

GUIDELINES FOR SAFE HANDLING OF FIREARMS AS EVIDENCE IN THE COURTROOM

1. There are two main goals of a firearms handling procedure.

- A. Prevent the accidental or purposeful discharge of a loaded firearm, which is being offered or received into evidence;
- B. Eliminate the fear and apprehension on the part of juries, court personnel and the public that a firearm, in a courtroom as evidence, is loaded and may be accidentally or purposefully discharged.

2. Importance of clear firearms handling policies and procedures.

The adoption and promulgation of firearms handling policies and procedures will allow judges, police, witnesses, solicitors, defense attorneys and court personnel to initiate and implement the procedures necessary to safely handle firearms in court. Knowledge of the policies and procedures will allow individuals handling firearms in the court to act appropriately even without being specifically instructed to do so.

An example would be: All firearms brought into court will be open so that an immediate visible inspection will indicate that they are not loaded. Personnel handling the firearm will take this action even before they come into the courtroom.

3. Discuss and review the court's firearm handling procedures with trial attorneys and other court and law enforcement personnel on a regular basis and prior to start of a trial involving any firearm.

The trial judge should review the court's firearm handling policies and procedures with the solicitor and defense attorney at the beginning of a case involving a firearm. The trial judge should require the proponent of a firearm to be offered into evidence to notify the court of their intent prior to the commencement of the trial. Copies of the firearm handling procedures should be distributed to solicitors' and public defenders' offices, the Sheriff's Department, other court personnel and police departments. The trial judge should also give a copy of the court's firearm handling procedures to private defense attorneys who represent a defendant charged with a crime that involves a firearm.

4. Inform juries that any firearms to be offered in evidence in the courtroom will be unloaded.

It is important that juries be informed that if the trial involves a firearm it will be unloaded at all times and will never be pointed at them. The court should direct an appropriate witness or court officer to examine the firearm to be offered into evidence and state to the court that the firearm is, in fact, unloaded.

There are two perspectives in regard to firearms:

A. The first is held by persons who are trained in the use of firearms. Their training tells them that when they see a firearm, unless it specifically proven otherwise, they should assume it is loaded and they should focus their attention on the firearm at all times because it could be loaded and thus dangerous. This type of person will not pay attention to the testimony when the firearm is in the courtroom;

B. The second perspective is held by persons who are not trained in the use of firearms. They see a firearm and think, "Oh my god there's a gun, it may be loaded, someone could grab it and shoot me". This person will not listen to the testimony as long the firearm is in the courtroom. Their fear will keep them focused on the firearm rather than the testimony of the witness.

Information regarding the unloaded and safe condition of any firearm to be offered into evidence and how the firearm will be handled while in court should be given to the jury. Prior to instructing the jury, the defense attorney should be asked on the record if they object to such instruction. Giving the instruction early in the trial, as part of other preliminary instructions, is less prejudicial to the defendant than giving it during the prosecutor's case-in-chief. If the defense attorney does object, the instruction should be given immediately prior to the establishing of foundation for the admission of the firearm. Giving the instruction at this point is based on the court's responsibility to supervise the handling and admission of evidence.

PROCEDURES FOR THE SAFE HANDLING OF FIREARMS AS EVIDENCE IN THE COURTROOM

1. This Procedure Applies To Firearms in the Courtroom As Evidence.

These procedures apply to **all firearms to be offered into evidence** brought into a court building or a courtroom.

These procedures do not apply to firearms carried or worn by police officers that are testifying in their official capacity, or to court security personnel.

2. These Firearms Are To Be Unloaded.

All evidentiary firearms will be **unloaded** at all times when they are in the court building and courtroom.

3. All Firearms To Be Open At All Times.

All evidentiary firearms, when they are in the court building and courtroom, will be **open**. This means:

1. The clip or magazine removed, bullets removed from cylinder; bullet removed from chamber;
2. If a semi-automatic pistol, the barrel slid back, if a revolver the cylinder swung out, if a single or double barrel shotgun the barrel “broken” open;
3. If a semi-automatic rifle or shotgun, the chamber slide or cocking lever in open position.

The condition of the firearm will be such that an immediate visual inspection will indicate that the firearm is unloaded. If available, trigger locks or other incapacitating hasp lock devices will be attached to all firearms. If such devices are not available, keeping the firearm open and keeping it separate from its ammunition is crucial and central to the safe handling of firearms in the courtroom.

4. No Display of the Firearm Prior To Showing To Witness To Establish Foundation For Admissibility.

No firearm will be displayed to the jury until it is necessary to show it to a witness to establish foundation for its admission into evidence. A prosecutor or a defense attorney who would like to refer to the firearm in an opening statement should use photographs of firearms that are to be offered into evidence, rather than the firearm itself.

5. Firearms To Be In Custody Of Court Reporter

Firearms and ammunition brought into a courtroom, to be offered into evidence, will be given to and left in the custody of the court reporter at all times except when they are being handled by solicitors, defense attorneys or witnesses.

During recesses of the court, all firearms will be locked in a secure drawer, cabinet or closet by the court reporter. It is the responsibility of the clerk of court in the county where the trial is being held to provide access to space that will secure the ammunition and firearm(s). In proceedings that lasts more than one day, it is the responsibility of the court reporter to relinquish any and all firearms to the clerk of court for safekeeping.

6. Firearm To Be Handled Only by Barrel and Not To Be Pointed At Any Person In Courtroom

The firearm will always be handled by the barrel only unless otherwise ordered by the trial judge. No firearm will be pointed at a jury, judge, court personnel or spectators. Firearms will always be pointed either at the ceiling or floor. However, if deemed valuable and necessary by the judge, the gun may be pointed for demonstrative purposes during testimony. Solicitors and defense attorneys must obtain the permission of the judge prior to such use for evidentiary purposes.

7. Notification And Approval Required Before Firearm Used In Final Argument

Solicitors and defense attorneys intending to use firearms admitted into evidence for demonstrative purposes in a final argument must inform the trial judge prior to such use, stating how the firearm will be used and obtaining the permission of the trial judge prior to such use.

8. Firearms And Ammunition Never Given To Witness Or Jury At Same Time

Firearms and ammunition will never be given to a witness or the jury at the same time. Firearms and ammunition will never be placed or left together. The presiding judge will have the discretion to decide if firearms and ammunition should be allowed into the jury room at the time of deliberation. If a firearm and the related ammunition are to be sent into the jury room during deliberation, the jury will be allowed to examine them, but the firearm and ammunition will never be sent into the jury room at the same time. If the judge allows firearms and ammunition into the jury room, the firearm may be sent in to the jury. After the jury has examined the firearm, they will inform the court, pass out the firearm and be given the ammunition for examination.