

CITY OF BARSTOW

CALIFORNIA

POLICIES and PROCEDURES MANUAL:

Subject: Discipline and Disciplinary Action

INTRODUCTION

The intent of this policy is to establish uniform procedures to be used for disciplinary actions within the Barstow Police Department.

Discipline may range from informal counseling to termination. An effective, reasonable disciplinary system is built on the premise that discipline is corrective rather than punitive. Further, discipline must be in proportion to the offense or omission, and be progressive in nature. However, it must be understood that a single offense may be sufficiently serious to result in substantial discipline or termination.

I. DISCIPLINE POLICY

The continued employment of members of the Department shall be based on reasonable standards of personal conduct, fitness, and satisfactory job performance.

1. Job-related misconduct is defined as conduct which reflects unfavorably on the employee, Department, City, or which may be detrimental to the organization.
2. Employees must conduct themselves in a manner which brings credit to themselves, the Department and the City at all times.
3. Failure to meet any required standard may result in disciplinary action.

II. DEFINITIONS

Definitions Generally: For the purpose of this policy, unless it is evident that a different meaning is intended, terms used shall have the following definitions:

-A-

ABILITY: The present competence to perform a function.

ADMINISTRATION: Those employees who collectively manage and supervise, the act of administering.

ADMINISTRATIVE LEAVE: A paid leave of absence assessed to an employee when, in the opinion of the Chief of Police or Division Commander, it is in the best interest of the police department for the employee to be on a leave of absence pending the outcome of an investigation or other matter. While on administrative

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leave of absence, the employee remains subject to duty and is required to appear at the police department, in court, or at any other place normally required by the employee's job duties.

APPEAL: A request for review of an action detrimental to an employee.

ARREST: Taking a person into custody as the result of a crime, and in a manner authorized by law.

AUTHORIZATION: To give authority or legal powers; to give the right to act, to empower.

AUTHORIZED ABSENCE: Leave taken in accordance with policy and with approval.

-B-

BRIBE: Any gift, advantage, or emolument offered, given, promised to, asked of, or accepted by, any public officer or employee to influence his/her behavior.

-C-

CRIME: An act committed or omitted in violation of law.

CONTROLLED SUBSTANCE: A drug substance or precursor which is included in Division 10, Chapter 2, of the "Uniformed Controlled Substance Act" of the California Health and Safety Code.

COMPENSATION: The salary, wages, and other forms of valuable consideration, earned by or paid to an employee for service in any position.

CRIMINAL CONVICTION: A criminal conviction is established by a plea of guilty, plea of nolo contendere, finding of guilty by a jury, or by judge in a non-jury trial.

CRIMINAL JUSTICE AGENCIES: A public agency directly and principally engaged in apprehending, prosecuting, adjudicating, confining, or rehabilitating individuals.

CRIMINAL OFFENDER RECORDS: Includes any records and data compiled by criminal justice agencies for purposes of identifying criminal offenders, including all arrests, convictions, and formal detentions. It also includes pre-trial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

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CRIMINAL SYNDICALISM: A doctrine or precept advocating, teaching, or aiding and abetting the commission of crime, sabotage, or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in ownership or control, or effecting any political change.

-D-

DAYS: Working days unless otherwise stated.

DEMOTION: An involuntary change in assignment of an employee from a position to another that has a lower maximum salary rate.

DEPARTMENT: A major component of City government organized for the purpose of performing certain closely related functions.

DISCIPLINE: Corrective action taken by the department with an employee for the purpose of enforcing compliance with department and city rules, policies, procedures, and proper employee conduct. The primary objective of discipline is to gain the willing participation of all employees in meeting established goals of City services. Discipline should aid in promoting efficient public service and harmonious working relationships.

DISMISSAL: The involuntary separation of an employee from employment with the City.

DISCIPLINARY ACTION: Disciplinary action is the invoking of a penalty for one who fails to meet standards, or violates rules, regulations, or law. Types of disciplinary action are:

1. Oral reprimand
2. Written reprimand
3. Suspension
4. Pay step reduction
5. Demotion
6. Termination

DISCRIMINATION: Any employment practice which adversely affects hiring, promotion, transfer, or any other employment membership opportunity of classes protected by federal or state law constitutes discrimination.

DIVISION: A major component of a department organized for the purpose of performing certain specialized activities assigned to the department.

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DIVISION COMMANDER: A member of management in charge of a division who is directly responsible to the Chief of Police for operation of an assigned division.

DRUGS: A substance officially defined by the California Health and Safety Code as such; or a substance intended for medical use; or a non-food used to change the structure or function of the body.

DUTY: Duty includes a large segment of the work performed by an individual and may include any number of tasks. "Issuing citations", "effecting arrests", and "providing information" are examples of job duties.

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EFFECTIVE DATE: The date upon which a specific action shall take effect.

EMPLOYEE: Any person regularly employed by the City of Barstow except those persons elected by popular vote.

EMPLOYEE REPRESENTATIVE: Means the authorized representative of a recognized employee organization.

EVALUATION: Periodic review of the quantity and quality of an employee's actual and specific work performance, including achievements and behavior on the job, stressing results, not technique or personality.

EXAMINATION(S): The job-related process of testing and evaluating the fitness and qualifications of applicants.

EXTENDED: Prolonged time.

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GRATUITY: Anything of value, given, or received, unearned or without recompense, usually in return for, or in anticipation of some return benefit, compensation, or consideration.

GRIEVANCE: A claim or dispute by an employee, group of employees, or their authorized representative, concerning rates of pay, hours, working conditions, or the interpretation of memoranda of understanding.

GRIEVANCE PROCEDURE: The standardized procedural steps involved in the resolution of grievance.

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IMMEDIATE SUPERVISOR: An employee with authority over another employee in such matters as assignment and direction of work, evaluation of work performed.

INACTIVE DUTY: Assignment to home or another place, on call, when it is contrary to the best interests of the City for the employee to perform his/her regular duties.

INITIAL PROBATION PERIOD: The trial period of employment, one year (26 pay periods). During this period following initial appointment, an employee is required to demonstrate his/her fitness for duties by satisfactory performance.

INSUBORDINATION: Willful failure of an employee to comply with a lawful directive from his supervisor, or any act(s) which indicates clearly and beyond doubt his/her unwillingness to accept the lawful authority of a supervisor.

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JUST CAUSE: Just cause includes the following: any criminal offense, incompetence, inefficiency, dishonesty, neglect of duty, misconduct, sexual misconduct, insubordination, violating of any City or Department policy or procedure, or similar actions which may bring discredit to the City of Barstow or the Department.

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LAW: The body of rules and conduct enforced under the authority of established government, determining that which is proper and should be permitted and that which should be denied.

LEAVE WITHOUT PAY: Authorized absence from duty for a prescribed period of time, without compensation.

-M-

MORAL TURPITUDE: An act of baseness, vileness, or depravity which causes one to lose credibility. Conduct contrary to justice, honesty, modesty, or good morals.

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NEED TO KNOW: The necessity to obtain certain types of information in order to execute official responsibilities.

NOTIFICATION: Transmitting information to a person or organization.

-O-

OCCUPATIONAL INJURY/ILLNESS: An injury or illness arising out of and occurring in the course of employment.

ORDINANCE: A local law enacted by the City Council; a rule of conduct applying to persons and things subject to the local jurisdiction.

ORGANIZED CRIME: A group of people unified for the purpose of performing together, through planning and coordination of individual effort, continuing activities, a substantial portion of which activities are illegal.

OUTSIDE EMPLOYMENT: Any work undertaken by an employee of the City for financial or property gain other than the specific duties assigned to an employee by a supervisor of the City.

-P-

PERMANENT EMPLOYEE: An employee who has successfully completed the initial probationary period. An employee retains that status during any subsequent promotional probationary periods.

POSITION: A group of DUTIES and responsibilities assigned by competent authority requiring the full or part-time employment of one person on a permanent or short-term basis.

PROMOTION: A change in the assignment of an employee from a position in one class to a position in another permanent class with a higher maximum salary rate.

PROPER ORDER: A command or direction which must be obeyed and followed pursuant to any ordinances or resolutions, or any directives, policies, procedures, rules, regulations, common customs, or practices.

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REDUCTION IN SALARY: The permanent or temporary assignment of an employee to a lower salary step in his/her class within the same salary range.

REPRIMAND, ORAL: A verbal censure of an employee whenever the job-related misconduct or job performance so warrants.

RESIGNATION: Voluntary termination by an employee of his/her employment.

RESOLUTION: A formal expression of the opinion or will of the City Council, adopted by vote.

RIGHT: A benefit which is bestowed by law or rule and which must be granted, unless denied after due process.

-S-

SEXUAL MISCONDUCT: Sexual misconduct includes illegal sexual conduct, sexual conduct in public (whether or not within a vehicle), sexual conduct while on duty, and sexual conduct on or about city property.

SPECIAL ASSIGNMENT: Positions within the Department designated by the Police Chief. There is no period of probation required in Special Assignments, and no property right results.

SUPERVISORY EMPLOYEE: An employee having authority to exercise independent judgment to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or having the responsibility to direct them or to adjust their grievances.

SUSPENSION: The temporary removal from duties of an employee, without pay, for disciplinary purposes.

-T-

TASK: It is a distinct identifiable work activity that constitutes one of the logical and necessary steps in the performance of a job, such as "drives vehicle", "answers telephone", "directs visitors to appropriate office".

TERMINATION: A general term meaning the cessation of employment synonymous with "separation".

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UNAUTHORIZED ABSENCE: Time taken away from work during normal work hours, and in violation of Department policy and without approval.

UNSATISFACTORY PERFORMANCE: Performance of job duties and responsibilities which is not reasonable and consistent with normal expectations or proficiency required of all persons in that class.

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III. DISCIPLINE AND STANDARDS

An employee of the Barstow Police Department may be disciplined whenever the employee's job performance or job-related misconduct so warrants. Just cause for such disciplinary action shall include incompetence, commission of a criminal offense, inefficiency, dishonesty, neglect of duty, misconduct, insubordination, conduct which tends to reflect unfavorably upon the employee, Department, or City, or failure to observe Departmental or City policies, procedures, rules, and/or regulations.

The following list constitutes a portion of the Department's disciplinary standards. This list does not preclude discipline for other specific acts, actions or omissions detrimental to the Department. The specific charge against an employee must be clearly related to the employee's duties. If off duty, they must affect the employee's ability to perform the duties assigned.

1. Attendance:

- a. Leaving assigned job during duty hours without reasonable excuse and approval.
- b. Unexcused or unauthorized absence on scheduled days of work.
- c. Failure to report for work or to place of assignment at time specified without reasonable excuse.
- d. Using city time, property, or equipment without authorization.

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- e. Unexcused, excessive, or patterned absenteeism.
 - f. Failure to make reasonable effort to notify the supervisor of an inability to report for work.
 - g. Frequent and unexcused tardiness.
 - h. Taking a longer period of time for lunch or rest periods than allowed.
 - i. Habitual abuse of sick leave time.
2. Conduct:
- a. Unlawful fighting, threatening, or attempting to inflict unlawful bodily injury on another.
 - b. Engaging in potentially dangerous, impractical "horseplay" resulting in employee injury or property damage, or the reasonable possibility thereof.
 - c. Unauthorized possession of, use of, loss of, or damage to City property or the property of others or endangering same through unreasonable carelessness or maliciousness.
 - d. Failure to report activities of any other employee, where such activities may result in criminal prosecution.
 - e. Using official position or office for personal gain or advantage.
 - f. Engaging in any employment, activity, or enterprise which constitutes a conflict of interest.
 - g. Malicious destruction of city property or equipment.
 - h. Conduct or activities tending to interfere with personal efficiency.
 - i. Using loud, abusive, or obscene language; fighting; rude, discourteous or uncivil behavior; commission of a public offense involving moral turpitude.
 - j. Sleeping on the job.
 - k. Theft of or aiding or encouraging the theft of cash, or city property or equipment, when established by proper investigation.

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3. Discrimination:

- a. Discrimination against an employee or applicant because of race, color, creed, religion, sex, national origin, ancestry, marital status, physical handicap, or medical condition.
- b. Making derogatory racial, ethnic, or sexist remarks in the presence of the public, or other employees while on duty.

4. Intoxicants:

- a. Reporting to work or being at work while under the influence of intoxicants. Unauthorized possession of, use, or attempting to bring intoxicants on the work site except when authorized. Employees that are required to consume intoxicants as part of their job shall not do so to a degree that would impair their ability to perform their proper duties.
- b. Reporting for work or being at work following the use of "controlled substances" or any drug (whether legally prescribed or otherwise) where such use may impair the employee's ability to perform assigned duties; unauthorized possession of, use of, or attempting to bring any "controlled substance" or other illegal drug to any work site.

5. Performance:

- a. Careless workmanship resulting in spoilage or waste of materials or work of an unacceptable nature, as applicable to the nature of work assigned.
- b. Refusal, failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or instructions of supervisors without reasonable and bona fide excuse.
- c. Concealing or attempting to conceal defective work; removing or destroying same without permission.
- d. Disobedience or insubordination to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor or employee.
- e. The wrongful or unlawful exercise of authority on the part of any employee for malicious purposes, personal gain, and/or willful deceit.
- f. Disparaging remarks concerning duly constituted authority to the extent that such conduct disrupts the efficiency of a department or subverts the good order, efficiency and discipline of a department and

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would tend to discredit any member thereof.

- g. Knowingly making false or malicious statements with intent to harm or destroy the reputation, authority, or official standing of departments or individual members thereof.
- h. Wrongfully loaning, selling, giving away, or appropriating any City property for the employee's own personal use.
- i. The unauthorized use of any badge, uniform, or City I.D. card for the purpose of personal gain.
- j. Acceptance of a fee or gift from a private party for providing services already required by law or department policy.
- k. Any intentional or continuing violation of the provisions of the City or Department policy, rules, regulations, or procedures.
- l. Work-related dishonesty, including attempted or actual theft of City property, City services, or the property of others.
- m. Criminal, dishonest, infamous, or notoriously disgraceful conduct, adversely affecting the employee/employer relationship (on-duty or off-duty).
- n. Failure to take reasonable action while on-duty and when required by law, statute, resolution, or approved Department practices or procedures.
- o. Substantiated, active, continuing association with, or membership in, "organized crime", and/or "Criminal Syndicalism", with knowledge thereof except as specifically directed by the Police Department.
- p. Soliciting, accepting, or offering a bribe or gratuity.
- q. Misappropriation or misuse of public funds.
- r. Exceeding lawful peace officer powers by unreasonable, unlawful, or excessive conduct.
- s. Unlawful gambling or unlawful betting on City premises, or at any work site.
- t. Substantiated, active, continuing association on a personal rather than official basis with a person or persons who commit(s) serious violations of state, or federal laws, where the employee has knowledge

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of such criminal activities, except as specifically directed by the Police Department.

- u. Solicitations, speeches, or distribution of campaign literature for or against any candidate for public office on City property except as expressly authorized by law.
 - v. Engaging in political activities prohibited by law during assigned hours of employment.
 - w. Misusing, or failing to use, delegated authority in the performance of duties.
 - x. Personal appearance not appropriate for the job in terms of community standards and job safety.
 - y. Failure to carry out assigned work or supervisory responsibilities adequately, directly or promptly.
 - z. Inattention or dereliction of duty.
 - aa. Refusal to perform work assignments or to cooperate with supervisors or management in the performance of duties, whether passive or overt. Also referred to as insubordination.
 - bb. Failure to cooperate with other employees or members of the public.
 - cc. Unnecessarily disrupting the work of other employees.
 - dd. Using threats or attempting to harm another employee or member of the public.
 - ee. Making false, vicious, or malicious statements concerning any employee, or concerning managers or city government.
6. Safety:
- a. Failure to observe posted rules, signs, written or oral safety instructions while on duty and/or within City facilities, or to use required protective clothing or equipment.
 - b. Knowingly failing to report within 24 hours any on-the-job accident or injury.
 - c. Substantiated employee record of unsafe or improper driving habits or actions in the course of employment.
 - d. Operating city vehicles or other equipment while under the influence of alcoholic beverage, and/or drugs/narcotics which will impair the ability to operate such equipment.

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- e. Operating city equipment unsafely or carelessly.
- f. Causing or contributing to an accident by operating city equipment in an unsafe manner, when established by investigation.

7. City Records/Confidential Information:

- a. Unauthorized intentional release of designated confidential City or Department information, materials, data, forms, or reports. The release of information must be guided by the legal "right to know" and "need to know" doctrine.
- b. Deliberately withholding information related to work from supervisors or others requiring the information.
- c. Intentionally falsifying or destroying city records without proper authority.
- d. Falsifying time cards, mileage reports, expense accounts, or similar work oriented documents, falsely claiming sick or allowed pay, falsifying reasons for absence.
- e. The falsification of records, the making of misleading entries, or statements with intent to deceive, or the willful and unauthorized destruction and/or mutilation of any useful Department or City record, book, paper, or document.
- f. Failure to disclose material facts or the making of any false or misleading statement on any application, examination form, or other official document of the City.

IV. DISCIPLINE/CLASSIFICATION

DISCIPLINE

WHO MAY ADMINISTER

Oral Reprimand	Any Supervisor
Suspension--Emergency	Any Supervisor
Written Reprimand	Division Commander
Suspension	Chief of Police
Demotion in Range	Chief of Police
Termination	Chief of Police

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Only the Chief of Police may administer disciplinary measures above that of a written reprimand. After the Chief of Police has signed the necessary documents, he may delegate the actual service of the disciplinary action to the Division Commander.

V. DISCIPLINARY PROCESS

When the department is made aware of unacceptable conduct or poor performance by an officer, an administrative investigation will be done. Depending on the seriousness of the allegations, the investigation will be performed either by the employee's supervisor or the Administrative Lieutenant. In all cases, the investigation will be thorough, fair, and in accordance with the Public Safety Officers' Bill of Rights.

1. Once the investigation is completed, it will be directed to the appropriate Division Commander for review. If the allegations are sustained, the Division Commander shall make a recommendation to the Chief of Police as to the level of discipline. The recommendation should be based on the totality of the facts, as well as the officer's past work record.
2. The Chief of Police shall then review the investigation and make a final determination as to discipline. If the discipline imposed is either an oral reprimand or a written reprimand, the Chief shall cause the necessary documents to be completed and served on the officer. If the discipline is a one day suspension or more, a Notice of Proposed Disciplinary Action will be given to the officer, along with a copy of the investigation, and a date for the Skelly Hearing.

VI. LEVELS OF DISCIPLINE

1. Oral Reprimand--conference between an employee and a supervisor concerning the employee's performance and/or behavior.
 - a. The conference will be documented, and placed in the employee's yearly work file.
 - b. The employee has the right to prepare a written rebuttal, and have it attached.
 - c. Any oral reprimands shall be included in the employee's next evaluation, then destroyed.
2. Written Reprimand--formal notice to the employee that his performance and/or behavior is unacceptable. The employee is informed that failure to improve will result in more serious disciplinary action.
 - a. Reprimand shall include an explanation of what occurred, date, time, location; and what rule, policy, or contract provision was violated.

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- b. Reprimands shall be signed by the employee for receipt only, and placed in his or her personnel file. Per city policy, the employee may request the reprimand be removed from his/her personnel file after two years. This request must be in writing, and directed to the Chief of Police. Reprimands for certain violations such as excessive force, sexual harassment, racial harassment, and insubordination shall not be considered for removal from an employee's personnel file.
 - c. Employee may prepare a written response to the reprimand, and have it attached.
3. Suspension--one to five working days (39 hours or less)--removal from duty without pay. This level of discipline is normally the result of serious misconduct and/or chronic behavioral problems.
- a. Employee shall receive a written Notice of Proposed Disciplinary Action, a copy of the investigation, and a notice of the date of the Skelly Hearing with the Chief of Police.
 - d. This notice shall include the proposed discipline, a statement of charges, and a description of the acts/omissions/job performance that resulted in the proposed discipline.
 - e. If the employee is not satisfied after the Skelly Hearing, he/she may then request an Evidentiary Hearing with the City Manager. The officer would have the right to representation, call witnesses, and cross examine witnesses.
 - f. If still not satisfied with the decision of the City Manager, the officer may appeal in writing to the City Council. The City Council will review all documents, and render a decision. A decision of the City Council is final.
 - g. The department may impose the disciplinary action prior to appeal to the City Manager and/or City Council.
 - h. A copy of the disciplinary action shall become a permanent part of the employee's personnel file.
4. Suspension of forty (40) hours or more.
- a. Employee shall receive a written Notice of Proposed Disciplinary Action, a copy of the investigation, and a notice of the date of the Skelly Hearing with the Chief of Police.
 - b. This notice shall include the proposed discipline, a statement of charges, and a description of the acts/omissions/job performance that resulted in the proposed discipline.
 - c. A suspension of forty (40) hours or more may be appealed to an Evidentiary Hearing before an

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outside arbitrator, in accordance with the MOUs.

- d. Per City policy, suspensions shall be for a maximum of thirty (30) days.
 - e. The department may impose the disciplinary action prior to appeal with an outside arbitrator.
 - f. A copy of the disciplinary action shall become a permanent part of the employee's personnel file.
5. Demotion--the reduction of an officer's pay grade, either permanently or temporarily due to improper conduct and/or poor job performance.
- a. Employee shall receive a written Notice of Proposed Disciplinary Action, a copy of the investigation and a notice of the date of the Skelly Hearing with the Chief of Police.
 - b. This notice shall include the proposed discipline, a statement of charges, and a description of the acts/omissions/job performance that resulted in the proposed discipline.
 - c. A demotion may be appealed to an Evidentiary Hearing with an outside arbitrator, in accordance with the MOUs.
 - d. The department may impose the disciplinary action prior to appeal with an outside arbitrator.
 - e. A copy of the disciplinary action shall become a permanent part of the employee's personnel file.
6. Termination
- a. Employee shall receive a written Notice of Proposed Disciplinary Action, a copy of the investigation, and a notice of the date of the Skelly Hearing with the Chief of Police.
 - b. This notice shall include the proposed discipline, a statement of charges, and a description of the acts/omissions/job performance that resulted in the proposed discipline.
 - c. A termination may be appealed to an Evidentiary Hearing with an outside arbitrator, in accordance with the MOUs.
 - d. The department may impose the disciplinary action prior to appeal with an outside arbitrator.
 - e. A copy of the disciplinary action shall become a permanent part of the employee's personnel file.

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7. Emergency Suspension--an officer may be relieved of duty with pay when there is reason to believe that it is in the department and/or employee's best interest. Such emergency suspensions would include:
- Reporting for duty intoxicated, or under the influence of drugs.
 - Physical, mental, or emotional condition rendering the officer unable to perform his/her duties.
 - Pending an internal investigation, when the employee's presence at the department might impede the investigation.
 - When the allegations are of such a nature that it would be in the department's best interest that the officer not be on active duty.
 - This type of suspension would not be documented in the officer's personnel file unless it is determined that the allegations were sustained, and the discipline was a letter of reprimand or more.

VII. EMPLOYEES ARRESTED OR SUSPECTED OF CRIMES

When an employee of this department is arrested for crime within the City limits of Barstow, the following shall take place:

- The Chief of Police and appropriate Division Commander shall be notified immediately.
- The on-duty watch commander shall respond to the scene and take charge of the criminal investigation. He may call the Detective Sergeant and request assistance if the crime is of a more serious nature.
- The Chief of Police and/or the Division Commander may choose to request an outside law enforcement agency to take charge of the criminal investigation.
- The procedures and scope of the investigation will be the same as that for any private party arrested under similar circumstances.
- Depending on the crime involved, the Chief of Police may cause the employee to be suspended from duty with pay, pending the outcome of the investigation.
- The Chief of Police or Division Commander may also require the Administrative Lieutenant to conduct an internal investigation. If so, this investigation will be completely separate from the criminal investigation, and will be in accordance with the Public Safety Officers' Bill of Rights.

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VIII. DISCIPLINARY FILES

When it is necessary to file a disciplinary action in an employee's personnel file, only a disposition and summary of the incident shall be so filed. The actual investigation and supportive data will be filed in the employee's Internal Affairs File. The Internal Affairs File shall not be used for reviews or promotions, but it is available for background investigator's inspection with the proper waiver. It is a confidential file which shall not be utilized except for Internal Affairs purposes.

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