

	<b>DELMAR POLICE DEPARTMENT</b>	
	<b>Policy 2.5 Employee Disciplinary Process</b>	
	<b>Effective Date: 10/03/14</b>	<b>Replaces: 1-7</b>
	<b>Approved: <u>Ivan Barkley</u> Chief of Police</b>	
	<b>Reference: N/A</b>	

**I. PURPOSE:**

A relationship of trust and confidence between the department and the community is essential to effective law enforcement. Officers must be free to exercise their own judgment and take enforcement action in a reasonable, lawful, and impartial manner without fear of reprisal.

It is therefore important to establish a disciplinary process which enables the department to initiate positive, corrective action for improper conduct while at the same time protecting officers from unwarranted criticism for properly discharging their duties.

It is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints about the conduct of its employees. Further, it is the policy to invite individuals to bring to the department’s attention complaints about its employees whenever that person feels the employee acted improperly.

This policy applies to all allegations of misconduct against department police officers, regardless of duty status.

**II. DEFINITIONS:**

- A. Law Enforcement Officer – any person, who in his/her official capacity, is authorized by law to make arrests and who is a member of a bona fide law enforcement agency. For disciplinary purposes under LEOBR, the term law enforcement officer does not include an officer serving in a probationary status except when allegations of brutality in the execution of duties are made.
- B. Probationary Status – a police officer is on probationary status for twelve (12) months from the date of hire.
- C. Summary Punishment – punishment imposed by the highest-ranking officer of the unit to which the officer is assigned or by the Chief of Police. Summary punishment may not exceed three (3) days suspension without pay or a fine of \$150 and may be imposed for minor violations of Department rules and regulations when: (1) the fact which constitute the minor violation are not in dispute; (2) the officer waives his/her right to a hearing provided by the Law Enforcement Officers’ Bill of Rights; and (3) the officer accepts the punishment.
- D. Complaint – an allegation of misconduct made against an employee of the department.

- E. Violation – any infringement of a law, rule, regulation, procedure, standard of conduct, or lawful order.
- F. Counseling – Communication between a supervisor and an employee concerning performance or career development. Supervisory counseling of subordinates is a non-punitive action. In most cases it is not made a part of the employee’s personnel record.
- G. Brutality – the use of unnecessary or excessive physical force by an officer while acting in an official capacity.
- H. Hearing Board- any board formed in compliance with the Law Enforcement Officers’ Bill of Rights to hear formal charges brought against an officer.
- I. LEOBR – the Law Enforcement Officers’ Bill of Rights. MD code, Public Safety Article, Title 3, Sections 3-101 through 3-113, as amended. DE code, Title 11, Chapter 92, Sections 9200 -9209, as amended.
- J. Non-Punitive Transfer – The Chief of Police has the authority “to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including transfer and reassignment if:
  - 1. That action is not punitive in nature; and
  - 2. The Chief determines that action to be in the best interests of the internal management of the law enforcement agency.

### **III. DISCIPLINARY SYSTEM:**

This policy establishes the department’s disciplinary system. The disciplinary system includes the following elements:

A. Rewarding

The department’s procedures and criteria for rewarding employees are explained in Policy 1.8, “Service Awards Program”.

B. Punitive Action

The department’s criteria for taking punitive action against employees are explained in the remainder of this policy.

C. Counseling & Retraining

The department’s procedures and criteria for using counseling and retraining as a function of discipline are explained in the remainder of this policy.

### **IV. PROGRESSIVE DISCIPLINE**

A. Considerations

Disciplinary action is administered in a progressive fashion. The seriousness of the incident, the circumstances surrounding the incident, the member's past disciplinary record, the member's past work performance, the overall negative impact on the organization caused by the incident, and the likelihood for future similar problems are taken into consideration in the administration of disciplinary action.

B. Categories & Criteria

The following are criteria for progressive disciplinary action alternatives. The description of each category is intended to provide guidance to supervisors in the administration of disciplinary action, but is not binding on the supervisor or the department; this policy does not require or imply a required sequence of punitive acts. More specific guidance for particular acts may be found elsewhere in this manual (example: departmental accidents, court fta, etc.)

1. Verbal Reprimand

The verbal reprimand is the lowest form of progressive discipline. Employee misconduct which warrants punitive disciplinary action, but less than that which is described below, may be resolved by a verbal reprimand. Verbal reprimands are not noted in the formal files of the department.

2. Written Reprimand; Reassignment

If the employee's misconduct is part of a continuing pattern of behavior involving repeated acts of misconduct or mistakes, a written reprimand may be issued, or the employee may be reassigned. Such actions are noted in the formal files of the department.

3. Suspension Without Pay; Fines; Loss of Leave; Demotion

This level of disciplinary action is appropriate in the following situations:

- a. The employee has deliberately or flagrantly violated a law, rule, regulation, procedure, or standard of conduct;
- b. The employee's conduct impairs the achievement of the department's mission or brings the department into disrepute;
- c. The employee's conduct represents a continuing pattern of disregard for the rules, regulations, and standards of conduct required of police officers;
- d. In cases where lesser applications of disciplinary action have failed to correct the employee's conduct.

Corrective action of this magnitude is noted in the formal files of the department.

4. Dismissal

If progressive discipline fails, or the employee's misconduct warrants disciplinary action greater than that described above, the employee may be dismissed from employment.

**V. AUTHORITY OF CHIEF OF POLICE:**

The Chief of Police has final authority for disciplinary action involving sworn personnel (within the requirements of the Law Enforcement Officers' Bill of Rights (LEOBR), and department civilian employees.

Only the Chief of Police has the authority to dismiss an employee from employment, or to suspend an employee without pay for longer than 30 days.

Consistent with the Law Enforcement Officers' Bill of Rights, the Chief of Police may administer any form or combination of punishment authorized by this policy.

**VI. AUTHORITY OF SWORN POLICE SUPERVISORS:**

A. Role of Supervisors

The role of supervisors, especially first-line supervisors, is crucial in the disciplinary process. First-line supervisors have the best opportunity to observe the conduct and appearance of officers and detect those instances when disciplinary actions are warranted (remedial training, counseling, or punishment). First-line supervisors also have the opportunity to understand the personality traits of the personnel under their supervision and to determine the most effective methods of discipline.

B. Authority of Supervisors & Commanders

1. Sergeants/first-line supervisors are authorized:

- a. To counsel employees;
- b. To recommend and/or conduct retraining of employees;
- c. To investigate complaints of employee misconduct, subject to approval and review by the Chief of Police;
- d. To offer and impose summary punishment, upon concurrence of the Chief of Police;
- e. To effect emergency suspension of employees;
- f. To serve as members of department administrative hearing boards.

2. In addition to the authority granted in B.1, Commanders are authorized:
  - a. To offer and impose punishment in excess of the provisions of LEOBR summary punishment, when authorized by the Chief of Police, up to but not including dismissal;
  - b. To chair department administrative hearing boards;
  - c. To rule complaints against officers as unfounded when a suitable investigation determines the complaint to be malicious, baseless, deliberately false, or frivolous. In such cases, the circumstances will be documented and forwarded to the Chief of Police, with no further action taken.

## **VII. EMERGENCY SUSPENSIONS**

### **A. Emotionally Unfit for Duty**

Supervisors may suspend an employee on an emergency basis in the light of evidence that the employee is emotionally or psychologically unfit for duty. This is an administrative action. The supervisor must immediately submit written justification for this action in inter-office memorandum to the Chief of Police, via the chain of command. The supervisor will also immediately notify the Patrol Commander, either in person or by telephone.

### **B. Response to Resistance Cases**

When a police officer's response to resistance causes death or serious physical injury, the officer will be relieved from line duty pending administrative review of the incident. See policy 6.1, "Response to Resistance" for details.

### **C. Other Emergency Suspensions**

1. Supervisors may suspend from duty on an emergency basis any employee who:
  - a. Refuses to obey a lawful order of a supervisory officer; or
  - b. Engages in conduct such that it is in the best interest of the employee, the department, or Town government that he/she be temporarily suspended from duty.
2. If the emergency suspension was made under this section, the following rules apply:
  - a. A sworn member subjected to emergency suspension is required to report to the commander of his/her assigned organizational unit immediately following the suspension, unless directed otherwise.
  - b. Whenever a supervisor effects an emergency suspension, he/she will promptly submit a Complaint Against Personnel report to the Chief of Police via the

chain of command setting forth the justification of the suspension. If the suspended employee is not under the supervision of the suspending supervisor, a copy of the report will be forwarded to the employee's supervisor.

- c. The Chief will review the report and forward it to an investigator for follow up investigation and processing.
- d. Any police officer so suspended is entitled to a prompt hearing before a ranking officer as designated by the Chief of Police. The purpose of the hearing is to determine whether the suspension should be continued, and if so, whether it will be with or without pay.

D. Payroll Status

Employees suspended on an emergency basis will be suspended with full pay and benefits until the Chief of Police changes their payroll status.

## **VIII. COUNSELING AND RETRAINING – REMEDIAL ACTION FORM**

A. Purpose and Use

- 1. The purpose of the Remedial Action Form is to provide supervisors with an instrument to document counseling and recommended corrective action for minor infractions of rules, procedures, and policies.
- 2. The Remedial Action Form may be used for supervisor-initiated counseling, training, or correction of subordinates' actions. The following are examples of such use: employee lateness; disruptive or inappropriate comments/behavior while in the department; failure to respond to calls promptly; speeding or improper parking in a police vehicle; or other minor infractions which should be pointed out and corrected immediately.
- 3. The Remedial Action Form may also be used, at the discretion of the employee's division commander, for minor citizen-generated complaints where, after initial inquiry, the supervisor and division commander determine the incident does not warrant formal disciplinary action. Examples of this include citizen complaints of improperly parked police vehicles, or complaints about an officer's attitude or demeanor.

B. Procedures

- 1. A Supervisors will make an initial inquiry by listening to complainants, through personal observation, or by listening to other employees, and then determine whether the incident, if true, should be handled through the formal disciplinary process or through use of the Remedial Action Form. This decision must be made before asking the officer for an explanation of the incident.

2. If the complaint originates from a citizen, the supervisor will inform the complainant that the complaint will be documented and the officer counseled.
3. The form is designed to provide a complete record of the incident and disposition for the supervisor. It is not a letter of reprimand or record of disciplinary action. Future use of the completed form will be only for purposes of documenting pre-disciplinary communication. Unless the form is required as evidence of pre-disciplinary counseling in some future disciplinary action, the original will be retained by the supervisor for one year and then destroyed.
4. The form should be completed in an original and one copy. The copy will be given to the employee. No copies of the form are to be placed in the employee's personnel file, or service records.
5. Before the incident is closed, the employee will be given an opportunity to review the form, make written comments, and sign the form.

## **IX. FINES: PAYMENT PROCEDURES**

### **A. Individual Responsibilities:**

#### **1. Employee Paying Fine**

All fines will be submitted to the Administrative Commander on or before the date specified in the disposition of the disciplinary event. All disciplinary fines must be paid by check or money order made payable to "TOWN OF DELMAR". Cash will not be accepted.

#### **2. Administrative Commander**

- a. Deliver collected fines to the towns Administrator of Finance along with a brief written explanation including the related internal investigation case control number.
- b. Forward a receipt to the individual paying the fine.