



INTERIM ORDER

SUBJECT: FIREARMS DISCHARGE BY UNIFORMED MEMBERS OF THE SERVICE		
DATE ISSUED:	REFERENCE:	NUMBER:
05-31-16	**P.G. 221-04, *P.G. 212-29, P.G. 221-22 AND P.G. 221-21	37

1. In order to properly record and evaluate incidents in which uniformed members of the service have discharged their firearms, Patrol Guide 212-29, "Firearms Discharge by Uniformed Members of the Service" has been revised.

2. Therefore, effective 0001 hours, June 1, 2016, Patrol Guide 212-29, "Firearms Discharge by Uniformed Members of the Service" is **SUSPENDED** and the following Patrol Guide procedure 221-04, "Firearms Discharge by Uniformed Members of the Service" will be complied with:

PURPOSE To record and evaluate incidents in which uniformed members of the service discharge firearms.

NOTE *A firearms discharge does not include a discharge during an authorized training session or while lawfully engaged in target practice or hunting. Additionally, it does not include a firearms discharge into a firearms safety station within a New York City Police Department facility, Department of Correction facility or Health and Hospital Corporation facility. See "ADDITIONAL DATA" for unintentional firearms discharge into a firearms safety station.*

PROCEDURE When a uniformed member of the service discharges a firearm, either on or off-duty:

- UNIFORMED MEMBER OF THE SERVICE**
1. Call for ambulance and render assistance to injured, if necessary.
 2. Request patrol supervisor, precinct of occurrence and safeguard the scene.

NOTE *If firearm is discharged outside New York City, uniformed member of the service concerned will promptly report discharge to local police authorities and the Operations Unit, either personally or by responsible messenger. Pursuant to the investigation of these incidents, investigating supervisors may use Department vehicles without obtaining prior permission, if responding outside the City but within the residence counties.*

- PATROL SUPERVISOR**
3. Respond to scene and assume command.
 4. Assess if involved members have sustained injuries.
 - a. Direct seriously injured members be transported to the nearest trauma center.
 - b. Direct members sustaining minor injuries (e.g., tinnitus, etc.) be transported to the nearest hospital after conferring with the commanding officer/duty captain, if available.
 5. Establish crime scene as per P.G. 212-04, "Crime Scene."

NOTE *The proper establishment and security of the crime scene is paramount to facilitate the investigation of the incident. In such, all involved vehicles (Department and private) must remain in their original positions at the time of the discharge. All precautions should be made not to alter their positions, which include doors that are ajar/closed.*

- | | |
|---|--|
| PATROL SUPERVISOR (continued) | 6. Secure and inspect firearms of members of the service involved for evidence of recent discharge. |
| | 7. Notify the desk officer. |
| | 8. Request the immediate response of the precinct detective squad through the desk officer. |
| | 9. Perform duties of the “immediate supervisor” as per <i>P.G. 221-03, “Reporting and Investigation of Force Incident or Injury to Persons During Police Action.”</i> |
| DESK OFFICER | 10. Notify precinct/police service area/transit district commanding officer/executive officer, Operations Unit, patrol borough command, Internal Affairs Bureau Command Center and precinct detective squad, without waiting for details. <ul style="list-style-type: none"> a. Ensure a supervisor is responding directly to the hospital where injured member is receiving treatment. |
| PATROL BOROUGH COMMAND | 11. Notify duty captain, duty inspector and Borough Investigations Unit, if available. |
| OPERATIONS UNIT | 12. Notify duty chief and the First Deputy Commissioner’s Force Investigation Division (FID). |
| COMMANDING OFFICER/ EXECUTIVE OFFICER/DUTY CAPTAIN | 13. Respond to the scene, confer with ranking supervisors, and assume command.
14. Confer with patrol supervisor, if on scene, prior to transportation of injured member, and direct injured member be transported to nearest trauma center/hospital, as appropriate. |
| DETECTIVE SQUAD MEMBER | 15. Immediately respond to scene, confer with ranking supervisors, and assume command of investigation. <ul style="list-style-type: none"> a. Ensure crime scene is properly established and make adjustments to the size of the crime scene, if necessary. b. Ascertain and secure witness(es) and video, if available. c. Transition all investigative steps taken to the FID personnel upon their arrival. |

NOTE *The FID investigator will coordinate the transition of the investigation with the precinct detective squad supervisor. The FID is responsible for all aspects of the Firearms Discharge Investigation, including the identifying, arrest processing, debriefing and enhancement of all suspects. Until arrival of an FID investigator, the highest ranking member of the Detective Bureau will be in command of the investigation.*

First Platoon Response: The FID Night Watch Team will lead the investigation with the assistance of the Detective Borough Night Watch Team and Internal Affairs Bureau (IAB) Group 9. Once FID resources are on the scene and operational, all investigative responsibilities will be transferred to FID.

**DUTY
INSPECTOR/
DUTY CHIEF**

16. Respond to the scene, confer with ranking supervisors, and assume command.

**FORCE
INVESTIGATION
DIVISION
SUPERVISOR**

17. Respond to scene, confer with detective squad supervisor and ranking patrol executives and assume command of the investigation.

18. Conduct investigative debriefing with all investigative units on scene to:

- a. Review investigative steps taken
- b. Develop an investigative plan
- c. Direct and coordinate all investigative activity.

19. Request the assistance of personnel assigned to the Detective Bureau, Internal Affairs Bureau, Deputy Commissioner, Public Information, Community Affairs Bureau, Deputy Commissioner, Legal Matters, etc., when appropriate.

20. Notify District Attorney's Office in all shooting cases.

- a. Confer with District Attorney before interviewing uniformed member(s) of the service.

NOTE

Unresolved issues with the District Attorney will be brought to the attention of the Commanding Officer, FID.

21. Interview:

- a. Witnesses
- b. Other persons involved
- c. Uniformed member of the service concerned, if appropriate.

22. Ensure patrol supervisor inspected firearms for evidence of recent discharge

- a. Have Firearms Analysis Section notified if firearm was discharged.

NOTE

If anyone was injured as a result of police firearms discharge, direct patrol supervisor to secure all weapons that were discharged. A member assigned to the FID will supply the discharging member with a temporary replacement firearm, if required, and transport the discharge firearm(s) to the Firearms Analysis Section.

23. If firearms discharge causes death or injury, assign uniformed member(s) of the service involved, temporarily, to patrol borough office of assignment, or counterpart, for a minimum of three consecutive scheduled tours (exclusive of sick time or regular days off).

24. Notify Operations Unit, patrol borough command and command of assignment, of details of investigation and temporary assignment of uniformed member concerned, if such assignment was made.

**COMMANDING
OFFICER,
FORCE
INVESTIGATION
DIVISION**

25. Upon completion of the firearms discharge investigation, prepare an initial report on **Typed Letterhead**, addressed to the First Deputy Commissioner, as per the *Force Investigation Division Manual*.

- a. Include findings as to whether firearms discharge was within or outside Department guidelines and whether the tactics used by the involved members of the service were consistent with Department guidelines, if investigation is completed, and,

INTERIM ORDER NO. 37

**COMMANDING
OFFICER,
FORCE
INVESTIGATION
DIVISION
(continued)**

- b. Include any recommendations, as per the following schedule:
- (1) FINDINGS
 - (a) Intentional discharge - no violation of Department firearms guidelines
 - (b) Intentional discharge - violation of Department guidelines
 - (c) Unintentional discharge - violation
 - (d) Unintentional discharge - no violation.
 - (2) RECOMMENDATIONS
 - (a) No corrective action to be taken
 - (b) Member concerned to review the law and instructions
 - (c) Member concerned to have additional firearms instructions
 - (d) Retraining in tactics re: _____
 - (e) Current assignment of member be reviewed
 - (f) Other (Command Discipline, Charges and Specifications, etc.) re: _____ .

NOTE

In many cases the investigating supervisor's determination about the shooting being "within/outside" the Department's guidelines will be reserved for the future when the investigation is completed (e.g., following the interview of uniformed member concerned [see P.G. 206-13, "Interrogation of Members of the Service,"] presentation to grand jury, or completion of a criminal trial.) However, other co-relative decisions will not be postponed. For example, regarding behavior or violations of Department guidelines, immediate action will be taken when the member's behavior is unusual (e.g., refer to Psychological Services, if appropriate) or derelictions are uncovered (e.g., initiate disciplinary actions). These actions will be described in the initial report.

26. Review and sign report.
- a. Forward original report with a copy to the First Deputy Commissioner, with additional copies for:
 - (1) Chief of Department
 - (2) Chief of Staff
 - (3) Deputy Commissioner, Legal Matters
 - (4) Deputy Commissioner, Training
 - (5) Deputy Commissioner, Internal Affairs
 - (6) Chief of Detectives
 - (7) Chief of Patrol
 - (8) Chief of Personnel
 - (9) Chief of Transportation, if appropriate
 - (10) Chief of Housing Bureau, if appropriate
 - (11) Chief of Community Affairs
 - (12) Office of Management Analysis and Planning
 - (13) Patrol Borough Commander
 - (14) Commanding officer, member concerned.

- COMMANDING/
EXECUTIVE
OFFICER OF
MEMBER
CONCERNED**
27. Conduct assessment of uniformed member(s) concerned, after initial investigation is completed.
 - a. Inquire about uniformed member's well-being.
 - b. Offer any assistance deemed appropriate including the services of the Counseling Services Unit, Employee Relations Section, Employee Assistance Unit (EAU) and Police Organization Providing Peer Assistance (POPPA).
 28. Conduct a follow-up assessment of the uniformed member concerned within twenty-four to forty-eight hours.
 - a. Observe uniformed member's post trauma reaction.
 - b. Repeat offer of the services of the Counseling Services Unit, Employee Relations Section, Employee Assistance Unit (EAU), and Police Organization Providing Peer Assistance (POPPA).

- COMMANDING
OFFICER,
FORCE
INVESTIGATION
DIVISION**
29. After three working days, prepare report on **Typed Letterhead** to First Deputy Commissioner, through channels, making recommendation regarding member of service's temporary assignment.
 - a. Recommend continuance or discontinuance, as appropriate.
 - b. Note whether member has been interviewed by members of the Medical Division and attended the tactical briefing at the Firearms and Tactics Section.

NOTE *Uniformed member(s) of the service involved in such incidents will not be returned to permanent command without prior approval of the First Deputy Commissioner.*

- COMMANDING
OFFICER,
FORCE
INVESTIGATION
DIVISION**
30. Conduct full investigative briefing for the Police Commissioner within seventy two hours of the incident.
 31. Prepare a final report within ninety days on **Typed Letterhead**, addressed to the First Deputy Commissioner, as per the *Force Investigation Division Manual*.
 - a. Include, in the final report, all information not available at the time of the initial report, and,
 - (1) Findings and recommendations
 - (2) Medical Examiner's report
 - (3) Ballistics report
 - (4) Department Gunsmith's report (accidental discharges)
 - (5) Synopsis of uniformed member(s) statements
 - (6) Statement that Communications Section tapes were audited and are consistent or not consistent with uniformed member(s)/witnesses' statements
 - (7) District Attorney/grand jury findings, if applicable
 - (8) Internal Affairs Bureau findings, if applicable.
 32. Compile data on firearms discharges for each year and complete **ANNUAL FIREARMS DISCHARGE REPORT** as outlined in the New York City Administrative Code and forward document to the Office of Management Analysis and Planning for release to the New York City Council, before the end of the second quarter of the following year.

**ADDITIONAL
DATA**

FIREARMS DISCHARGE BY UNIFORMED MEMBERS OF THE SERVICE

If a person is killed as a direct result of police action, the uniformed member of the service involved will not be assigned to identify the body at the morgue. Another uniformed member of the service, who can identify the body, will be assigned.

*While a firearms discharge into a safety station within a New York City Police Department facility, Department of Correction facility, or Health and Hospital Corporation facility is not considered a firearm discharge, it does require a report on **Typed Letterhead** by the uniformed member's commanding officer to the Police Academy, Firearms and Tactics Section outlining circumstances of the discharge.*

All uniformed members of the service who discharge a firearm, on or off duty, at other than an approved firing range or while lawfully engaged in target practice or hunting, will attend a tactics review session conducted by the Firearms and Tactics Section. The dates, times, locations, required equipment, and other provisions governing the review sessions will be the subject of a yearly Department directive.

**RELATED
PROCEDURES**

Crime Scene (P.G. 212-04)

Repair/Replacement of Authorized Firearms (P.G. 204-12)

Reporting and Investigation of Force Incident or Injury to Persons During Police Action (P.G. 221-03)

Line of Duty Injury or Death Occurring Within City (P.G. 205-05)

Line of Duty Injury or Death - Outside City in Residence Counties (P.G. 205-06)

Trauma Counseling Program (P.G. 205-08)

Interrogation of Members of the Service (P.G. 206-13)

Removal and Restoration of Firearms (P.G. 206-17)

**FORMS AND
REPORTS**

***THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)
Typed Letterhead***

3. Effective 0001 hours, June 1, 2016, Patrol Guide 221-22, "Traffic Enforcement Agent Victim of an Offense While Performing Duty" is amended as follows:

- a. **DELETE** step "**10**," opposite actor "TRAFFIC ENFORCEMENT DISTRICT SUPERVISOR," on page "**2**".
- b. **ADD** new step "**10**," opposite actor "PATROL SUPERVISOR," on page "**1**" to read:

**"PATROL
SUPERVISOR**

10. Prepare THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154), if investigation reveals harassment, assault, reckless endangerment, or menacing against a traffic enforcement agent and comply with P.G. 221-06, 'Member of the Service Subjected to Force While Performing Lawful Duty'.

- c. **REVISE** "**RELATED PROCEDURES**," on page "**2**" to read:

**"RELATED
PROCEDURES**

**Member of the Service Subjected to Force While Performing Lawful Duty (P.G. 221-06)
Aided Cases - General Procedure (P.G. 216-01)**

INTERIM ORDER NO. 37

RELATED PROCEDURES (continued)

Vehicle Collisions - General Procedure (P.G. 217-01)
Civilian Member - Injury (A.G. 319-15)

d. **REVISE** “FORMS AND REPORTS,” on page “2” to read:

“FORMS AND REPORTS

WITNESS STATEMENT - INJURY TO MEMBER OF THE DEPARTMENT (PD429-065)
COMPLAINT REPORT WORKSHEET (PD313-152a)
AIDED REPORT WORKSHEET (PD304-152b)
THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)”

4. Effective 0001 hours, June 1, 2016, Patrol Guide 221-21, “School Safety Agent – Victim of an Offense While Performing Duty” is amended as follows:

a. **REVISE** step “16,” opposite actor “PRECINCT SCHOOL SAFETY SERGEANT/PATROL SUPERVISOR,” on page “2” to read:

“PRECINCT SCHOOL SAFETY SERGEANT/PATROL SUPERVISOR

16. Prepare THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154), if investigation reveals harassment, assault, reckless endangerment, or menacing against a school safety agent and comply with P.G. 221-06, ‘Member of the Service Subjected to Force While Performing Lawful Duty’.”

b. **REVISE** “RELATED PROCEDURES,” on page “3” to read:

“RELATED PROCEDURES

Member of the Service Subjected to Force While Performing Lawful Duty (P.G. 221-06)
Aided Cases - General Procedure (P.G. 216-01)
Vehicle Collisions - General Procedure (P.G. 217-01)
Civilian Member - Injury (A.G. 319-15)”

c. **REVISE** “FORMS AND REPORTS,” on page “3” to read:

“FORMS AND REPORTS

WITNESS STATEMENT - INJURY TO MEMBER OF THE DEPARTMENT (PD429-065)
COMPLAINT REPORT WORKSHEET (PD313-152a)
AIDED REPORT WORKSHEET (PD304-152b)
THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)
Commanding Officer’s Report of Injury (Form E)
Employee Option Form (DP2002)
Employee’s Notice of Injury (Law Department Form WCD23)
Supervisor’s Report of Injury (Law Department Form WCD201)
Police Accident Report (MV104AN)
Typed Letterhead”

5. Effective 0001 hours, June 1, 2016, Patrol Guide 212-29, "Firearms Discharge by Uniformed Members of the Service" is OBSOLETE and hereby **REVOKED**.

6. Effective 0001 hours, June 1, 2016, **REVISE** references to Patrol Guide 212-29, "Firearms Discharge by Uniformed Members of the Service" and Patrol Guide 212-29, "Firearms Discharge and Assaults Involving Uniformed Members of the Service" in Patrol Guide 204-19, 205-05, 205-08, 205-40, 221-23, 221-10, Administrative Guide 316-45, Detective Guide 506-02, and wherever they appear in the Department Manual to read:

"Patrol Guide 221-04, "Firearms Discharge by Uniformed Members of the Service"

7. Effective 0001 hours, June 1, 2016, Department form "**FIREARMS DISCHARGE/ ASSAULT REPORT (PD424-151)**" is hereby **REVOKED**.

8. Effective 0001 hours, June 1, 2016, **REVISE** references to Department form "**FIREARMS DISCHARGE/ASSAULT REPORT (PD424-151)**" in Patrol Guide 205-08, 205-39, 205-40, Administrative Guide 320-27, 322-13 and wherever else it appears in the Department Manual to read:

"THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)"

9. Effective 0001 hours, June 1, 2016, Department form "**PARKING ENFORCEMENT DISTRICT H.A.R.M. REPORT (PD313-1515)**" is hereby **REVOKED**.

10. Effective 0001 hours, June 1, 2016, **REVISE** Department form "**PARKING ENFORCEMENT DISTRICT H.A.R.M. REPORT (PD313-1515)**" wherever else it appears in the Department Manual to read:

"THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)"

11. Effective 0001 hours, June 1, 2016, this Interim Order will be incorporated into the On-Line Patrol Guide, On-Line Administrative Guide and On-Line Detective Guide.

12. Any provisions of the Department Manual or any other Department directive in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION

All Commands

INTERIM ORDER NO. 37