b) **Department Rifle, Department Shotgun, or Less-Lethal Shotgun** – In the event a department rifle, department shotgun, or less-lethal shotgun is seized for a possible mechanical malfunction and turned over to the Training Academy for inspection, the following actions shall occur:
1. The involved officer's supervisor shall turn the firearm over to the Property Control Office (PCO) at their substation, noting that the firearm requires an inspection by the Training Academy.
 2. The involved officer's supervisor shall send an email notification to the Learned Skills sergeant informing them of the firearm's location and that an inspection of the firearm is required.
 3. The Learned Skills sergeant shall confirm receipt of the email notification and ensure delivery of the firearm to the Training Academy.
 4. The Learned Skills sergeant shall ensure that an inspection is completed of the firearm as soon as practicable by the Learned Skills Unit at the Training Academy.
 5. If the firearm passes an inspection by the Learned Skills Unit:
 - (a) The firearm shall be returned to the originating PCO.
 - (b) The Learned Skills sergeant shall send an email notification to the originating supervisor indicating that the firearm has been returned.
 - (c) The involved officer's supervisor shall ensure the returned firearm is put back into service.
 6. If the firearm does not pass inspection:
 - (a) The Learned Skills sergeant shall notify the originating supervisor, and the originating PCO that the firearm has not passed an inspection and is being retained at the Training Academy.
 - (b) The Learned Skills Unit shall replace the retained firearm as soon as practicable.
- (c) **Personally Owned Rifle or Personally Owned Shotgun** – In the event a department used, personally owned rifle or personally owned shotgun require an inspection due to a possible mechanical malfunction, the involved officer's supervisor shall take the following actions:
1. The supervisor shall down the firearm from service immediately.
 2. The supervisor shall send an email notification to the Learned Skills sergeant indicating a department used, personally owned rifle or shotgun requires an inspection by the Learned Skills Unit, due to a possible mechanical malfunction.
 3. The supervisor shall coordinate with the Learned Skills sergeant the transfer of the firearm to the Learned Skills Unit for inspection.
 4. If the firearm passes an inspection:
 - (a) The Learned Skills sergeant shall notify the involved officer's supervisor that the firearm has passed inspection and that the firearm may be returned to service by the officer. The Learned Skills sergeant and the supervisor shall coordinate the return of the firearm.
 5. If the firearm does not pass inspection:

- (a) The Learned Skills sergeant shall notify the involved officer and the officer's supervisor that the firearm has not passed an inspection, and that the firearm may not be returned to service.
- (b) The Learned Skills sergeant shall notify the involved officer, and the officer's supervisor of:
 - 1. The measures needed to return the firearm to service, or;
 - 2. The necessary steps to remove and/or add a weapon to their weapons card at the Training Academy.
- (c) The involved officer should coordinate picking up the weapon with the Learned Skills Unit.

~~202.4.1 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE AT THE APD FIREARMS RANGE OR APPROVED FIREARMS TRAINING SITE~~

~~The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while at the APD firearms range or approved firearms training site.~~

~~DEFINITIONS:~~

~~**Unintentional Discharge**—The discharge of a firearm that the shooter did not intend to occur.~~

~~**Preventable Discharge**—An unintentional discharge that constitutes a gross deviation from Department training received prior to the incident or a discharge which exhibits a failure to exercise the care that a reasonably prudent employee would have exercised in similar circumstances.~~

- (a) ~~If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).~~
- (b) ~~If there is no injury or the injury is only to self:~~
 - 1. ~~Employees will report the discharge immediately to range personnel and request emergency medical assistance if needed.~~
 - (a) ~~The Learned Skills sergeant will be notified immediately.~~
 - (b) ~~Employees may be immediately disqualified and placed on restricted duty depending on the severity of the incident.~~
 - 2. ~~The Learned Skills Unit will:~~
 - (a) ~~Notify the involved employee's immediate supervisor regarding the incident.~~
 - (b) ~~The training instructor will completed an UD/PD form and forward it to the Learned Skills Sergeant.~~
 - (c) ~~The Learned Skills Sergeant will review the UD/PD form and make the determination on whether the firearms discharge was unintentional or preventable. He/she will prepare a memorandum addressed to the employee's immediate supervisor regarding the incident and send a copy to the Learned Skills Lieutenant.~~
 - 3. ~~If the discharge is determined to be unintentional the employee's chain-of-command will handle the inquiry.~~
 - 4. ~~If the discharge is determined to be preventable the incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):~~
 - (a) ~~The Learned Skills Lieutenant will review the prepared memorandum and complete an Internal Affairs complaint and forward it to Internal Affairs.~~
 - 5. ~~The incident will be reviewed by the Force Review Board after the internal investigation is complete.~~

~~202.4.2 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE ON DUTY~~

~~The following reporting guidelines will be followed when an on-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.~~

- (a) ~~If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).~~
- (b) ~~If there is no injury:~~
 - 1. ~~Employees will report the situation immediately and request their immediate supervisor to respond to the scene.~~

- ~~2. Employees may be placed on restricted duty.~~
- ~~3. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):~~
 - ~~(a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.~~
 - ~~(b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.~~
 - ~~(c) The employee's chain of command will determine what, if any, corrective action is needed.~~
- ~~4. The incident will be reviewed by the Force Review Board after the internal investigation is complete.~~

~~202.4.3 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE OFF-DUTY~~

~~The following reporting guidelines will be followed when an off-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.~~

- ~~(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).~~
- ~~(b) If there is no injury:~~
 - ~~1. Employees will report the situation immediately and request an on-duty supervisor to respond to the scene.~~
 - ~~2. Employees may be placed on restricted duty.~~
 - ~~3. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):~~
 - ~~(a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.~~
 - ~~(b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.~~
 - ~~(c) The employee's chain of command will determine what, if any, corrective action is needed.~~
 - ~~4. If the incident occurs out of city, the proper law enforcement authority having jurisdiction must be notified. The employee's supervisor will coordinate the investigation with the responsible agency.~~
 - ~~5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.~~