

Bowie Police Department - General Orders



TITLE: DISCIPLINARY PROCESS	NUMBER: 322
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<u> </u> NEW <u> </u> <u> </u> AMENDS <u> </u> <u> </u> RESCINDS	DATE: 5/26/16

AUTHORITY	ACCREDITATIONS STANDARDS	TOTAL PAGES
Chief John K. Nesky	26.1.4, 26.1.5, 26.1.6, 26.1.7, 26.1.8	11

I. POLICY

The Bowie Police Department’s disciplinary system is a combination of the Law Enforcement Officer’s Bill of Rights (LEOBR), The Code of the City of Bowie, Maryland Annotated Code, counseling, and all General Orders, Rules and Regulations related to the taking or recommending discipline up to and including termination of employment.

The Disciplinary System will be used to stimulate employee morale and motivation and reward employees for exceptional performance. Training will be used as a function of discipline to improve employee performance. The goal of the Disciplinary System is to protect the integrity of the Department.

II. PURPOSE (CALEA 26.1.5)

To establish a Disciplinary System based on fairness to the employee and the Department; to provide commanders and supervisors with the authority to take disciplinary action against subordinates; and to set forth uniform and consistent procedures for handling disciplinary proceeding.

III. AUTHORITY OF THE CHIEF OF POLICE (CALEA 26.1.5)

- A. The Chief of Police has the authority to take disciplinary action against any employee of the Department and to delegate that authority to selected subordinates.
- B. The authority to initiate or administer disciplinary action is delegated by the Chief of Police to commanders and supervisors, or those officers in the acting capacity of commanders or supervisors in accordance with the procedures set forth in this order.
- C. The authority to suspend in an **emergency situation** is delegated to the rank of Sergeant/ or above in accordance with LEOBR and will cause an immediate notification, via the chain of command, to the Office of the Chief of Police.

- D. All supervisory officers will have the authority to make recommendations of disciplinary actions to a commander or sergeant.
- E. Any employee who observes unethical conduct or a violation committed by another employee regardless of rank will report the violation to the offending employee's supervisor.
- F. Only the Chief of Police or his/her designee may suspend an officer of the rank of Sergeant or above.
- G. Only the Chief of Police or his/her designee has the authority to suspend any sworn officer without pay subject to the provisions of the LEOBR.
- H. The Office of the Chief of Police has the authority to increase or decrease disciplinary recommendations.
- I. Employee dismissals must be approved by the City Manager.

IV. COUNSELING FORMS (CALEA 26.1.4.b)

- A. The intent of the Record of Counseling form is to provide supervisors with an instrument to document positive counseling and recommended corrective actions for minor infraction.
- B. The form is designed for use as a management tool in those cases initiated by supervisor where counseling and corrective actions are necessary and appropriate, but for which an entry into an employee's Personnel File is not necessary. Documented counseling is not considered discipline.
- C. Instances when a supervisor may consider using the form include any Category I offense or other minor infraction not listed.
- D. The form may also be used, at the discretion of the employee's supervisor, for minor citizen generated complaints where, after initial inquiry, the supervisor determines the incident does not warrant taking formal action, yet feels the incident should be documented and the behavior corrected through a positive supervisory approach.
- E. For the form to be an effective supervisory tool, the supervisor must determine, after initial inquiry (listening to the complainant, personal observations, or listening to comments from other employees, etc.), whether the incident, even if true, should be handled through the formal disciplinary process or a remedial action.

V. COMPLETION / MAINTENANCE OF THE RECORD OF COUNSELING FORMS

- A. When a supervisor completes the form, it will be discussed in private with the employee who will be requested to sign it before it is placed into the employee's file.

- B. When completed, the form will consist of one original and one copy. The original should be retained by the supervisor as part of his/her supervisory file for a minimum period of one year. If the behavior that led to the counseling has not been corrected then the form may be retained longer.
 - 1. The duplicate copy should be given to the employee.
 - 2. No copies are to be placed in the employee's Personnel File, and under no circumstances will the form be completed without the employee being given the opportunity to review and make written comments concerning the incident. Signing of the form is optional for the employee.

VI. TRAINING AS A SUPPLEMENT TO DISCIPLINE (CALEA 26.1.4.a)

- A. Remedial Training: Because infractions are sometimes committed unintentionally due to an employee's unfamiliarity with a Department Rule or Procedure, supervisors will strive to identify those instances when training would be more appropriate as a function of discipline than the formal placing of charges.
- B. Depending upon the nature of the infraction committed, the Department may elect to utilize training in conjunction with formal disciplinary action. Training shall not be used in lieu of discipline.
- C. Training can range from a discussion held in roll-call on a particular topic to a formal course of instruction. Because supervisors work closely with their subordinates and generally know their capabilities better, supervisors are the best judge of when a subordinate would benefit from remedial training.
- D. When a supervisor elects to utilize training as a supplement to discipline, the supervisor should:
 - 1. Explain the infraction committed and the expected behavior.
 - 2. Review the rule, policy, or procedure that was violated.
 - 3. Consider discussing the infraction at a future roll-call (without naming the offender) if necessary.
 - 4. Recommend the need for further or more in-depth remedial training to the appropriate Commander.
 - 5. Document all of the above steps in a completed case file.

VII. TAKING PUNITIVE ACTIONS-PROCEDURES AND CRITERIA (CALEA 26.1.4.c)

- A. The Department will accept and investigate complaints against its employees of alleged misconduct, and based upon its findings, to exonerate the innocent, establish the guilt of wrongdoers and justly determine the appropriate disciplinary actions promptly.
- B. All allegations of misconduct will be formally investigated.
- C. To ensure all employees of an effective administrative Disciplinary System, it will be necessary to: establish an effective review of complaints, operate an internal unit responsible for an impartial investigation when merited by the nature of the complaint; and, impanel a board to hear evidence, question witnesses, and after review of the Department's Disciplinary Action Recommendation Guide, recommend action to the Office of the Chief of Police.
- D. Throughout these procedures the rights of the individual police officer and citizens will be acknowledged and will not be compromised.
- E. Where applicable, all administrative disciplinary procedures will be consistent with the provisions in the LEOBR.

VIII. REQUIRED ACTIONS BY EMPLOYEE

- A. All employees of the Department will assume the obligations of their rank and perform their duties accordingly in the investigation of complaints or allegations of misconduct.
- B. Employees of the Department will cooperate fully with the personnel conducting an internal investigation.
- C. Command and supervisory personnel will themselves initiate investigations when the alleged violation reported or observed is within the scope of their authority. Violations outside of their authority will be reported properly to higher authority consistent with procedures herein prescribed. Refer to General Order Personnel and Administrative Complaints
- D. Untruthfulness committed by any employee of the Department is a very serious transgression and any employee found guilty may be subject to dismissal, or other punishment as may be adjudged.
- E. **COMPLAINTS OF BRUTALITY:** The Department will recognize the following categories of force when investigating complaints of alleged brutality:
 - 1. Excessive Force: Intentional malicious, unjustified use of force resulting in injury or potential for injury.
 - 2. Aggressive Force: Force (continued use of force) in scope, duration, or severity under circumstances when resistance has ceased.
 - 3. Unreasonable Force: Force inappropriate to affect arrest or control situations; includes use of force when none is necessary.

IX. COURTESY COMPLAINTS

- A. Courtesy complaints apply to any coarse, profane, or insolent language and/or an action performed by a Department employee, acting in their official capacity, which is offensive to contemporary community standards.
- B. Abusive language, which is a serious transgression, will have harsh consequences. Abusive language i.e racial or ethnic slurs, sexual innuendos and other demeaning comments that cast a shadow of bias and/or prejudice on the Agency and the law enforcement profession.

X. COMPLAINT/INVESTIGATION PROCESS

- A. Whenever a complaint is filed against a sworn member of the Department, the investigation and interrogation of the accused will be conducted in accordance with the LEOBR.
- B. Complaints against civilian personnel will be investigated in a similar manner, excluding the application of the LEOBR.
- C. Upon the conclusion of the investigation both the complaint and the Chief of Police will be notified of the results of the investigation. Notification to the complainant will be in writing and addressed to the complainant's last known address.

XI. SUMMARY PUNISHMENT

- A. Consistent with the provisions in the LEOBR, summary punishment may be imposed for minor violations of the Department Rules and Regulations when:
 - 1. The facts which constitute the minor violation are not in dispute.
 - 2. The officer waives the hearing provided under the LEOBR.
 - 3. The officer accepts the punishment imposed by the Office of the Chief of Police.
- B. Summary punishment may not exceed three days suspension without pay or a fine of \$150.00
- C. The offer of summary punishment will be presented to the officer in writing and they will have the option of acceptance or rejection.
- D. If an officer is offered summary punishment imposed pursuant to the LEOBR and refuses, the Office of the Chief of Police may convene a one-member or more Hearing Board. The Hearing Board will have the authority to recommend the sanctions as provided by the Maryland Annotated Code for summary punishment. NOTE: This is if the accused member does not agree with the punishment offered. In cases where the charge is being disputed, a formal investigation shall be completed.

- E. If a single member Hearing Board is convened, that member need not be of the same rank as the officer for whom the Hearing Board was convened.

XII. PUNISHMENT EXCEEDING SUMMARY PUNISHMENT LIMITS

If the Office of the Chief of Police decides that an appropriate punishment would exceed the limits of summary punishment, or the facts constituting the offense are in dispute, the Office of the Chief of Police will convene an Administrative Hearing Board in accordance with LEOBR to hear the complaint(s) against the officer, unless the officer accepts the punishment offered by the Office of the Chief of Police.

XIII. EMERGENCY SUSPENSIONS

A. Suspensions with Pay:

- 1. Emergency suspensions with pay may be imposed by the Office of the Chief of Police when it appears that the action is in the best interests of the public and the Department.
- 2. A suspension results in the removal of police powers. The Office of the Chief of Police may reassign the officer to restricted duties.
- 3. Any officer so suspended for possible disciplinary actions will be entitled to a prompt hearing in accordance with LEOBR.

B. Suspensions without Pay

- 1. The Office of the Chief of Police may suspend an officer without pay if the officer has been charged with the commission of a felony. A suspension results in the removal of police powers.
- 2. An officer so suspended will be entitled to a prompt hearing.

XIV. APPEALING DISCIPLINARY ACTIONS

A. Employees have a right to appeal disciplinary actions and Hearing Board decisions. An employee waives his/her right to appeal when they accept a punishment or penalty.

B. Appeal Process for Sworn Employees:

- 1. An officer may refuse summary punishment offered as the result of an internal investigation by requesting a Hearing Board.
- 2. Pursuant to the provisions of the LEOBR, an officer may appeal a decision rendered by a Hearing Board to the Circuit Court of Prince George's County.

3. Any party aggrieved by a decision of the Circuit Court may appeal to the Court of Special Appeals.
 4. The order to appeal, jurisdiction, service of documents on the Department, notice to other parties and the information required for the petition will be enumerated in the Maryland Rules.
 5. Pursuant to the Maryland Rules, appeals shall be filed within 30 days from the date of the Department's decision regarding disciplinary action.
 6. In accordance with Maryland Rules, the filing of the appeal to the Circuit Court involves filing of a memorandum with the Court that sets forth a concise statement of all issues raised on appeal and argument on each issue, including citations of legal authorities and references to pages of transcript and exhibits relied on.
 7. Maryland Rules also specify that within 30 days thereafter any other party desiring to be heard, including the appropriate agency when entitled by law to be a party to the appeal, shall file an answering memorandum in the same form.
 8. The appellant may file a reply memorandum within 15 days after the filing of any answering memorandum.
 9. The Court shall affirm, reverse, or modify the action appealed from, remand the case to the Department for further proceedings, or dismiss the appeal pursuant to Maryland Rules.
- C. Appeal Process for Non-Sworn Employees: Any regular classified city employee who has been suspended, demoted or dismissed may appeal the action in writing in accordance with The Code of the City of Bowie, Appeal Procedures.

XV. DISMISSAL OF A DEPARTMENT EMPLOYEE (CALEA 26.1.7)

- A. The Department considers the dismissal of an employee as a very serious matter and before a decision is made to dismiss an employee, a careful review will be given to the facts and circumstances which result in this type of action.
- B. After a Hearing Board finding of guilty and in accordance with the LEOBR, before the Chief of Police dismisses an officer, the Chief of Police will review the officer's personnel file and permit the officer to be heard. If the Chief of Police subsequently dismisses the employee, the employee will be provided with the information described below:
 1. A statement citing the reason(s) for dismissal; (CALEA 26.1.7.a)
 2. The effective date of the dismissal; (CALEA 26.1.7.b)
 3. A statement of fringe benefits including retirement; and, (CALEA 26.1.7.c)

4. A statement as to the content of the employee's record relating to the dismissal.
- C. If the Chief of Police is considering the dismissal of an officer for poor performance (non-disciplinary), before the Chief makes that recommendation, he will review the officer's entire work history and permit the officer to be heard. The Officer is not entitled to counsel at this meeting.

XVI. MAINTENANCE OF DISCIPLINARY RECORDS (CALEA 26.1.8)

- A. Because of their sensitivity and confidentiality, all records of a disciplinary nature will be maintained in a secure file by the Internal Affairs Section.
- B. The records will be maintained in the file until such time they are expunged pursuant to the provisions in LEOBR.

XVII. DISCIPLINARY ACTION RECOMMENDATION GUIDE

The guide is designed to promote equity and uniformity in levying certain disciplinary actions.

- A. The Department identifies offenses in four separate categories and offers a recommended range of punishment for each category.
- B. Once an investigation is complete and a punishment has been recommended, one of the following options will be approved via the chain of command, with the concurrence of the Office of the Chief of Police:
 1. Accepted disciplinary action.
 2. Deviations from the recommended categories.
 3. Proposed disciplinary action on cases for which the violation is not listed in the guide.
- C. When a violation is not listed, the Operations Division Commander will recommend an action based on the severity of the violation in comparison with the violations that are listed in the guide.
- D. A second (or greater) category I, II or III violations of the same offense within 12 months can cause the disciplinary action recommendation to advance to the next higher category, with penalties levied from the higher category.

XVIII. CONSIDERATIONS IN PUNISHMENT

- A. It is recognized that good officers make mistakes. When weighing the totality of a situation or complaint, the supervisor charged with the determining punishment should consider the officer's motive. This agency recognizes the two following motives in determining punishment.
 1. Malfeasance: misconduct or wrong doing which is malicious in nature and intent.

Example: An officer who accepts payment from two secondary employers at the same time by submitting an erroneous pay slip to one or both employers.

2. Misfeasance: misconduct or wrong doing with no malicious intent.

B. Shift/Unit/Squad Supervisors are reminded that progressive discipline is the best method in the building blocks for future and more severe discipline. A Squad/Unit Supervisor should ensure that previous incidents of misconduct are well documented in the form of counseling and mandatory training as a firm foundation for future action. This does not preclude a Shift/Unit Supervisor from moving directly into the Disciplinary Action Guide when circumstance dictates a stronger countermeasure for misconduct.

XIX. DISCIPLINARY ACTION GUIDE

CATEGORY I: Recommended disciplinary action range from:

- A. Written Reprimand to \$50.00 fine; or,
- B. Loss of 1-10 hours of annual leave; or,
- C. Suspension from the take-home car program for not more than 10 days.

VIOLATIONS

- 1. Failure to appear as scheduled in court;
- 2. Courtesy complaints;
- 3. Unauthorized areas entry;
- 4. Failure to properly control or maintain equipment;
- 5. Unauthorized Equipment;
- 6. Failure to schedule or appear at felony screening;
- 7. Unreasonable Force;
- 8. Grooming violations;
- 9. Minor traffic law violations;
- 10. Mishandled or improper preparation of criminal or traffic cases resulting in prosecutorial declination to prosecute;
- 11. Mishandled or improper preparation and submission of property procedures;
- 12. Misrepresent facts;
- 13. Profane language;
- 14. Failure to properly acknowledge police radio;
- 15. Careless operation of a police vehicle;
- 16. Failure to properly maintain a police vehicle;
- 17. Illegal parking of police vehicle;
- 18. Failure to properly secure, search, handcuff, or seat belt a prisoner;
- 19. Failure to complete or submit a report;
- 20. Improper response status (priority);
- 21. Unauthorized and violations of the ride-a-long program;
- 22. Failure to call out or clear at secondary employment;
- 23. Failure to wear the patrol uniform of the day at secondary employment;
- 24. Exceeding secondary employment weekly hours limitations;

25. Failure to appear at overtime or training without notification;
26. Leave abuse;
27. Violations of telephone procedures;
28. Violations of uniform procedures;
29. Tardiness.
30. Conduct Unbecoming
31. Code of Conduct violations

CATEGORY II: Recommended disciplinary action range from:

- A. \$100.00-\$250.00 fine; and/or,
- B. Loss of 10-30 hours of annual leave; and/ or,
- C. 10-30 hours suspension without pay; and/or,
- D. Suspension of take-home car for 10-30 days.

VIOLATIONS

1. Two violations of Category I offenses in 12months;
2. Absent without leave;
3. Failure to respond or properly clear a call for service;
4. Flagrant traffic law violation while operating a Department vehicle;
5. Unattended or careless handling of a firearm;
6. Harassment;
7. Unauthorized vehicle pursuit;
8. Leave city without supervisor notification;
9. Failure to properly search or secure a prisoner that results in escape or the discovery of a weapon;
10. Working unapproved secondary employment.

CATEGORY III: Recommended disciplinary action range from:

- A. \$250.00-\$1000.00 fine; and/or
- B. 20-40 hours suspension without pay; and/or,
- C. Removal from promotional process; and/or,
- D. Reassignment; and/or,
- E. Reduction in rank and/or,
- F. Suspension from the take-home car program for two to three months;

VIOLATIONS

1. Abusive or demeaning language
2. Two violations of Category II violations;
3. Aggressive Force;
4. Unauthorized Use of Department Vehicles;

5. Engaging in selling, serving, imbibing or dispensing alcoholic beverage in any manner (secondary employment or while in uniform);
6. Careless handling of a firearm resulting in injury;
7. Operating a motor vehicle while revoked or suspended;
8. Unreported firearms violation;
9. Employment or ownership in or on behalf of Private Detective, Attorney, Insurance Agency, Bail Bond Agency or involvement in the service of civil or criminal papers;
10. Employment related to any part in a labor dispute.

CATEGORY IV: Recommended disciplinary actions range from:

- A. Fines in excess of \$1000.00; and/or,
- B. Reassignment; and/or,
- C. Reduction in rank; and/or
- D. Removal from the promotional process; and/or,
- E. Suspension exceeding 40 hours; and/or,
- F. Written reprimand to termination from the Department.

VIOLATIONS

1. Two violations of Category III violations
2. Alcohol related violations;
3. Cowardness;
4. Criminal law offenses (serious);
5. Drug related violations;
6. Excessive force;
7. False statement/reports;
8. Insubordination;
9. Loss of job requirement;
10. Participating in employment requiring conduct inconsistent with Department objectives, regulations, ethics or reputation or that creates real or potential conflict of interest;
11. Receiving compensation from other employment source while on-duty for the City of Bowie; or,
12. Receiving payment from two or more secondary employers simultaneously.
13. Misrepresentation of compensatory or overtime compensation;
14. Working while on prohibited leave status;

XX. DEVIATION FROM PRESCRIBED DISPOSITION

A member who recommends a disciplinary action other than those proscribed for the sustained violation shall document the aggravating or mitigating factors that justify the deviation.

XXI. CANCELLATION

This General Order cancels and replaces:

General Order 4-20, Dismissal of a Department Member, dated 6/11
General Order 3/801 thru 3/816, Processing Complaints, dated 7/2007