

CHAPTER 2
TERMS AND DEFINITIONS
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CHAPTER 2

TERMS AND DEFINITIONS

1. OVERVIEW. This chapter provides definitions for commonly used internal investigation terms and concepts. The definitions contained herein, if in conflict with any other source, are specific to this manual only.

2. CONCEPTS.

a. Internal Investigation. An official inquiry, utilizing departmental investigative resources, into alleged misconduct by a departmental employee(s). Internal investigations may lead to administrative action.

(1) Criminal Investigation. A formal investigation into alleged criminal misconduct which may lead to exoneration or a recommendation of criminal prosecution, with concurrence of the Office of the Commissioner.

(2) Administrative Investigation. A formal investigation into alleged violations of policies, procedures, or poor performance. Administrative investigations may result in the employee being exonerated or subject to administrative sanctions specific to Section 19572 of the Government Code (GC). Once initiated, an administrative investigation has four possible outcomes:

(a) Adverse Action. A disciplinary legal action taken in response to an employee's misconduct, or continued failure to meet the rules of conduct, established by law and/or departmental policy. Penalties consist of:

- 1 Formal written reprimand.
- 2 Suspension.
- 3 Reduction in salary.
- 4 Demotion.
- 5 Involuntary transfer.
- 6 Dismissal.

(b) Rejection During Probation. The Department may reject any employee during the probationary period for reasons relating to the probationer's qualifications, for the good of the service; or, for failure to

demonstrate merit, efficiency, fitness, and moral responsibility, in accordance with GC Section 19173.

(c) Miscellaneous Investigation. An administrative investigation in which the employee is exonerated, separates from state service, transfers to a new agency, or the conduct does not warrant adverse action or rejection during probation (refer to Chapter 7, Investigation Documentation, of this manual).

(d) Nonpunitive Termination. Actions resulting in involuntary separation from state service, not as a disciplinary measure, but as a result of an employee's failure to meet the minimum qualifications for their job classification. Examples include nonpunitive termination resulting from driver's license revocation (refer to Chapter 7 of this manual).

b. Nexus to Employment. The Department shall only administratively investigate allegations of misconduct when there is a nexus (or connection), between the act(s) and the individual's employment with the Department. Such a nexus is necessary to establish a basis for disciplinary or corrective action. When establishing nexus, distinctions exist between uniformed and nonuniformed employees. As such, nexus is established in the following circumstances:

(1) Uniformed and Nonuniformed Employees:

(a) The misconduct occurred while the employee was on duty, regardless of location or assignment.

(b) While off-duty, an individual's employment status is affirmatively established by an overt act. Examples include employees who are subject to enforcement action requesting leniency while identifying themselves as members of the Department, or employees identifying themselves as members of the Department for personal gain or the gain of another.

(c) Off-duty misconduct which relates to the employee's job duties. For example:

1 An accountant assigned to the Fiscal Management Section who commits theft.

2 An automotive technician privately selling departmental automotive parts.

3 An off-duty officer at a social gathering providing preliminary alcohol screening tests to drivers.

(2) Uniformed Employees:

(a) All criminal acts, whether on or off-duty.

(3) Nonuniformed Employees:

(a) An off-duty criminal act which has resulted in a conviction for a felony or a crime of moral turpitude.

1 Crimes of moral turpitude involve dishonesty, fraud, deceit, larceny, misrepresentation, deliberate intent to harm, or those that reflect adversely on a person's honesty or trustworthiness.

(b) Off-duty conduct which may lead to conviction of a felony or crime of moral turpitude shall be administratively investigated. At the conclusion of the investigation, the Office of Internal Affairs (OIA), with concurrence of the Office of Legal Affairs, will determine if the conduct established a nexus to the Department as a basis for disciplinary or correction action.

NOTE: Normally, mere knowledge of employment status with the Department is insufficient to establish a nexus.

3. PENAL CODE SECTION 13510.8 DEFINITIONS. Sections 13510-13519.15 of the Penal Code (PC) codifies standards for accreditation and certification of peace officers through the Commission on Peace Officer Standards and Training (POST) for law enforcement personnel throughout the State. The POST Commission shall adopt, by regulation, a definition of "Serious Misconduct" that shall serve as the criteria for ineligibility for, or revocation of, certification. Specified in PC Section 13510.8 (b) are nine categories of Serious Misconduct defined by the Legislature that require notification to the POST Commission for possible revocation of a peace officer's POST certification. The POST Commission may add more definitions, through regulations, to what constitutes Serious Misconduct. The current nine categories, defined by the Legislature are:

a. Dishonesty. Penal Code Section 13510.8 (b)(1) defines Dishonesty as relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

b. Abuse of Power. Penal Code Section 13510.8 (b)(2) defines Abuse of Power as including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

c. Physical Abuse. Penal Code Section 13510.8 (b)(3) defines Physical Abuse as including, but not limited to, the excessive or unreasonable use of force.

d. Sexual Assault. Penal Code Section 13510.8 (b)(4) defines Sexual Assault as the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of, any sexual act while on duty is considered a sexual assault.

(1) Penal Code Section 832.7 (b)(B)(iii) defines a member of the public as any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

e. Demonstrating Bias. Penal Code Section 13510.8 (b)(5) defines Demonstrating Bias as when a peace officer, on the basis of a person's race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status, violates law or department policy, or is inconsistent when carrying out their duties in a fair and unbiased manner.

f. Acts that Violate the Law. Penal Code Section 13510.8 (b)(6) defines Acts that Violate the Law as sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by POST.

g. Participation in a Law Enforcement Gang. Penal Code Section 13510.8 (b)(7) defines a Law Enforcement Gang as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft,

unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

h. Failure to Cooperate. Penal Code Section 13510.8 (b)(8) defines Failure to Cooperate as failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to POST regarding potential accreditation decertification.

i. Failure to Intercede. Penal Code Section 13510.8 (b)(9) defines Failure to Intercede when a peace officer is present and observes another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

4. DEPARTMENT-SPECIFIC DEFINITIONS. The following are definitions to terms used throughout the internal investigation process:

a. Absent Without Leave. Absent Without Leave (AWOL) is the unauthorized absence for five consecutive working days (whether the absence was voluntary or involuntary) and is considered an automatic resignation from state service, effective the last day the employee worked (refer to Chapter 10, Separations During an Internal Investigation, of this manual, and Highway Patrol Manual [HPM] 10.3, Personnel Transactions Manual; Chapter 9, Separations).

b. Administrative Interrogation. The compelled, formal, and direct questioning of an employee to determine the facts for an administrative investigation. Interrogations shall be conducted in compliance with the Public Safety Officers Procedural Bill of Rights (POBR) Act, applicable collective bargaining agreements (CBA), and all relevant statutes.

c. Administrative Subpoena. Government Code Section 11180 authorizes the head of each department to make investigations and prosecute actions related to all business under their jurisdiction. An administrative subpoena is a legal document that compels the production of evidence related to such administrative investigations consistent with the scope of that investigation as described in GC Section 11181(e).

d. Administrative Time Off. Administrative time off is a leave of absence initiated by the Department and can be either paid or unpaid leave (refer to Chapter 4, Pre-Investigative Considerations, of this manual).

e. Adverse Action. An adverse action is a formal administrative action taken to correct an employee's on-the-job, or job-related, behavior or performance. It imposes one or more penalties including: official reprimand, salary reduction, suspension without pay, involuntary transfer, demotion, or dismissal. The various causes for discipline are described in GC Section 19572.

(1) The appointing power, or its authorized representative, may take adverse action against a nonmanagerial employee in accordance with GC Section 19574.

(2) Employees designated as managerial under GC Section 3513, from the beginning of their current appointment, but whose positions are not in the Career Executive Assignment category, shall be subject to the adverse action process stated in GC Section 19590.

f. Bazemore Admonition. This term refers to an appeal by Ms. Carla Bazemore and subsequent precedential decisions by the State Personnel Board (SPB) in 1996 (Carla Bazemore SPB Case No. 96-02). This case was determined by SPB to have a bearing on discipline matters conducted by all state departments and agencies. Employees shall be notified that misconduct for which they are being counseled may be charged in a future adverse action if the written document contains the Bazemore admonition. Accordingly, the Bazemore admonition shall be included in all Memoranda of Direction (MOD) which are counseling or remedial in nature. The Bazemore admonition shall be stated verbatim. The Bazemore admonition states:

"Your conduct on this occasion [these occasions] was unacceptable and will not be tolerated by this Department. If you engage in similar misconduct in the future, the Department may take adverse action against you based on the incident[s] cited in this documentation, as well as any future incidents."

g. Brady Material. Brady material consists of exculpatory or impeaching information that is material to the guilt or punishment of the defendant. The term comes from the U.S. Supreme Court case, *Brady v. Maryland*, (1963) 373 U.S. 83, in which the Supreme Court ruled that suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process. Following *Brady*, the prosecutor is required to disclose any evidence favorable to the accused, which includes any evidence that goes towards negating a defendant's guilt, that would reduce a defendant's potential sentence, or evidence going to the credibility of a witness.

h. Case Management. A process by which a commander or designee oversees an ongoing investigation.

i. CHP 2, Incident Report.

(1) Commendable. A record of commendable acts, outstanding levels of performance, outstanding accomplishments, or efforts toward self-improvement.

(2) Censurable. A record of censurable acts or omissions which is intended to correct inappropriate behavior, conduct, or performance. A CHP 2 shall not be issued if adverse action will be taken against the employee for the same acts.

j. Closing Documentation. The final documentation provided to an employee at the conclusion of an internal investigation. Closing documentation is the Notice of Adverse Action, MOD, Memorandum of Findings (MOF), or CHP 2.

k. Coleman Hearing. The process by which an employee who, because of Absence Without Leave, has resigned from the Department by automatic separation, has the opportunity to present information to an impartial and disinterested departmental member with the authority to recommend a final disposition (Coleman v. Department of Personnel Administration [1991] 52 Cal.3d 1102).

l. Collective Bargaining Agreement. A contract between an employer and a labor union regulating employment conditions, wages, benefits, and grievances. For the purposes of this manual, a Memorandum of Understanding is synonymous with a CBA.

m. Demotion. Lowering of an employee's rank or classification.

n. Departmental Complaint. Allegation of misconduct from departmental personnel that originates from an employee (e.g., an anonymous letter signed "Concerned Employee").

o. Dishonesty Allegation. Knowingly providing false statements, making an intentional misrepresentation of facts, or intentionally omitting information of a material nature. Dishonesty, if proven, usually results in dismissal for uniformed personnel.

p. Dismissal. A complete and final punitive separation from the Department resulting from an adverse action.

q. Dismissal Review Panel. A panel consisting of five members who are convened at the request of the Commissioner or Deputy Commissioner after the review process of an internal investigation has been completed. The panel reviews the internal investigation and determines whether the allegations against an

employee merit dismissal or a lesser penalty. The panel makes a final recommendation to the Commissioner or Deputy Commissioner (refer to Chapter 8, Review, Approval, and Closing Documentation, of this manual).

r. Emergency Protective Order. A restraining order issued at the request of a law enforcement officer in response to a domestic violence, child abuse, abduction, or elder abuse victim, who is in general danger. Emergency protective orders contain a weapons restriction which forbids the subject of the order to own, possess, and/or carry any firearm (refer to Chapter 4, Pre-Investigative Considerations, of this manual).

s. Evidence. Any testimony, document (digital or otherwise), or tangible object, which tends to prove or disprove an alleged fact.

t. Exhibit. Any testimony, writings, material objects, or other things (digital, electronic, or otherwise) presented to the senses that are offered to prove the existence or nonexistence of a fact.

u. Failure to Meet Minimum Qualifications. When a permanent or probationary employee fails to meet the minimum qualifications required for a position, the employee must be informed of this and prohibited from further work in the current classification. Examples include a driver license revocation for any classification requiring driving (refer to Chapter 10 of this manual).

v. Formal Written Reprimand. A formal written reprimand is the lowest penalty in the adverse action process and may be used when a penalty greater than corrective action is necessary.

w. Interview. The formal, direct questioning of a witness as part of an investigation.

x. Investigative Plan. A plan formulated by the assigned investigator, in conjunction with a supervisor/manager, as part of an internal investigation. The investigative plan identifies the scope of the investigation, anticipated investigative steps to be taken, necessary evidence to be obtained, additional investigator(s) needed, and anticipated interviews and interrogations to be conducted (refer to Chapter 5, Investigative Procedures, of this manual).

y. Involuntary Transfer. A removal from a current assignment and administrative transfer to another assignment.

z. Leave of Absence. A period of time wherein an employee is directed to remain away from the work location during scheduled duty hours, either on paid or nonpaid status. Approval must be obtained, through channels, from the appropriate

Assistant Commissioner prior to placing an employee on a leave of absence (refer to HPM 10.3; Chapter 8, Leave of Absence.

aa. Lybarger Admonishment. An admonishment given in administrative interrogations which advises the subject of the interrogation that their compelled statement cannot be used against them in a criminal proceeding and the employee does not have the right to refuse to answer administrative questions (Lybarger v. City of Los Angeles (1985) 40 Cal.3d 822). Subjects are also advised that failure to answer administrative questions will be deemed insubordination.

NOTE: The legally required Lybarger Admonishment is contained in the CHP 8, Administrative Interrogation Record.

bb. Memorandum of Counseling. A memorandum issued to an employee to formally document supervisory counseling pertaining to misconduct, behavior, or poor performance. A Memorandum of Counseling does not normally contain the Bazemore admonition.

cc. Memorandum of Direction. A memorandum issued to an employee to formally document misconduct, behavior, or poor performance, and to provide specific direction to preclude a recurrence. An MOD is remedial or counseling in nature. The Bazemore admonition shall be included in all MODs.

dd. Memorandum of Expectations. A memorandum issued to an employee to formally explain the expectations for conduct or performance. An example would be an officer assigned to a sensitive position in which confidentiality is required. A Memorandum of Expectations should not contain Bazemore.

ee. Memorandum of Findings. A memorandum issued to an employee to document the findings of a miscellaneous investigation or civilians' complaint. The MOF is sometimes used when the employee is exonerated of misconduct or when substantiated misconduct does not rise to the level of an MOD. An MOF is also used when an employee resigns and/or retires pending an investigation.

ff. Memorandum of Understanding. An agreement between two or more parties outlined in a formal document.

gg. Miranda Warning. A warning peace officers must give to a suspect before conducting a criminal interrogation, including the right to remain silent, the right to have an attorney present during questioning, the right to a court appointed attorney, and the fact that any statements made by the suspect can be used against the suspect in court (Miranda v. Arizona [1966] 384 U.S. 436). Based upon court decisions (California Correctional Peace Officers Association v. State of California [82 Cal.App.4th 294]), Miranda warnings shall be given when an employing agency is conducting a criminal investigation on one of its employees.

hh. Notice of Administrative Interrogation. Advance notice given to an employee (a reasonable length of time) prior to an administrative interrogation. The notice is usually given by memorandum from the employee's commander but may be delivered verbally under exigent circumstances. The notice will include the following:

- (1) The nature or scope of the interrogation.
- (2) The name, rank, and command of the lead and assistant interrogator.
- (3) The date, time, and location of the interrogation.
- (4) The employees right to be represented by a representative of their choice and the employee's right to voluntarily provide mitigating evidence (refer to Chapter 6, Interview and Interrogation, of this manual).

ii. Notice of Adverse Action. The administrative legal document the Department uses to notify the employee of the adverse action being taken for specified act(s) of misconduct or poor performance (refer to Chapter 8, of this manual).

jj. Notice of Intent to Destroy Administrative Evidence. Notification in the form of a memorandum provided to an employee within a reasonable length of time prior to the destruction or repair of administrative evidence (e.g., a crashed patrol vehicle). The notice shall describe the opportunity afforded the employee to examine the evidence for exculpatory value. A copy of the memorandum shall be included in the internal investigation file as an exhibit. If the employee and/or the representative conduct an examination of the evidence, this fact shall be noted in the chronological summary in the investigative file.

- (1) Administrative evidence should not be destroyed while the investigation is pending. A sample memorandum can be located at the OIA intranet website. Contact OIA for any questions regarding the destruction or repair of administrative evidence.

kk. Notice of Internal Investigation. Formal notice of internal investigation advising an employee they are under investigation. The notice contains directives not to have any contact or communication regarding the investigation with any of the involved parties or witnesses. Additionally, the notice contains language that violation of the directives in the notice may result in additional charges/disciplinary action.

ll. Personal Electronic Device. An electronic device (e.g., cell phone, laptop computer) owned by an employee but may have been used while on duty, in the workplace, or to conduct departmental business.

mm. Predisciplinary Hearing. This is also known as a “Skelly” hearing (Title 2, Section 52.6, California Code of Regulations). Prior to the effective date of a proposed adverse action, rejection during probation, or termination, an employee is entitled to receive notice of the proposed personnel action. The predisciplinary hearing is an informal hearing in which an employee is given the opportunity to provide a response and/or mitigation regarding the proposed personnel action. The purpose of the hearing is to determine only if there are reasonable grounds that the charges against the employee are true and support the proposed action (refer to Chapter 9, Predisciplinary Hearings, Leave Credits, and Appeals, of this manual).

nn. Predisciplinary Hearing Officer. A reasonably impartial and noninvolved reviewer of a proposed adverse action, rejection during probation, or termination. The predisciplinary hearing (PDH) officer is to provide an objective review of the proposed personnel action, the supporting materials, the employee’s response, and any mitigating factors. Division commanders, or designated Assistant Chiefs, serve as PDH officers.

oo. Preponderance of Evidence. Evidence that proves a fact is more likely to be true than not true, not necessarily in the greater number of witnesses testifying about the fact. Preponderance of evidence is a significantly lesser threshold than “beyond a reasonable doubt.” Preponderance of evidence is often referred to as “the standard of 51 percent.”

pp. Public Safety Officers Procedural Bill of Rights Act. The POBR Act is comprised of GC Section 3300 et seq., and it established due process rights and protections for peace officers within California. By policy, the Department extends POBR to all employees, except cadets.

qq. Reduction in Salary. A percentage reduction in salary for a specified period of time or number of pay periods. A one-month, five percent step reduction is financially equivalent to a one-working-day suspension.

rr. Removal for Cause from Specialty Pay Position. Reassignment from a designated specialty pay position (refer to the CBA for a listing). This is appropriate when the employee’s performance/conduct has a direct relationship to the employee’s ability to perform that particular skilled assignment. This penalty may be imposed in conjunction with other penalties, such as suspension. When removing an employee from a specialty pay position, prior approval of the appropriate Assistant Commissioner is also required (refer to HPM 9.1, Employee Relations Manual; Chapter 14, Removal for Cause from Specialty Pay Positions).

ss. Stipulated Agreement. A written agreement between an employee and the Department specifying terms and conditions resolving an adverse action or

rejection during probation. Stipulated agreements are completed by the Office of Legal Affairs and approved by the Commissioner or the Deputy Commissioner.

tt. Suspension. A temporary separation from a classification without pay.

uu. Tolling. The POBR Act provides that in order to impose punitive action against a public safety officer, an employing agency must investigate and notify the officer of the proposed discipline within one year of discovering the underlying misconduct. However, if the misconduct is also the subject of a criminal investigation or prosecution, the one-year limitation period may be tolled while the criminal investigation or prosecution is pending. Tolling can also occur by written waiver, multijurisdictional investigation, if the investigation involves more than one employee and requires a reasonable extension, or if the investigation involves an employee who is incapacitated or otherwise unavailable. The POBR details additional reasons for tolling. However, POBR does not allow for tolling beyond the three-year limitation period pursuant to GC Section 19635. Under GC Section 19635, adverse action shall not be valid against any state employee unless notice of adverse action is served within three years after the cause of discipline first arose. Adverse action based on fraud, embezzlement, or the falsification of records shall be valid, if notice of the adverse action is served within three years after the discovery of the fraud, embezzlement, or falsification.

ANNEX A

CAUSES FOR DISCIPLINARY ACTION

The following is a list of subsections contained in GC Section 19572. The definitions and examples are provided as a guide for use when completing a Request for Adverse Action. The examples shown are not all inclusive.

a. Fraud in Securing Appointment. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee intentionally misrepresented or intentionally omitted known facts in order to secure the position. This is generally applicable when an employee submits falsified information regarding education, work experience, medical information, etc., to such a degree that the employee would not have been eligible for the position.

b. Incompetency. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee failed to perform their duties adequately within an acceptable range of performance. Incompetency implies an overall absence of qualifications, fitness, or ability to perform one's duties, and not just a single act of misconduct. Examples would include:

- (1) Lacking the necessary mental or analytical ability to understand and apply Vehicle Code laws.
- (2) Inability to perform a required task due to physical limitations or insufficient skills necessary to perform essential tasks such as driving a car, firing a weapon, or observing traffic violations. This is separate and distinct from a disability which could be addressed by the reasonable accommodation process.
- (3) Continued failure to perform after repeated, documented training or counseling.
- (4) Failure to obtain or maintain basic required competency certificates.

c. Inefficiency. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee has either continuously failed to meet a level of productivity set by other employees in the same or similar position or has failed to produce an intended result with a minimum of waste, expense, or unnecessary effort. Inefficiency and incompetency are not interchangeable. Inefficiency does not require evidence of a specific rule violation. Inefficiency would include:

- (1) A competent typist who consistently produces significantly less than other typists performing like work.

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CAUSES FOR DISCIPLINARY ACTION (*continued*)

(2) An employee, either uniformed or nonuniformed, who consistently takes excessive time to complete reports, or fails to maintain acceptable performance standards.

(3) A continuous failure by an employee to meet an acceptable range of performance.

(4) Continuous failure of a supervisory employee to take appropriate administrative action and/or appropriately report incidents of misconduct by a subordinate.

(5) Carelessness, indifference, laziness, lack of alertness, and inattention to duty resulting in poor work performance.

(6) Other failure to complete assigned duties or instructions in a reasonable period of time.

d. Inexcusable Neglect of Duty. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee intentionally, or with gross negligence, failed to exercise due diligence in the performance of a known official duty. To be subject to discipline for inexcusable neglect of duty, an employee must have actual or constructive notice of expected standards of conduct, unless the conduct is so clearly wrong that notice is not necessary. This means the Department must prove the employee knew and understood the policy they are charged with violating unless the violation was so clearly wrong. Inexcusable neglect of duty would include:

(1) Negligence in performing official duties, including failure to follow departmental policy and procedures, such as not appearing in court pursuant to a lawfully issued subpoena.

(2) Frequent unexcused absences resulting in dock.

(3) Sleeping on duty.

(4) Improper and unauthorized access to and/or disclosure of confidential information.

(5) Carelessness and/or willful disregard for safety rules which endangers the employee, fellow workers, or the public.

ANNEX A

CAUSES FOR DISCIPLINARY ACTION (*continued*)

(6) Accidental discharge of a firearm, by a uniformed employee, whether on or off duty. Preventable patrol vehicle crashes.

(7) Any criminal activity by a uniformed employee.

(8) Loss or damage to state property or equipment (subject to the bargaining unit agreements permitting reimbursement or prohibiting adverse action in some cases).

(9) Evasiveness during an interrogation.

e. Insubordination. Insubordination generally implies mutinous, disrespectful, or contumacious conduct by an employee. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee has intentionally and willfully refused to obey an order by a supervisor who is entitled to give and entitled to have obeyed. A single act by an employee is sufficient to constitute insubordination. The assigned investigator in the action shall not be the supervisor against whom the act was committed. Insubordination would include:

(1) Adamantly refusing to carry out a direct order where no legal justification exists for failure to obey the directive.

(2) Leaving the work area completely after repeatedly being told by a supervisor to remain.

(3) Threatening a supervisor with physical harm.

(4) Refusing to answer questions during an administrative interrogation after being directed to do so.

f. Dishonesty. In order to prove this allegation, the Department must prove by a preponderance of evidence the employee made intentional misrepresentations of known facts, or a willful omission of pertinent facts, or a disposition to lie, cheat, or defraud. Dishonesty would include:

(1) Willful falsification of sick leave request forms, arrest reports, attendance records, travel expense claims, payroll records, purchase vouchers, etc.

(2) Unauthorized taking of property belonging to the state or other employees.

(3) Theft.

ANNEX A

CAUSES FOR DISCIPLINARY ACTION (*continued*)

g. Drunkenness on Duty. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee was intoxicated on alcohol while on duty. The degree of alcohol intoxication should be determined by chemical analysis in accordance with the Department's drug testing policy as contained in HPM 9.2, Substance Testing Manual. Inexcusable neglect of duty should be charged for drug or prescription medication intoxication after examination by a physician or certified Drug Recognition Evaluator.

h. Intemperance. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee's use of intoxicating liquor caused them to be unable to attend properly to their job duties and/or to engage in excessive misconduct arising out of the use of intoxicating liquor. In most instances where the employee's intemperate use of intoxicants has been previously known by departmental supervisors, a reasonable attempt to encourage the employee to obtain counseling assistance, through the Employee Assistance Program and/or other health care providers, would be advisable prior to the imposition of discipline.

(1) Where the circumstances involve only the odor of an alcoholic beverage on the breath of the employee, not amounting to intemperance, use GC Section 19572(r) as a charge for violation of HPM 10.3; Chapter 14, Inconsistent and Incompatible Activities.

i. Addiction to the Use of Controlled Substances. In order to prove this allegation, the Department must prove by a preponderance of evidence the employee's addiction to a controlled substance caused them to be unable to attend properly to their job duties and/or to engage in excessive misconduct arising out of the use of a controlled substance. Medical evidence of dependency or an evaluation, prepared by a certified Drug Recognition Evaluator, would be beneficial to support such a charge.

j. Inexcusable Absence Without Leave. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee's absence from work is without prior authorization and is not excused because of illness or other legitimate reason. This is separate and distinct from the AWOL process when an employee is inexcusably absent for five consecutive working days. Inexcusable absence without leave would include:

(1) When a request for proof of illness is justified and the employee refuses to provide that proof.

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k. Conviction of a Felony or Conviction of a Misdemeanor Involving Moral Turpitude. A plea or verdict of guilty, or conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section. Moral turpitude is defined as "conduct contrary to justice, honesty, modesty, or good morals." For example, theft (whether the conviction is for petty theft or grand theft), embezzlement, various sexual crimes, domestic violence on a spouse, etc., do involve moral turpitude. Generally, there need not be an established nexus between a conviction involving moral turpitude and the employee's duties.

(1) If an employee has entered a deferred entry of judgement or diversion plea and the criminal charges are later dismissed prior to sentencing, this does not constitute a conviction within the meaning of this section.

l. Immorality. Conduct conflicting with generally held moral principles, such as extremely deviant sexual behavior. To support a charge of immorality, it is necessary to show a significant deviation from generally held moral principles. Examples include child molestation, rape, murder, and possession of child pornography.

m. Discourteous Treatment of the Public or Other Employees. Discourteous treatment of the public or other employees generally involves conduct where a person displays hostility towards others, speaks in an abrasive tone of voice, and has a brusque demeanor. Discourteous treatment can include a flippant attitude, as well as rude, demeaning, and sarcastic comments. Discourteous treatment is more than unprofessional conduct. Examples would include yelling, making threats, or using foul language.

n. Improper Political Activity. An employee's use of state time or state property, or the prestige and influence of the employee's official position, to advance the political interest of any person or the interests of any political party. Employees must abide by departmental guidelines as contained in HPM 10.3, Chapter 14, when engaged in political activity.

o. Willful Disobedience. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee knowingly and intentionally violated a direct command or prohibition. To some degree, insubordination and willful disobedience overlap. Insofar as they are distinguishable, willful disobedience means a specific violation of command or prohibition, while insubordination indicates a specific or general course of disrespectful or mutinous conduct. Failure to obey a direct order without disrespectful or mutinous conduct

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would constitute willful disobedience. For example, willful disobedience includes leaving a work area or a job when specific instruction has been given to remain in the work area or at the job, disobedience, or failure to work cooperatively with other employees, etc.

(1) Failure to follow known departmental policy can constitute willful disobedience. For example, if an employee is warned through an MOD that their conduct violated policy and later, the employee commits the same misconduct, the employee can be charged with willful disobedience.

p. Misuse of State Property. In order to prove this allegation, the Department must prove by a preponderance of evidence the employee stole state property or intentionally used state property or state time for an improper or non-state purpose, often, but not always for personal gain. Misuse of state property may also mean improper or incorrect use, or mistreatment or abuse of state property. Generally, a single incident of an accidental loss or damage to state property does not constitute misuse of state property. Misuse of state property would include:

(1) Using a state vehicle for personal business and/or to transport unauthorized passengers or property.

(2) Using for private gain or advantage the facilities, equipment, or supplies of the state.

(3) Misuse of state time would include conducting personal business during duty hours or otherwise using state time for personal gain or advantage.

q. Violation of this Part or Board Rule. This section shall not be charged in an adverse action or rejection during probation of any civil service employee with this Department.

r. Violation of the Prohibitions Set Forth in Accordance with Government Code Section 19990. Section 19990 provides that a state employee shall not engage in any activity which is inconsistent, incompatible, in conflict with, or inimical to, their duties as a state employee. In order to prove this allegation, the Department must prove by a preponderance of evidence, the employee's conduct specifically violated the inconsistent and incompatible activities as designated in HPM 10.3, Chapter 14, Annex A. The SPB requires the employee receive notice of what designated activities are considered inconsistent and incompatible. A uniformed employee just getting arrested for driving under the influence (DUI) while off duty is not enough to violate this section. However, if the uniformed employee attempted to use his

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CAUSES FOR DISCIPLINARY ACTION (*continued*)

badge to avoid getting arrested for the DUI, that is a specific violation of HPM 10.3, Chapter 14, and therefore a violation of GC Section 19990. Other examples of a violation of GC Section 19990 would include:

- (1) Misusing state time for private gain.
- (2) Accessing confidential information (i.e., CLETS) for personal reasons.
- (3) Drinking alcohol while on-duty or while in uniform.

s. Refusal to Take and Subscribe any Oath or Affirmation Which is Required by Law in Connection with the Person's Employment. An example of a circumstance where this section is applicable includes failure to take or adhere to the Oath of Allegiance or refusing to testify at a hearing as part of an employee's official duties.

t. Other Failure of Good Behavior Either During or Outside of Duty Hours Which is of Such a Nature it Causes Discredit to the Appointing Authority or the Person's Employment. In order to prove this allegation, the Department must prove by a preponderance of evidence the employee's conduct caused discredit to the Department where the misconduct bears a rational relationship to the employee's job and may easily result in the disruption or impairment of the public service. It is not necessary that an employee's "failure of good behavior" be known to some portion of the public before disciplinary action can be initiated. One example would

be the off-duty arrest of a uniformed employee for driving while under the influence of alcohol. Example:

- (1) The off-duty arrest of a uniformed employee for driving while under the influence of alcohol.

u. Any Negligence, Recklessness, or Intentional Act Which Results in the Death of a Patient of a State Hospital Serving the Mentally or Developmentally Disabled.

v. The Use of Any Material Which is not Authorized by the Appointing Power, During Duty Hours, for Training or Target Practice. This section includes using and/or distributing any unofficial targets for weapons training, including unauthorized alterations to any departmental target which depicts persons by name, race, sex, sexual orientation, national origin, ancestry, religious affiliation, or disability, in a demeaning or inflammatory manner.

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CAUSES FOR DISCIPLINARY ACTION (*continued*)

- w. Unlawful Discrimination; Including Harassment; on the Basis of Race, Religious Creed, Color, National Origin, Ancestry, Physical Disability, Marital Status, Sex, or Age; Against the Public or Other Employees While Acting in the Capacity of a State Employee. This section includes engaging in or condoning discrimination, racial profiling, or sexual harassment (refer to HPM 10.12, Equal Employment Opportunity Manual).
- x. Unlawful Retaliation Against any Other State Officer or Employee or Member of the Public Who in Good Faith Reports, Discloses, Divulges, or Otherwise Brings to the Attention of the Attorney General, or any Other Appropriate Authority, Any Facts or Information Relative to Actual or Suspected Violation of Any Law of this State or the United States Occurring on the Job or Directly Related Thereto.