

## **Rules and Procedures**

### **Rule 311**

**July 24, 2001**

#### **Rule 311 - PROCEDURES FOR HANDLING FIREARMS EVIDENCE**

This rule is re-issued to establish the Department policy and procedure for safeguarding, disposal of, and/or destruction of firearms and ammunition that come into Department custody. It is effective immediately, superseding all previously issued rules, orders, bulletins and other directives concerning evidence and custody.

Sec. 1 General Considerations: Department personnel shall be especially vigilant in their attention to the details of the procedures established by this rule for the handling of firearms. The purpose of this rule is to:

1.1 Insure the continuity of evidence for the prosecution of cases in which firearms or ballistic evidence is involved.

1.2 Insure that every firearm discharged by a member of this Department, except when in training or practice, is examined by a Firearms Analysis Examiner Unit Firearms Toolmark Examiner (FTE); and

1.3 Insure proper control of all firearms coming into the possession of Department personnel for any reason.

Sec. 2 Definitions: For the purposes of this rule, the word "firearm" shall mean "firearm" as defined in G.L. c. 140 § 121 (including pistols, firearms, certain shotguns, air pistols and machine guns), as well as any instrument capable of discharging a bullet or shot or toy-guns, replicas or starter's pistols.

For the purpose of this rule, "ammunition" shall include cartridges or cartridge cases, primers, bullets or propellant powder designed for use in any firearm, rifle or shotgun. Ammunition shall not include chemical mace, pepper spray or other such aerosol propellant designed to temporarily disable.

Sec. 3 Firearms Coming into the Possession of Police Officers: Whenever a firearm comes into the possession of a police officer, the officer shall complete an Incident Report, a Firearm Submission Form (BPD Form 2419), and the Firearms Analysis Examiner Unit Control Log. A description of the firearm (including serial number) and any ammunition recovered, as well as notice of whether the person found in possession of the firearm is licensed to carry a firearm under G.L. c. 140 § 131 or possesses a Firearms Identification Card under G.L. c 140 § 129B, shall be included in the Incident Report whenever such information shall not jeopardize an

investigation. In addition, the Duty Supervisor or designated superior officer shall record the firearm recovery in the District/Unit Firearms Control Log.

Officers shall handle all firearms and ammunition in a safe manner, being mindful that all recovered firearms, magazines and ammunition are processed for fingerprint evidence. The Duty Supervisor or designated Superior Officer shall secure the firearm in the gun locker at the district of occurrence. An officer designated by the day tour Duty Supervisor shall deliver the firearm, along with a copy of the Incident Report to the Firearms Analysis Examiner Unit. Under no circumstances shall a firearm or other ballistic evidence be released to an outside agency until the Firearms Analysis Examiner Unit has examined it. Once the Firearms Analysis Examiner Unit has examined the evidence, it may be released to an outside agency for examination only by a court order, order of the Police Commissioner, or order of the Commander of the Firearms Analysis Examiner Unit.

In all incidents involving a firearm in the City of Boston, the Duty Supervisor or designated superior officer shall forward a copy of the Incident Report to the Commander, Licensing Unit. The Duty Supervisor shall also forward all License to Carry Firearms and Firearm Identification Cards that come into the possession of the Department to the Commander, Licensing Unit. The Commander, Licensing Unit shall review the circumstances regarding the firearm incident and take necessary action available under the law regarding the status of the license. If the license is issued outside the City of Boston, the Commander, Licensing Unit shall forward the license and supporting documentation to the appropriate licensing authority.

Sec. 4 Receipt of Firearms Discharged by Department Personnel: Upon receipt of a Department issued firearm, or personal firearm that has been discharged by a police officer in any such circumstances outlined in Rule 303, §§ 10 and 11, the Firearms Analysis Examiner Unit FTE shall retain the firearm for test purposes. If no person or property has been struck as a result of a discharge, the FTE shall immediately test-fire the firearm and retain one or more bullets for comparison purposes.

If a person has been struck or property damaged as a result of a discharge, the Firearms Analysis Examiner Unit FTE shall retain the firearm as long as necessary to complete the investigation(s). All firearms shall be retained by the Firearms Analysis Examiner Unit until such time as the Police Commissioner authorizes, in writing, that the firearm may be returned to the officer. After completion of the investigation(s) the firearm shall be returned as soon as possible to the officer involved in the discharge. When appropriate, a different firearm shall be issued to the officer and the records shall be so amended. The department Range Master or designee will issue and maintain all department firearms. When appropriate, the department Range Master or designee shall temporarily issue a spare firearm. Whenever a spare firearm is issued, a receipt shall be obtained and a proper entry made in the gun locker inventory book. Any firearm, including a police officer's, that is temporarily stored in the gun locker, shall be clearly identified by a tag.

Sec. 5 Firearm Examination: The Firearms Analysis Examiner Unit shall be responsible for examining all firearms and ammunition that come into the custody of the Boston Police Department. All firearms received by the Firearms Analysis Examiner Unit shall be entered into the National Crime Information Center (NCIC), for record purposes and query. All firearms received by the Firearms Analysis Examiner Unit shall be test fired, and all cartridge cases and projectiles shall be submitted for examination and the results shall be logged into appropriate computerized systems (e.g., IBIS and Drugfire).

Sec. 6 Destruction of Unclaimed Firearms and Ammunition: Firearms taken into custody by Department personnel shall be disposed of according to law. In those cases wherein weapons are seized and for which there is no court prosecution, such weapons shall be held for one year from the date of seizure at which time a letter shall be sent by certified mail, return receipt requested, to the owner of record. The letter shall advise the owner to contact the Firearms Analysis Examiner Unit. If the owner fails to contact the Firearms Analysis Examiner Unit within 30 days, the Firearms Analysis Examiner Unit shall destroy such weapons in the prescribed manner.

Firearms that have been submitted to the Firearms Analysis Examiner Unit as a result of court order will, at the expiration of the order, be returned to the owner only when and if the court that issued the order of confiscation subsequently issues an order to return the firearm. Absent a court's order for return, firearms will be destroyed as mandated by Massachusetts General Laws and Department Policy.

The Firearms Analysis Examiner Unit shall maintain a permanent case file on each weapon destroyed. The file shall include a copy of the Incident Report, a copy of the letter sent to the owner of the firearm, the postal receipt, and any court orders or other police reports concerning the firearm.

The destruction of weapons under conditions of this section shall be verified and witnessed by the Commanding Officer of the Forensic Technology Division, a Deputy Superintendent, a superior officer of the Internal Affairs Division, and a representative of the Federal Bureau of Alcohol, Tobacco, and Firearms.

When ammunition is forwarded to the Firearms Analysis Examiner Unit pursuant to a Restraining Order, it shall be retained only as long as it is safe to do so. The storage of ammunition presents certain obvious hazards and any amount beyond the storage capability of the Firearms Analysis Examiner Unit shall be destroyed.

Sec. 7 Ballistic Evidence Used in Court Proceedings: The Firearms Analysis Examiner Unit shall prepare firearm evidence for court. When the evidence is needed for trial, the officer shall report to the Firearms Analysis Examiner Unit and sign out the evidence and Ballistic Unit FTE's report without incurring overtime. In ordinary cases, such as Unlawfully Carrying a Firearm, Discharging a Firearm, etc., the Firearms Analysis Examiner Unit shall provide the prosecuting officer with a notarized certificate indicating that the firearm is accepted in all District Courts,

except the Boston Municipal Court, without the presence of the Firearms Analysis Examiner Unit FTE in court. In all cases before the Boston Municipal Court, the Superior Court and the Grand Jury, the presence of the FTE is also required.

When a case is concluded, firearm(s) and ammunition involved shall be returned to the Firearms Analysis Examiner Unit with a record of the court disposition. The disposition shall include the date, name of the court, name of the judge, sentence or other disposition and the disposition of the firearms(s) and/or ammunition.

All firearms shall be released through the Firearms Analysis Examiner Unit in accordance with section § 8 of this Rule.

If the firearm(s) and/or ammunition are ordered confiscated or destroyed by the District Court, documentation of the court's order shall be returned with the evidence, to the Firearms Analysis Examiner Unit for disposal.

In District Court proceedings where there has been no final decision as to the disposition of the firearms, i.e., when the defendant has defaulted, the case has been continued for a period of more than one month, the case has been appealed to the Superior Court, or probable cause has been found and the case is held for the Grand Jury, the firearm(s) and/or ammunition shall be returned to the Firearms Analysis Examiner Unit immediately.

Sec. 8 Return of Firearms in Department Custody: The following procedures shall be followed for any member of the public requesting the return of a firearm through general request or in circumstances not addressed in Section 5A. All requests shall be made in writing to the District Commander in the District where the weapon was seized or voluntarily relinquished to the Department. The District Captain shall submit a report and supporting documentation (including but not limited to all Incident Reports, court orders, a Board of Probation check, firearm license inquiry and civil restraining order inquiry) to the Chief, Bureau of Field Services. The report shall include a recommendation regarding the return of the weapon and concerns, if any, regarding the petitioner's suitability to possess a Class "A" or Class "B" license to Carry Firearms or Firearm Identification Card.

The Chief, Bureau of Field Services shall forward the report to the Commander, Licensing Unit. The Commander, Licensing Unit shall review the Captain's recommendation and supporting documentation and take necessary action available under the law regarding the status of the petitioner's license. The Commander, Licensing Unit shall attach a report regarding the status of the petitioner's licenses and forward the package to the Office of the Legal Advisor.

The Office of the Legal Advisor shall prepare a memorandum to the Police Commissioner recommending the return of the weapon, denying the petitioner's request or setting forth particular conditions in which a firearm or ammunition may be returned. No weapon that has come in to the custody of the Department shall be released prior to the approval of the Police Commissioner. The office of the Legal Advisor shall forward the Police Commissioner's decision

and supporting documentation to the Firearms Analysis Examiner Unit. The Firearms Analysis Examiner Unit shall notify the petitioner of the action taken on his/her request and make arrangements for the petitioner to retrieve the weapon if approved.

All requests for return of firearms or ammunition shall be completely processed by the Department within thirty (30) days from the date of the receipt of the request. The Firearms Analysis Examiner Unit shall maintain a file of all requests for return of firearms and supporting documentation with their case files.

Sec. 9 Reports of Wounds Caused by Firearms and Air Rifles: Whenever a physician or hospital, in accordance with G.L. c. 112, § 12-A, reports the treatment of a wound caused by the discharge of a gun, pistol, BB gun, other air rifle, or other firearm, an appropriate unit shall be dispatched to initiate an investigation. Whenever a physician or hospital reports that a bullet or fragment of a bullet is removed from the person being treated, an appropriate unit shall be dispatched to receive the bullet, or fragment. This evidence shall be stored in an envelope properly identifying it with the case to which it is related, in the District gun locker and shall be delivered to the Firearms Analysis Examiner Unit as soon as possible when a Firearms Analysis Examiner Unit FTE is on duty.

Sec. 10 Night or Weekend Request for Services of the Firearms Analysis Examiner Unit: It shall be incumbent upon the District or Unit supervisor or investigator at the scene to determine if there is a need for Firearms Analysis Examiner Unit personnel to respond. Through the Operations Division, the supervisor on scene shall request a Firearms Analysis Examiner Unit FTE to respond for all night and weekend cases where a delay in rendering the desired services would hamper the investigation. Other requests shall be held for on duty Firearms Analysis Examiner Unit personnel. In all cases, the Firearms Analysis Examiner Unit shall be responsible for the processing of Firearms Analysis Examiner evidence. In cases where vehicle(s) have to be examined, the vehicle(s) shall be towed to the examination bay at Police Headquarters and the examination by the Firearms Analysis Examiner Unit FTE shall be conducted during the day tour of duty.

Sec. 11 Proper handling of ballistic evidence at crime scenes: Whenever possible spent bullets, cartridge cases, etc., should be left where found until photographs and/or sketches are made at the scene and measurements taken. In the absence of the Firearms Analysis Examiner Unit FTE, the evidence may then be collected, packaged, tagged or labeled, and stored in the District or Unit gun locker and shall be delivered to the Firearms Analysis Examiner Unit as soon as possible when a Firearms Analysis Examiner Unit FTE is on duty, without incurring overtime. Under no circumstances should such evidence be forwarded by Department mail. Whenever there is any doubt as to the proper handling of firearms, spent bullets etc., during the Ballistic Unit FTE's working tour of duty, the Ballistic Unit should be contacted by telephone to ascertain, according to explained circumstances, the proper handling and delivering of such evidence. Bullets that may be connected with any crime, that are found embedded in any article or substance, shall be removed only by a FTE.

The fuming of a firearm for fingerprints shall be handled by the Crime Scene Response Unit. In the event that the Crime Scene Response Unit is not available, firearm fuming may be conducted by other personnel trained in firearm fuming. In extraordinary cases, the fuming of firearm(s) may be handled by the Latent Prints Section of the Physical Comparison Unit.

Notes:

- Amended by SO 08-034, issued 09/12/2008, Effective immediately, the name of Rule 311 is amended to **Procedures for Handling Firearms Evidence**. All references to the **“Ballistics”** or **“Ballistics Unit”** in the Boston Police Rules and Procedures, Special Orders, and any other internal Boston Police documents shall be amended to **Firearms Analysis Unit**. All references to the **“Ballistician”** or the **“Department Ballistician”** in the Boston Police Rules and Procedures, Special Orders, and any other internal Boston Police documents shall be amended to the **Firearms Examiner**.
- Amended by SO 10-005, issued 1/21/2010, replaced the last paragraph in Section 11.
- Amended by SO 10-011, issued 3/23/2010, replaced the last paragraph in Section 11.