



# MIDDLETON POLICE DEPARTMENT

DATE  
**July 30, 2013**

POLICY  
**4.2.01**

SUBJECT: **Disciplinary Procedures**

REVIEWED  
December 11, 2017

Refer to: SS [62.13\(5\)](#)

History: 1995, Updated 6/02, 7/13, 11/14, 12/17

**WILEAG (5th Ed.) Standards:** 4.2.1 (4.2.1.01, 4.2.1.02, 4.2.1.03); 4.2.2; 4.2.3 (4.2.3.1, 4.2.3.2); 4.2.4

## Contents

PURPOSE.....	2
POLICY .....	2
PROCEDURE.....	2
Purpose of Discipline .....	2
Recognition of Rights .....	2
Employee Responsibilities.....	3
Progressive Discipline .....	3
Levels of Discipline .....	3
Informal Discipline .....	3
Formal Discipline.....	4
Authority to Discipline .....	5
Determination of Action .....	5
Investigation.....	5
Predetermination Hearing .....	5
Standard of Proof.....	5
Sanctions .....	6
Appeals .....	6
Discipline Documents and Records .....	7
Informal Discipline Documents and Records .....	7
For information on .....	7
Formal Discipline Documents and Records.....	7
Disclosure of Discipline and Personnel Records.....	7
Removal of Records.....	8
Employee Assistance Program (EAP) .....	8

## **PURPOSE**

The purpose of this policy is to provide procedures and guidelines for administering discipline or corrective action to employees.

## **POLICY**

It is the policy of this department that the discipline system is one that is fair, rational, efficient and consistent, reflects the values of the department, protects the rights of employees and citizens, promotes respect and trust within the department and with the community and results in a culture of public accountability, individual responsibility and maintenance of the highest standards of professionalism.

## **PROCEDURE**

### **Purpose of Discipline**

The overall objectives of this disciplinary system are to facilitate the orderly functioning and operation of the department; to ensure employee adherence to reasonable and acceptable standards of performance and conduct; and to provide fair and equitable consequences for failing to adhere to those standards. Personal recognition by peer employees, supervisory and command staff, and citizens, is strongly encouraged to provide balance to the necessities of the disciplinary system (4.1.01 Employee Recognition and Awards). The purposes of disciplinary sanctions include the following:

- A. To modify/correct the conduct of the disciplined employee.
- B. To deter future misconduct by the disciplined employee.
- C. To impose an appropriate penalty on the disciplined employee, taking into account the nature and seriousness of the misconduct, any mitigating or aggravating factors, and the employee's disciplinary and work history.
- D. To address/reflect the harm or risk of harm arising from the misconduct and the effects of the misconduct both inside and outside of the department.
- E. To provide notice of the consequences of misconduct to all members of the department and to deter future misconduct by all members.
- F. Ensuring the orderly functioning and operation of the department and adherence to its established standards of conduct.
- G. Reinforcing department values and training.
- H. Effectively managing risk and potential civil liability for employees, the department, and the City.
- I. Establishing trust in and respect for the discipline system and the department, both internally and in the community.

### **Recognition of Rights**

The department recognizes employee rights as afforded by the Federal and State Constitutions, state law, municipal ordinance, case law, contractual language, and the [Law Enforcement Officer's Bill of Rights](#) (§ 164.01). All supervisors shall adhere to all applicable employee rights when conducting internal investigations and administering discipline. The Chief of Police shall

also abide by all applicable employee rights while imposing discipline. Likewise, investigations and discipline must be administered with regard for the rights and respect due other employees, complainants, witnesses, and members of the public. The administration of the investigation and discipline process shall not discriminate against anyone on the basis of race, color, creed, national origin, ancestry, gender, sexual orientation, age, religion, political affiliation, physical or mental disability, military status, marital status, or other basis protected by Federal, State or local law or regulation.

### **Employee Responsibilities**

It is the responsibility of every employee to be familiar and comply with department policy, procedures, rules and standards of conduct. When involved in an investigation, employees are required to cooperate, to fully and truthfully answer questions, and to render material and relevant statements to the investigating officers.

### **Progressive Discipline**

Disciplinary action is meant to be corrective and constructive, and may range from counseling, to corrective sanctions, suspension or termination, where the positive effect is in the reassurance to other employees and the community that unacceptable conduct will not be tolerated. Generally, the principle of progressive discipline shall be applied in determining the appropriate action. Where progressive disciplinary action does not bring about satisfactory job performance, discharge is necessitated. Discharge should be resorted to only where other corrective efforts have failed. The principles of progressive discipline may not apply to major serious offenses, for example assault on a supervisor or fellow employee, theft, drinking on the job, or sabotage. In the cases of serious offenses, immediate discharge may be the appropriate action.

The progressive discipline continuum includes, but is not limited to, corrective counseling, supervisory warning, reprimand, suspension, reduction in rank, suspension and reduction in rank, or removal. Remedial training or reassignment may occur at any stage or outside of the progressive discipline process. The progressive discipline continuum does not preclude non-sequential imposition of discipline. The degree of discipline administered should be reasonably related to the seriousness of the employee's proven offense, and the employee's record. In each case, care must be exercised to obtain a desired and just result and the evenhanded application of corrective action, including discipline, department-wide. Because circumstances vary, the department retains the right to treat each violation on a case-by-case basis; and a particular finding does not create a binding precedent for deciding discipline for other subsequent cases or violations, but should be considered in similar cases.

### **Levels of Discipline**

#### ***Informal Discipline***

A. **Corrective Counseling** - Employees may receive corrective counseling for minor isolated violations and work deficiencies. Corrective counseling is documented on a Counseling Report, signed by the employee, and placed in the employee's annual service file, with a copy provided to the employee. Corrective Counseling is an informal action, is not placed in permanent personnel files, is removed from the annual service file after one year, but may be cited in the next annual evaluation or in support of subsequent formal disciplinary action.

Counseling reports document a private counseling meeting between the employee and supervisor and should include a brief description of the violation, what standard or expectation was violated, the corrective action that is needed, and what action will be taken if similar problems continue to occur.

- B. **Supervisory Warning** - Employees may receive a supervisory warning for work deficiencies or repeat or more serious violations which have minimal negative impact on the operations or professional image of the department; or which have minimal negative impact on relationships with other employees, agencies or the public. Warnings are documented on a Supervisory Warning Report, signed by the employee, and placed in the employee's annual service file. A Supervisory Warning is an informal action, is not placed in permanent personnel files, is removed from the annual service file after one year, but may be cited in the next annual evaluation or in support of subsequent formal disciplinary action. Supervisory Warning Reports should include a brief description of the violation, what standard or expectation was violated, and what action may be taken if similar problems recur.

### ***Formal Discipline***

- A. **Reprimand** – Employees may receive a reprimand for work deficiencies or repeat or more serious violations; for conduct that has a pronounced negative impact on the operations or professional image of the department, or on relationships with other employees, agencies or the public.
- B. **Suspension Without Pay** – Employees may receive a suspension for recurrent work deficiencies or repeat or more serious violations; for conduct that is substantially contrary to the values of the department or that substantially interferes with its mission, operations or professional image, or that involved a demonstrable serious risk to officer or public safety. (Administrative leave with pay is not a disciplinary action and does not in itself imply that an employee will be disciplined or that an allegation is credible. Police officers are routinely placed on administrative leave after a critical incident while the standard required investigation is conducted, without implying fault on the part of the officer.)
- C. **Reduction in Rank** - Reduction in the rank of an employee may occur if, after considering performance or all of the facts and circumstances surrounding an incident, it is determined that a supervisor or command officer lacks the ability, willingness or worthiness to perform in the current rank. Reduction in rank reflects the determination that an employee has demonstrated by his/her performance or conduct that he/she is unfit to fulfill the responsibilities and duties required for his or her current position at the specific rank. (Promotions are conditioned on successful completion of a probationary period, and no property interests arise until after successful completion of that probationary period.)
- D. **Removal** – Employees may be removed (dismissed, discharged, terminated) for recurrent work deficiencies or repeat or more serious violations; Conduct that involves the serious abuse or misuse of authority, unethical behavior, or an act that results in an actual serious and adverse impact on employee or public safety, or to the professionalism of the department; Any violation of law, rule or policy which foreseeably results in death or serious bodily injury, or constitutes a willful and wanton disregard of department values, or involves any act which demonstrates a serious lack of the integrity, ethics or character related to an employee's fitness to hold the position; or involves egregious misconduct substantially

contrary to the standards of conduct reasonably expected of police employees; or involves any conduct which constitutes the failure to adhere to any contractual condition of employment or requirement of certification mandated by law. (Probationary employees may be terminated without cause and do not have the right to appeal.)

### **Authority to Discipline**

Supervisors may administer informal discipline and recommend formal discipline. Supervisory recommendations for formal discipline shall be forwarded through the chain of command to ensure consistency and uniformity of discipline within the department. The Chief of Police will have final authority on imposition of discipline. Supervisors may order emergency suspensions with pay, all other suspensions must be by the Chief of Police or Police Commission. The Chief of Police must report all suspensions of sworn officers to the Police Commission. Pursuant to Wis. Stats. § [62.13\(5\)](#), charges against a sworn officer may be filed in writing with the President of the Police Commission by the Chief, the Police Commission, a member of the Police Commission or any aggrieved person, and, upon a determination of just cause, the Police Commission may suspend, or reduce in rank, or suspend and reduce and rank, or remove sworn officers, as the good of the service may require.

### **Determination of Action**

#### ***Investigation***

It is important that a supervisor conducts a thorough investigation of the facts and circumstances. This requires a supervisor to actively seek information in a fair, objective, and nondiscriminatory manner. This process is separate and distinct from any consideration of what disciplinary sanction, if any, is appropriate if it is decided that a violation has been proven. Before a determination is made, the employee shall be afforded an opportunity for explanation or rebuttal, which could result in additional investigation. If formal discipline may be warranted, a predetermination hearing shall be scheduled.

#### ***Predetermination Hearing***

If there is probable cause that an employee violated department policy, operating procedures, rules, or standards of conduct for which formal disciplinary action may be appropriate, the affected employee shall be given a formal opportunity to answer the allegations before a decision is made. In such a case, the affected employee shall be given a written notice of allegations, as well as the date, time and place of a predetermination hearing. The purpose of the predetermination hearing is to provide the employee an opportunity for rebuttal. The employee may choose to appear or not, may bring representation if desired, and is entitled to make no response. Any new and pertinent information that comes to light shall be investigated before a decision is made. (It may be necessary to continue the hearing at a later date if additional investigation is required.) A decision shall be rendered only after the hearing has been completed and all available information has been given careful consideration.

#### ***Standard of Proof***

A finding of whether or not a violation has been proven must be based on a fair and rational consideration of all of the evidence and only the evidence in the case. Just cause for disciplinary action requires that there be substantial evidence that an alleged violation was committed and the accused employee committed it. Substantial evidence means “such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion.” Furthermore, the rule or order must be reasonable, the employee could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct, the investigation was thorough, fair, and objective, and the rule or order is applied fairly and without discrimination.

### ***Sanctions***

Any proposed discipline must reasonably relate to the seriousness of the alleged violation and to the employee’s record of service. (See Levels of Discipline and Progressive Discipline.) In determining the appropriate sanction or penalty, mitigating and aggravating circumstances may be considered.

Mitigating circumstances may include: willingness to accept responsibility and acknowledge wrongdoing; the circumstances under which the violation occurred; lack of or minimal nature of any consequences caused by the current offense; satisfactory work history, complimentary history including awards and commendations; or minimal or lack of prior disciplinary history relative to years of service.

Aggravating circumstances may include: injury or harm to a member of the public or an employee; endangerment to a member of the public or an employee; the existence of an actual or demonstrable legal or financial risk to the department or the City; the supervisory or command rank of the employee who committed the violation; prior disciplinary history; actual and demonstrable prejudice to the department; jeopardizing the department’s mission and/or relationship with other agencies; loss or damage to city or private property; a criminal conviction of the involved employee arising out of the underlying event; dishonesty on the part of the employee; prejudicial conduct regarding a protected class; harassment or retaliatory conduct; the culpable mental state of the employee in the commission of the violation; or unsatisfactory work history.

The imposition of discipline may have ancillary consequences which result from the personal circumstances of the employee being disciplined. For example, a suspension may impose a greater hardship on a married parent of three children than it does on a single employee. These consequences cannot be regarded as part of the disciplinary sanction. In attempting to treat employees in a consistent manner, these ancillary consequences resulting from personal circumstances must not play a part in the decision of whether a violation should be sustained or what the appropriate penalty should be.

At the Chief’s discretion, an employee may be afforded the option of working additional days to serving a suspension.

### **Appeals**

Employees may ask to have informal corrective counseling and supervisory warnings reviewed by the next highest ranking officer. All formal disciplinary actions may be appealed to the Chief of Police. If sustained by the Chief of Police, sworn officers may appeal a suspension to the Police Commission pursuant to § [62.13\(5\)](#). Suspensions, reductions in rank, suspensions and reduction in rank, and removal of sworn officers by the Police Commission may be appealed to the Circuit Court.

Non-Represented employees may use the grievance procedure found in the City Personnel Ordinance ([Chapter 27](#)) to address concerns regarding discipline decisions, limited to suspensions, demotions, and discharge.

Represented Dispatchers may use the grievance and arbitration procedure (4.01) found in the City of Middleton Local 60, AFSCME, AFL-CIO, Dispatcher Unit Handbook to address a complaint by an employee or the Union as to the meaning or application of the terms of employment.

## **Discipline Documents and Records**

### ***Informal Discipline Documents and Records***

For information on Corrective Counseling and Supervisory Warning documents and records, please see Informal Discipline.

### ***Formal Discipline Documents and Records***

Personnel Orders are issued for hiring, commendation, reprimand, suspension, reassignment, permanent status, reclassification, awards, promotion, demotion, termination, remedial action, and special fitness reports. Personnel Orders are issued by the Chief of Police, or his/her designee, are on blue paper, and become part of the employee's permanent personnel file. Personnel Orders should be labeled as such and are typically in memorandum format.

A Personnel Report is a personnel order formatted for commendations, and disciplinary or remedial action. A copy of personnel orders shall be provided to the affected employee. A disciplinary personnel order should, at a minimum, include the following information:

1. A description of the specific act or omission;
2. The date(s) and place of the act or omission;
3. The specific policy, procedure, rule, order, or expectation violated;
4. The specific penalty that is being imposed;
5. The effective date for the sanction;
6. The possible consequences of future similar violations;
7. Employee appeal and hearing rights;
8. If available and appropriate, reference to the availability of the Employee Assistance Program; and
9. Signature of the employee who is the subject of the action thereby acknowledging the existence of the personnel order and appeal procedure.

Any charges filed against a police officer with the Police Commission shall be in writing and a copy thereof shall be served upon the person charged.

### ***Disclosure of Discipline and Personnel Records***

Public employee disciplinary or personnel records are not exempt from disclosure under public records law, except as provided in Wis. Stats. § [19.36\(10\)](#) and [\(13\)](#) [home address, home electronic mail, personal telephone number, social security number, identity of family members, patient health care information prepared by a health care professional, account or customer numbers with financial institutions, information related to employment examinations (and background investigations) except scores, information relating to staff management planning,

performance evaluations, judgment or recommendations concerning wage treatments, job assignments, letters of reference, or other comments or ratings, and information relating to the current investigation of possible misconduct prior to disposition of the investigation].

The department must, on a case-by-case basis, engage in a balancing test, weighing the public policies favoring disclosure, including the presumption of openness, against any public policies favoring keeping such records closed. If a record contains information that is subject to disclosure under the public records law and information that may be withheld, the department will redact information not subject to disclosure before releasing the record.

The department, before permitting access to discipline records and within three days of making the decision to permit access, provide the employee a written notice of that decision. Within 5 days after receipt of a notice, the employee may provide written notification to the department of the employee's intent to seek a court order restraining the department from providing access to the record. Within 10 days after receipt of the department notice, the employee may commence an action seeking a court order to restrain the department from providing access to the requested record. The department will not provide access to the record within 12 days of providing notice to the employee or, if the employee commences an action, during pendency of that action (§ [19.356](#)).

#### ***Removal of Records***

After a period of at least 18 months since a disciplinary personnel action was taken and having had no subsequent similar action taken, an employee may request, in writing, that the Chief of Police remove any record of that action from the employee's permanent personnel file. The Chief of Police shall either grant or deny such a request after a full review of the employee's personnel record. If the request is granted, the documentation of the disciplinary personnel action shall be removed from the employee's permanent personnel file and placed in a separate file held by the Chief of Police. Any routine inquiry into the employee's personnel file shall not include a review of these documents. These documents may be used only with the approval of the Chief of Police should they be necessary for the documentation of subsequent disciplinary action.

#### **Employee Assistance Program (EAP)**

The department recognizes that problems in the work place may be related to alcoholism, other drug dependency, emotional disorders, or other personal problems. In order to address problems such as these, the department provides health insurance and an Employee Assistance Program. Employees and supervisors are encouraged to use the program as a prevention measure, as well as a parallel system to the disciplinary process.