



# INVESTIGATIONS OF FIREARMS VIOLATIONS

**FC No.: 640**

**Date: 08-05-16**

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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## I. Policy

The department places a high priority on the investigation and arrest of persons illegally possessing, transferring, or using firearms for criminal purposes. Officers are instructed to actively and thoroughly investigate these crimes and when probable cause is present, make arrests for violations. Also, officers will arrest and remove from school property any person unlawfully in possession of a handgun on school property in violation of the Annotated Code of Maryland, CR4-102.

## II. Department Resources

### A. Firearms Investigations Unit

The Firearms Investigations Unit (FIU) is part of the *Special Investigations Division*. The FIU was formed to ensure that firearms related crimes are fully investigated and the proper charges are filed with the State's Attorney's Office and/or the United States Attorney's Office.

### B. Gun Violence Grant Program

The department is a participant in the State of Maryland's Gun Violence Grant Program. The program's primary goal is to reduce incidents of violence involving firearms. The program is also intended to reduce the availability of firearms to criminals and other persons who cannot legally possess them by identifying, arresting, and prosecuting persons responsible for the illegal trafficking and possession of firearms. The program is administered by the Assistant Chief, Investigative Services Bureau. With the assistance of grant funds and by utilizing existing resources, the department has implemented a comprehensive program that includes:

1. An aggressive enforcement policy.
2. FIU investigators being immediately notified of and responding to crimes or arrests for commercial burglaries involving firearms, including burglaries of Federal Firearms Licensed (FFL) dealers/stores.
3. Enhanced follow-up investigations.
4. A firearms evidence collection system.

5. Special training for employees to provide them with the knowledge and skills necessary to accomplish the objectives of the program.
6. Participation in the federal government's *Project Exile*.
7. Establishing a closer working relationship with school officials when weapons violations involve children.
8. The implementation of public education programs designed to elicit the support and assistance of the community.

### III. Gun Crime Statutes

- A. Officers should familiarize themselves with the following crimes contained in the Annotated Code of Maryland:
1. PS5-133(b) – Possession of regulated firearm by prohibited person
  2. PS5-133(c) - Possession of regulated firearm by convicted felon
  3. PS5-133(d) - Possession of regulated firearm by minor (under 21)
  4. **PS5-133.1 Possession of Ammo by Prohibited Person**
  5. PS5-138 - Possession of stolen regulated firearm
  6. PS5-143-(a) - Obliterated serial number on firearm
  7. **PS5-146 - Fail to report stolen regulated firearm within 72 hours**
  8. PS5-203(a) - Unregistered short barreled shotgun/rifle
  9. PS5-205(b) - Possession of rifle/shotgun by *prohibited person*
  10. **PS5-206 - Possession of Rifle/Shotgun with felony/COV conviction**
  11. CR4-102 - Deadly weapon on school property (firearms also)
  12. CR4-103 - Disarming a Law Enforcement Officer (attempts also)
  13. CR4-104 – **Loaded** Firearms access by minors
  14. CR4-106 - Wearing body armor during crime of violence or drug trafficking
  15. CR4-107 -Possession of body armor after conviction of drug trafficking
  16. CR4-107(a) - Possession of body armor after conviction of crime of violence
  17. CR4-203 - Wear, carry, transport a handgun upon their person/vehicle
  18. CR4-204 - **Firearm** used in commission of crime of violence
  19. **CR4-303 - Possession-Assault weapon (not grandfathered) See list under CR4-301**
  20. CR5-621(b)(1) - Nexus of firearm during a drug trafficking crime
  21. CR5-621(b)(2) - Possession of firearm during a drug trafficking crime
  22. CR5-622 - Possession of firearm after felony drug conviction
  23. CR6-203B - Burglary with intent to steal firearm
  24. Art. 4-511 (Family Law) - Permitting a law enforcement officer to remove firearms from the premises where a domestic violence act has occurred
- B. The 1500 event code classification, “Weapons,” will be used to document violations of the above referenced crimes.

### IV. Arrest Procedures

- A. Any person arrested for a 1500 classification weapons offense involving a firearm will be transported to the officer's district station. Immediately upon arrival, the officer will notify a FIU investigator, per the procedures outlined in FC 611, “Follow-Up Investigations Responsibility,” who may respond to debrief the arrested person.
1. The arrested person will be advised of their Miranda rights by the FIU investigator utilizing the MCP 50, “Advice of Rights Form.”
  2. The MCP 640, “Recovered Firearm Questionnaire,” contains standard de-briefing questions to be used during any subsequent interrogation and will be completed by the FIU investigator if the arrested person agrees to submit to questioning. If FIU declines to respond, the arresting officer will follow the above debriefing procedures.

- B. Supervisors will forward copies of the Event Report, MCP 50, and MCP 640 forms to the FIU supervisor.
- C. If the arresting officer is not relieved by FIU, the arresting officer will be responsible for evidence collection and storage, prisoner transportation, charging document preparation, and the completion of all required reports.
- D. Whenever a firearm is seized, the seizing officer will initiate the following:
  - 1. NCIC stolen check
  - 2. MSP 97, "Firearms Search Report," if applicable (refer to FC 725, "Firearms Search Report")
  - 3. ATF Firearms Trace Report, (refer to FC 723, "ATF Firearms Traces")
  - 4. ***MCP 41 "Request for Evidence Examination," if applicable.***
    - a. ***For firearms used in a crime/evidence in a criminal investigation the MCP 41 requesting specific forensic examinations must be received within 10 days of entering the firearm into evidence. After this 10-day waiting period, suitable firearms will be eligible for test firing, which could affect latent print processing and DNA preservation. (Firearms seized for non-criminal incidents and safekeeping do not qualify for test firing or NIBIN entry.***

#### V. Follow-Up Investigations

- A. FIU investigators will be primarily responsible for the follow-up investigation of all weapons offenses (1500 event codes) involving firearms.
- B. On all firearm related arrests, FIU investigators will determine if additional criminal charges are warranted and will focus efforts on identifying the source of the firearm(s).
- C. The follow-up investigation of all other crimes committed with the use of a firearm will be conducted in accordance with FC 611, "Follow-Up Investigation Responsibility."
- D. If a firearm-related criminal investigation reveals a possible connection with a drug-related crime, the FIU investigator will contact the ***Drug Enforcement Section*** and coordinate a joint investigation.
- E. FIU Investigators will work with state and federal agencies in monitoring and investigating gun dealers to ensure compliance with the law and to identify criminal violations.

#### VI. Removal of Firearms – Domestic Violence

Family Law Article section 4-511 provides that when a law enforcement officer responds to a complaint of domestic violence and determines that an act of domestic violence has occurred, the officer will:

- 1. Remove any firearm the officer observes on the premises.
- 2. Request a voluntary surrender or obtain consent to search for any other firearms not within plain view.
- 3. Provide the owner with the procedures to retake possession.
- 4. Provide safe storage of the firearm following proper departmental procedure.
- 5. Follow the firearms processing procedures in section IV.D.

#### VII. Evidence Collection and Processing

In addition to ordinary evidence collection procedures described in FC 721, "Evidence/ Recovered Property," the following procedures will be followed when collecting firearm, ammunition, expended ***projectiles***, and ***cartridge*** casing evidence:

- 1. Latent ***print recovery and DNA preservation*** will be ***attempted*** on firearms when requested ***via MCP 41 (Request for Evidence Examination)***.

2. Firearms, ammunition, expended *projectiles*, and *cartridge* casings will be packaged and labeled separately from non-firearm evidence. Firearms, ammunition, expended *projectiles*, and *cartridge* casings will be stored separately from other evidence in the property room; additional security measures will be taken for these items (e.g., separate locked cabinet inside the property room).
3. District/unit property officers/*Evidence Unit couriers* will transport all firearms, *ammunition, expended projectiles, and cartridge casings* seized as evidence, marked for destruction, or held for safekeeping to the *Evidence Unit as soon as possible* within one week.
4. *Firearms recovered as a result of a criminal act or evidence in a criminal investigation (requested via MCP 41)* will be test-fired by the Firearms Examination Unit (FEU) except *for* firearms that:
  - a. Cannot be made functional.
  - b. *Are designated as* antique firearms.
  - c. *Are seized during non-criminal offense or was not the firearm(s) used during the commission of an actual criminal act (EEP'S, additional firearms taken for safekeeping).*
  - d. *Are within the designated 10-day forensic examination request waiting period.*
5. *In an effort to match firearms used in other crimes, test-fire exemplars* will be entered into the Bureau of Alcohol, Tobacco, and Firearms' *National Integrated Ballistics Identification Network (NIBIN)*. *All suitable cartridge casings recovered from crime scenes or are part of a criminal investigation (requested via MCP 41) will be entered into NIBIN as soon as practical and after all other requested forensic examinations have been completed.*
6. When *requested via MCP 41*, the FEU will restore firearm serial numbers that have been obliterated, removed, or altered.
7. At the conclusion of the firearm's forensic examination(s) by FSS, *the firearm* will be returned to the *Evidence Unit*.

#### VIII. Release of Firearms

- A. The United States Code, Title 18, Section 922(g), and the Annotated Code of Maryland, *CR5-133 and CR5-134*, prohibit the transfer and possession of firearms by, or to, certain persons.
- B. Release Procedures  
The following procedures will be followed for the release of firearms:
  1. The person intending to claim the firearm (applicant) must complete the MCP 710, "Application for Return of Firearms," and submit the form to *FIU*.
  2. The FIU supervisor, or designee, will:
    - a. Conduct an investigation to determine if the applicant may legally possess the firearm.
    - b. Complete the MCP 709, "Return of Firearms Investigation."
  3. The FIU supervisor will review the MCP 709 and MCP 710.
- C. Release Denied  
If a decision is made not to release the firearm to the applicant, the FIU supervisor will:
  1. Notify that individual in writing via the MCP 712, "Return of Firearms Denial Notice."
  2. Initiate criminal charges, if appropriate.
  3. Refer the applicant to the District Court if the applicant subsequently wishes to appeal the decision.
- D. Release Approved
  1. If a decision is made to return the firearm to the applicant, *the FIU will*:
    - a. Contact the applicant and coordinate the release of the firearm.
    - b. Complete the MCP 711, "Release of Firearms Receipt."
  2. The return of the firearm will be witnessed by another officer who will also sign the receipt.
  3. The applicant must sign the receipt block in order to receive the firearm.
  4. If the applicant refuses to sign the "hold harmless" statement at the bottom of the form, the *FIU detective* will write "refused" on the signature line and return the firearm.

5. The **FIU detective** will retain the original MCP 711 and give a copy of the MCP 711 to the individual receiving the firearm.

E. Contraband Firearms

All firearms that are contraband (e.g., altered or obliterated serial number) will not be returned.

F. Destroying Firearms

A firearm that cannot be legally returned to an owner or is no longer needed as evidence will be destroyed after 60 days. Before destroying any firearms, **the Evidence Unit will contact the investigating Officer, via the electronic purge system, to ensure that the firearm is not part of an on-going investigation. After receiving verification, the Evidence Unit will enter this information on the MCP 561, "Authority to Dispose of Firearms" and forward the MCP 561 to CID/FSS and SID/FIU to obtain the authorization via required signatures.** However, if a firearm owner's application for the return of a seized firearm has been refused and the department has been notified that an appeal process in District Court has been initiated, the firearm will be:

1. Stored for one year from the date of notification and destroyed, or
2. Returned to the owner by the authority of a court order.

**IX. Project Exile**

- A. The **Project Exile** is a joint law enforcement partnership between the U.S. Attorney's Office, the Montgomery County State's Attorney's Office, the Montgomery County Department of Police, and the Bureau of Alcohol, Tobacco, and Firearms. The goal of the **Project Exile** is to reduce firearm-related violence by identifying, targeting, and apprehending violent offenders with prior felony criminal convictions and/or narcotics traffickers who use or carry firearms in furtherance of their criminal activities.
- B. The **Project Exile** is not intended to replace local law enforcement efforts but instead is intended to assist local authorities by providing for federal prosecutions of the most dangerous violent offenders under United States firearms statutes. These laws call for mandatory sentencing without the possibility of parole or probation.
- C. The FIU has the responsibility of identifying, screening, and preparing eligible cases for prosecution pursuant to the guidelines established for the **Project Exile**.

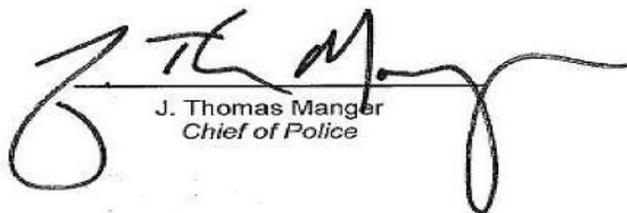
**X. Prosecution**

The State's Attorney for Montgomery County is committed to the aggressive prosecution of persons charged with gun-related crimes.

**XI. CALEA Standards: Chapters 41, 42, 83, 84**

**XII. Proponent Unit: Firearms Investigations Unit**

**XIII. Cancellation: This directive cancels Function Code 640, effective date 04-27-05.**



J. Thomas Manger  
Chief of Police