

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED
JUN 25 2002
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

In the Matter of:)	
)	
)	Administrative Order
ARIZONA CODE OF JUDICIAL)	No. 2002- <u>70</u>
ADMINISTRATION §6-113:)	
FIREARMS STANDARDS)	
_____)	

The above captioned provisions having come before the Arizona Judicial Council on March 14, 2002, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) §§12-251, -253, 13-916, 8-203 and -205

IT IS ORDERED that the above captioned provisions, attached hereto, are adopted as a section of the Arizona Code of Judicial Administration.

IT IS FURTHER ORDERED that the implementation of this code section begin immediately and continue until all provisions are fully implemented, based upon a schedule adopted by the Administrative Director of the Administrative Office of the Courts (director).

IT IS FURTHER ORDERED that the implementation schedule provide for phased implementation of this code section based upon the availability of funds and priorities established by the director and that the highest priority be given to the safety of those staff positions at the highest risk.

IT IS FURTHER ORDERED that the officers currently employed and firearms certified through the Pima County Adult Probation Department are considered firearms certified under this Code Section. Requalification and practice standards outlined in this code section shall apply to these officers.

IT IS FURTHER ORDERED that AOC staff report back to the council at future meetings regarding progress made in implementing this code section.

Dated this 25th day of June, 2002.



 CHARLES E. JONES
 Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 6: Probation

Chapter 1: General Administration

Section 6-113: Firearms Standards

A. Definitions. In this section the following definitions apply:

“Certified firearms instructor” means an individual trained by a recognized agency in accordance with national law enforcement firearms training standards and approved by the Administrative Office of the Courts (AOC).

“Firearms automated training system” means a system which visually presents situations the officer may encounter in the officer’s duties and requires the officer to make use-of-force decisions relating to the use of a firearm.

“Immediate threat” means the subject poses a risk of instant harm or attack with the elements of jeopardy, opportunity and ability.

“Life-threatening circumstances” means actions which may cause serious bodily injury or death.

“Low light condition” means firearms training conducted in situations either natural or simulated, designed to expose officers to situations they may encounter while working at night or in reduced light situations.

“On duty” means the time period during which the officer is involved in performing the officer’s respective probation duties or functioning at the direction of the officer’s respective probation department.

“Off duty” means the time period during which the officer is not involved in performing the officer’s respective probation duties or functioning at the direction of the officer’s respective probation department.

“Officers” means both adult and juvenile probation and surveillance officers.

“Tactical condition” means a training which involves the officer’s appropriate use of a firearm in training involving the use of distance, shielding and movement, and other issues the officer may encounter during the course of duty.

B. Applicability. Officers of the probation departments with the authority of peace officers pursuant to A.R.S. §§12-253, 13-916, 8-205 and Arizona Code of Judicial Administration (ACJA) §6-105, may carry and use firearms while on duty only if authorized by the chief probation officer or director of juvenile court and under the terms and conditions specified in this section.

C. Purpose. To govern the administration and authority of officers to use firearms.

D. General Policy. Officers shall use a firearm for defensive purposes only, under the following conditions:

1. Officers shall not carry any firearm on the officer's person, or have any firearm in the office or job location or in the officer's vehicle, while on official business except with prior approval and authorization of the chief probation officer or director of juvenile court.
2. Chief probation officers or directors of juvenile court may require that certain job assignments are staffed by an armed officer. Examples include, but are not limited to, warrants teams or specialized caseloads.
3. Chief probation officers or directors of juvenile court shall determine when officers authorized to carry a firearm are restricted from carrying in certain job assignments or in the performance of certain duties.
4. Chief probation officers or directors of juvenile court shall not order a staff member to be armed. Chief probation officers or directors of juvenile court may require the transfer of an unarmed officer to another job assignment if the current assignment requires an armed officer.

E. Request for Authorization to Carry Firearm.

1. Officers wishing authorization to carry a firearm or who desire training on firearms shall submit a written request to the chief probation officer or director of juvenile court and submit to the following screening and testing requirements.
2. The chief probation officer or director of juvenile court shall confirm that the requesting officer has done the following prior to granting authorization:
 - a. Completed a psychological evaluation by a psychologist or psychiatrist selected by the department;
 - b. Completed a criminal history records check;
 - c. Completed the Committee on Probation Education (COPE) approved firearms qualification program with a minimal standard score of 80% conducted by an AOC certified firearms instructor with the firearm intended for use;
 - d. Successfully completed a COPE approved competency test and training course on ACJA Firearms Standards 6-113 and Use of Force 6-112, department policies and legal issues relating to firearms;

- e. Completed and demonstrated proficiency in all required defensive tactics training;
- f. Submitted an AOC approved medical evaluation form completed by a licensed physician which indicates whether the officer has a listed medical or health condition including a physical disability which substantially impairs the officer's ability to responsibly carry a firearm or interferes with the safe use of or handling of a firearm; and
- g. Submitted an AOC approved form to be completed by the officer attesting;
 - (1) The officer has no medical, psychological, or health condition including a physical or mental disability which substantially impairs the officer's ability to responsibly carry a firearm or interferes with the safe use of or handling of a firearm.
 - (2) The officer is not addicted to alcohol or prescription drugs.
 - (3) The officer does not use unlawful narcotics or drugs.
 - (4) The officer agreed to submit to random drug tests if authorization is granted.
 - (5) The officer will abide by all department policy regarding firearms.
- 3. The chief probation officer or director of juvenile court may require that the requesting officer submit to an AOC approved polygraph examination.
- 4. Within 30 days, the chief probation officer or director of juvenile court shall act on the request for initial authorization by initiating arrangements for the probation officer to undergo the necessary tests, evaluations, checks and training.

F. Required Firearms Training and Qualifications.

- 1. COPE shall approve a uniform, standardized and statewide firearms qualification program and annual re-qualification that is developed by the AOC probation safety specialist in conjunction with the probation department certified firearms instructors.
- 2. The certified firearms instructor shall provide firearms training that meets the following minimum standards.
 - a. Annual training in:
 - (1) Low light conditions;
 - (2) Tactical conditions; and
 - (3) Firearms automated training system.
 - b. The certified firearms instructor shall provide all required instruction on the safe and effective use of department firearms.
- 3. Departments shall provide range equipment including eye and ear protection for use during training and qualifications.

4. Officers shall comply with all directives of the certified firearms instructor concerning firearms training and safety.
5. The certified firearms instructors shall prepare and submit a quarterly firearms qualification report in a format specified by the AOC to the chief probation officer or director of juvenile court and AOC.
6. An officer's direct supervisor may authorize the officer to use the department issued firearm for practice while off duty on a departmentally approved range.
7. The certified firearms instructor shall confiscate and take control of the firearm of any officer who exhibits inappropriate or unsafe behavior while on the range or of any firearm determined to be unsafe.

G. Procedures for Authorization or Denial.

1. The chief probation officer or director of juvenile court may deny authorization at any point in the screening and testing process based on the criteria stated in G(4)(a-t).
2. The chief probation officer or director of juvenile court shall approve or disapprove the request in writing within 30 days after the officer satisfactorily completes all requirements stated in E(2)(a-g). Reasons for denial shall be provided to the officer in writing.
3. The chief probation officer or director of juvenile court or designee shall place the original request and the approval or reasons for denial in the officer's personnel file and provide copies to the officer, and to the officer's supervisor. The certified firearms instructors shall receive a copy of all approvals.
4. The chief probation officer or director of juvenile court shall not deny, revoke or temporarily suspend authorization to carry a firearm except for the following reasons:
 - a. Results from the psychological evaluation that indicates unfitness to carry a firearm;
 - b. The officer is currently diagnosed by a licensed mental health professional with a mental illness that may affect the use of firearms;
 - c. The denial or revocation of a permit to carry a concealed weapon by the State of Arizona;
 - d. A result from a criminal history record check indicating any or all of the following:
 - (1) The conviction of a felony or an offense which would be a felony if committed in this state;
 - (2) The commission of any offense involving dishonesty, unlawful sexual conduct, physical violence or domestic violence;

- (3) The violation of A.R.S. §13-3112, concealed weapons permit or statutes governing firearms or lethal and non-lethal weapons; and
 - (4) The commission of a misdemeanor involving the carrying or use of a firearm.
- e. The violation of departmental policy or ACJA relating to the carrying or use of firearms;
 - f. Carrying, exhibiting, or using a firearm in an unsafe or careless manner;
 - g. Disciplinary charges pending or action taken that relate to the fitness to carry a firearm;
 - h. Any use of alcoholic beverages on duty or excessive use of alcoholic beverages off duty that affects performance of job;
 - i. The administrative reassignment of officers as a result of a certified stress related disorder or post traumatic stress disorder as diagnosed by a licensed mental health professional that may affect use of firearms;
 - j. A medical, psychological, or health condition including a physical or mental disability which substantially impairs the officer's ability to responsibly carry a firearm or interferes with the safe use of or handling of a firearm;
 - k. The addiction to alcohol or prescription drugs that would interfere with the safe use of a firearm and render the officer unfit to carry a firearm;
 - l. Officers shall not have illegally used dangerous drugs or narcotics for any purpose within the past seven years;
 - m. Officers have not illegally used marijuana for any purpose within the past three years;
 - n. Transfer or reassignment of officers to an assignment or unit where carrying a firearm is not authorized pursuant to D(3) of this code section;
 - o. The authorization was based solely upon a specific personal risk to officers and the risk is determined to no longer exist;
 - p. Arrest for an offense punishable as a felony or for a misdemeanor involving the carrying or use of a firearm;
 - q. Discharge of a firearm by an officer in violation of any municipal, county or state law, regulation or policy;
 - r. Drawing a firearm or use of a non-lethal defensive weapon in violation of any municipal, county or state law, regulation or policy;

- s. Any other circumstance temporary or permanent which leads the chief probation officer or director of juvenile court to believe that the arming of the officer could place that officer, other staff, probationers, or the public in jeopardy; or
 - t. Failure to successfully complete the annual re-qualification program and participate in required practice sessions.
5. All screening and testing records shall be maintained in the officer's personnel file and be confidential as required by law.
 6. The presiding judge shall hear all appeals to the denial, revocation or suspension and the judicial decision is final and not appealable.
 7. Officers wishing to have their authorization reinstated after revocation may submit a written request to the chief probation officer or director of juvenile court after one year. This written request shall clearly state the reasons why the authorization should be reinstated. The presiding judge or judicial designee shall hear any appeals to the denial of reinstatement.

H. Authorization.

1. Officers granted authorization to carry a firearm shall acknowledge and sign an authorization document indicating the officer understands the terms and conditions contained in the code and any department policy regarding the use of firearms. The authorized officer shall also agree to adhere to all state laws regarding the carrying and use of firearms. This includes all laws relating to the use of force.
2. Officers failing to comply with regulations and limitations are subject to disciplinary action and loss of firearm authorization.
3. Officers granted authorization to carry a firearm shall successfully complete the annual re-qualification and participate in all required practice sessions.
4. The chief probation officer or director of juvenile court may order an authorized officer to submit to an evaluation by a licensed or certified professional when it is apparent that the officer manifests behavior that indicates a physical, medical, psychological, or psychiatric condition that indicates unfitness to carry a firearm.

I. Restrictions for Carrying Firearms. Officers authorized to carry and use a weapon on duty are prohibited from carrying department issued firearms under the following conditions:

1. While in a condition resulting from the use of alcohol or medication where the officer's motor skills, reflexes, or judgment could be adversely affected or while displaying evidence of mental or emotional instability;

2. While injured or in a physical condition causing inability to use a firearm properly, for example, broken hand or an eye injury causing uncorrected impaired vision. This is not intended to limit an authorized officer's ability to defend oneself during the incident or others when injuries are incurred in a life threatening situation;
3. While on disciplinary or investigative suspension;
4. While on leave, short term or extended, with or without pay, or other periods of unpaid absence from the department;
5. When the chief probation officer, director of juvenile court, or other superior directs the officer not to carry a firearm;
6. When the chief probation officer or director of juvenile court revokes the authorization to carry; and
7. When engaged in official travel out of state unless written permission is obtained from the chief probation officer or director of juvenile court.

J. Authority to Unholster, Draw and Display Firearms.

1. Officers shall only draw their duty weapon from its holster, or display it in public, under the following conditions:
 - a. In compliance with department policy regarding firearm concealment or exposure;
 - b. The circumstances surrounding the incident create a reasonable belief that it may become necessary to use the firearm in the performance of probation supervision duties or for self defense;
 - c. When a law enforcement officer requests assistance from an officer in a life-threatening situation; and
 - d. For maintenance, inspection and training purposes.
 - (1) Officers shall ensure that the weapon is empty of ammunition prior to cleaning or inspection.
 - (2) Whenever using the weapon in an approved training course, practice session or qualification with the certified firearms instructor.

K. Required Reporting of Firearm Unholstering, Drawing, or Displaying of Firearm in Course of Duty.

1. Officers who unholster, draw, or display but does not discharge a firearm while on duty, other than to secure the weapon or when requested by the certified firearms instructor for maintenance, inspection, or training purposes, shall submit an incident report to their supervisor no later than the next business day.
2. Officers who witness this behavior shall submit an incident report to their supervisor no later than the next business day.
3. The supervisors shall immediately send the incident report through the departmental chain of command to the chief probation officer or director of juvenile court.
4. Failing to comply with reporting requirements may be subject to disciplinary actions.

L. Authority to Discharge Firearm.

1. An officer shall determine that deadly force is warranted under the circumstances provided by statute before using deadly force in the performance of the officers duties.

- a. A.R.S. §13-410(A)(1) provides:

The threatened use of deadly physical force by a person against another is justified pursuant to §13-409 only if a reasonable person effecting the arrest . . . would believe the suspect . . . is:

(1) Actually resisting the discharge of a legal duty with deadly force or with the apparent capacity to use deadly physical force.

- b. A.R.S. §13-410(C)(1)(2)(a)(b)(c)and(d) provides:

The use of deadly force by a peace officer against another is justified pursuant to §13-409 only when the peace officer reasonably believes that it is necessary:

1. To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.

2. To effect an arrest . . . of a person whom the peace officer reasonably believes:

- (a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or threatened use of a deadly weapon.

- (b) Is attempting to escape by use of a deadly weapon.

(c) Through past or present conduct of the person that is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

(d) Notwithstanding any other provision of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of force or deadly physical force.

2. Officers are prohibited from performing the following acts:
 - a. Drawing or displaying a weapon unless the situation poses a threat that may warrant the use of the weapon;
 - b. Firing warning shots;
 - c. Firing in the immediate direction of a crowd;
 - d. Firing into buildings or through doors or windows, when the subject is not clearly visible;
 - e. Using firearms to protect property;
 - f. Discharging firearms to apprehend a fleeing offender;
 - g. Firing at a moving vehicle unless it is necessary to protect oneself or others against immediate threat of death or serious physical injury; or
 - h. Firing at an animal unless justified in preventing substantial harm to oneself or another.
3. Officers may use firearms on an approved range, or during other approved training, practice or qualification when supervised by the probation department certified firearms instructor or other department-approved training.

M. Investigation of Discharges and Call-Out Procedures.

1. Departments and the appropriate law enforcement agency shall investigate any discharge of a firearm. The improper use of a firearm may result in sanctions or criminal or civil action.
2. In an administrative investigation of weapons discharge the first non-involved responding officer shall:
 - a. Preserve the firearm in a condition as close as possible to the condition when the discharge took place;

- b. Take care not to destroy or add fingerprints;
 - c. Work the mechanisms of the firearm only enough to render it to a safe condition;
 - d. Record exactly what is done with the firearm and report it to the investigating law enforcement agency; and
 - e. Secure the weapon in the trunk of a vehicle until it is surrendered to investigating officers.
3. The responding officer shall immediately give all information gathered to the site commanding officer of the shooting inquiry team and incident investigator of the law enforcement agency conducting the investigation.
4. The probation department shall assign a staff member to aid and assist the officer if the discharge of the officer's firearm results in the wounding or death of a person or persons.
5. The chief probation officer or director of juvenile court shall ensure that when the officer's weapon is held as part of an investigation, a replacement firearm is issued as soon as is reasonable unless authorization to carry a firearm has been revoked or temporarily suspended.
6. AOC shall review each department's policies and procedures for the investigation of all firearm discharges or firearm involved incidents. Which shall include at a minimum:
 - a. Direction as to who should be notified;
 - b. Direction as to who should be called to the scene;
 - c. Notification to AOC and appropriate law enforcement;
 - d. Notification to county and state risk management;
 - e. Notification to county attorney and attorney general;
 - f. Establishment of a critical incident response team;
 - g. Notification of a critical incident response team representative or representatives; and
 - h. Procedures to place an officer on administrative leave following a shooting or discharge.
7. The chief probation officer or director of juvenile court or designee shall handle all media and family inquiries.

N. Shooting Inquiry Board.

1. The chief probation officer or director of juvenile court shall appoint a shooting inquiry board within 20 days of the incident.
2. The shooting inquiry board shall convene for the purpose of revealing the facts in each instance of a discharge.
3. The shooting inquiry board shall consist of:
 - a. Two members of the probation department not involved in the incident, appointed by chief probation officer or director of juvenile court;
 - b. One member of a law enforcement agency, not the investigative officer, appointed by the chief probation officer or director of juvenile court;
 - c. One representative of the officer from the department, not involved in the incident;
 - d. One representative not involved in the incident, appointed by the presiding judge, from either inside or outside the probation department; and
 - e. The AOC probation safety specialist.
4. The shooting inquiry board shall review the investigation of the shooting and determine the facts surrounding the incident, interview witnesses, and when necessary, request the chief probation officer or director of juvenile court to assign investigators.
5. The board shall issue a written report to the chief probation officer or director of juvenile court at the conclusion of its review containing the following:
 - a. A brief summary of the incident, as determined by the facts presented to the board;
 - b. The board's opinion of whether the discharge complied with department policy and ACJA;
 - c. Determination if the action of the officer was reasonable, safe, and necessary;
 - d. Any minority opinion of a member, in the event that the board's opinion is not unanimous; and
 - e. The signature of each board member.
6. The chief probation officer or director of juvenile court shall have the authority to administer any discipline or remedial measures according to the local judicial merit system.

7. The chief probation officer or director of juvenile court shall forward a copy of the shooting inquiry board's report to the AOC probation safety specialist along with the actions taken by the chief probation officer or director of juvenile court.

O. Authority to Carry and Use Concealable Firearms While Off Duty.

1. Officers authorized to carry and use issued firearms and ammunition on duty may request in writing separate authorization from the chief probation officer or director of juvenile court to carry and use the issued firearm and ammunition off duty. Approval or denial of a request to carry off duty shall be in writing and placed in the officer's personnel file and shall be based on a specific personal risk or need to immediately respond based on assignment.
2. Officers authorized to carry and use firearms while off duty shall comply with all laws and regulations and ACJA code sections concerning the carrying of firearms.
3. Officers who are carrying off duty without written authorization pursuant to this code section, shall be deemed to be acting outside the course and scope of employment and to be acting completely independently from the county or state.
 - a. The county and state assume no responsibility or liability for those actions.
 - b. Any liability arising from such possession or use of a firearm shall be the sole, individual liability of the officer.
4. Officers shall not carry department issued firearms while working secondary employment.

P. Authorized Firearms, Ammunition and Holsters.

1. Officers may only carry and use the firearms and ammunition that are approved by the AOC as their duty weapons.
 - a. The certified firearms instructor shall record the firearm serial number with the probation department.
 - b. The department shall maintain records of all firearms carried by on duty officers.
 - c. Officers shall only alter the firearm with personalized grips or grip adapters. Only probation department approved armorers shall make adjustments to the firearm.
 - d. All safety devices on the firearm provided by the manufacturer shall be intact and functioning at all times.
 - e. Officers may use another officer's firearm in the case of a life-threatening emergency.

- f. Officers may only use another firearm on the range, under the direct supervision of a certified firearms instructor.
2. The chief probation officer or director of juvenile court shall approve holsters for the authorized firearms. The department shall issue holsters that meet the following guidelines:
 - a. Readily concealable;
 - b. Properly fit the firearm;
 - c. Contain a thumb break; and
 - d. Contain a trigger guard.
3. Officers shall qualify with the approved holster or holsters prior to initiating use and upon re-qualifying.
4. The certified firearms instructor shall ensure that only factory ammunition is used. The use of reload ammunition is prohibited.
5. Officers shall only carry the approved and authorized firearm.
6. Officers shall have in their possession their department issued badge, identification card and firearms authorization card whenever carrying a firearm.
7. Officers shall ensure that the firearm is fully loaded when it is carried or worn.
8. The chief probation officer or director of juvenile court may grant approval for an officer on official business to carry an issued firearm when traveling. If permission is granted, the officer shall follow all federal, state and local laws and regulations. The officer shall also comply with the carrier's requirements. Any such approval must be in writing with a copy carried by the officer while traveling.

Q. Firearms Safety and Storage.

1. Officers authorized to carry firearms shall observe and practice the following safety regulations:
 - a. All firearms shall be handled safely and treated as a loaded firearm until the handler has personally proven otherwise;
 - b. Officers shall only dry-fire, clean, exhibit, load or unload in a safe manner and environment;
 - c. Officers shall ensure that any unholstered firearm that is brought into a probation department facility is unloaded; and

- d. Officers shall ensure that firearms equipped with safety devices are carried in a "safe" position.
2. Officers shall ensure that the holstered firearm and ammunition are stored in a designated safe and locked place that is not accessible to unauthorized persons when not carrying or wearing the firearm.
 - a. Officers shall not keep firearms in the office overnight unless secured in a department approved firearms storage unit.
 - b. Officers shall not store firearms overnight in any vehicle.
 - c. The department shall issue a trigger lock for all department issued firearms.
 - d. Officers shall ensure that firearms are kept in a secure and safe place where it is not accessible to other individuals, particularly children.
 - e. On-duty armed officers not wanting to carry a firearm into a residence or public building, shall temporarily store the firearm in a locked automobile trunk or glove compartment.
 - (1) Officers shall ensure that the automobile is locked if the firearm is stored in a glove compartment or if the trunk is accessible through the passenger area.
 - (2) Officers shall exercise care that the placement of the firearm in the glove compartment or trunk is not observed by the public.
 - (3) The chief probation officer or director of juvenile court may approve alternative arrangements, such as secure lock boxes under the seat.
 - f. Officers shall follow facility procedures for safekeeping and temporary storage of their firearm, ammunition and other prohibited items at all correctional and court facilities.
3. Officers failing to comply with the safety and storage regulations may result in disciplinary action which may include the loss of authorization to carry a firearm.

R. Stolen or Lost Firearm.

1. Officers shall immediately file a report with local law enforcement upon discovery that a firearm is missing.
2. Officers shall immediately report a stolen or lost firearm to the supervisor, who will in turn notify the chief probation officer or director of juvenile court.
3. Officers shall provide a written report to the supervisor no later than the close of that business day. The supervisor shall review the report and forward it to the chief probation officer or director of juvenile court.

4. The chief probation officer or director of juvenile court shall discipline an officer who is found negligent in the loss of their department issued weapon. The discipline shall minimally consist of a letter of reprimand.
5. Officers shall reimburse the county or state in the event that a probation department firearm and related equipment is lost or damaged through negligence.

S. Firearm Care and Maintenance.

1. Officers shall be responsible for cleaning and inspection of their issued firearm.
2. Officers shall not clean firearms in the probation department.
3. Officers shall present the firearm to the certified firearms instructor for inspection upon the instructor's request.