

SAMPLE POLICE DEPARTMENT

Off-Duty Conduct - Arrest

NOTE: This document is for internal use only. It does not establish a legal duty or standard of care for civil liability, or enlarge an employee's civil or criminal liability in any way. A violation of this policy may only form the basis for internal discipline by this agency and then only in a non-judicial administrative setting.

I. PURPOSE

The purpose of this policy is to provide guidelines to officers of the SAMPLE Police Department regarding acceptable criteria for taking law enforcement action or making an arrest while off-duty and is intended to limit unnecessary enforcement action by off-duty officers.

II. POLICY

- A. Off-duty officers may confront criminal activity to which they should take or must decide whether to take enforcement action including arrest. However, off-duty officers may not be equipped or prepared to handle these situations in the same manner as if they were on-duty, which could lead to claims of illegal or excessive acts, abuse of authority, as well as unnecessary injuries to the officer or members of the public.
- B. It is the policy of the SAMPLE Police Department that officers generally should not initiate law enforcement action or make arrests while off-duty. Officers are not expected to place themselves in unreasonable peril and should first consider reporting and monitoring the activity. However, any officer who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage or loss, may take reasonable action to minimize or eliminate the threat.

III. DEFINITIONS

- A. On-duty Officer: An officer who is being paid by their department and performing assigned duties whether in uniform or plain clothes, or who is otherwise acting in their official capacity as a law enforcement officer. This officer would normally be easily identifiable by the public by the uniform worn, marked vehicle, or some other identification.
- B. Off-duty Officer: An officer who is not being paid by their agency or otherwise acting in their official capacity as a law enforcement officer. The officer is not wearing their department's uniform, driving a marked patrol unit, or otherwise be readily identifiable by the public as an on-duty police officer. The officer may have on his person a badge and department identification, and a concealed weapon, but these items of equipment would most often be hidden from the view of the public.

- C. Duty Bound to Act: A situation where, because of the seriousness of the situation, the officer must take some kind of reasonable enforcement action to prevent a crime or stop a crime in progress. The degree to which an off-duty officer can respond in any given situation is dependent upon many factors and is ultimately a judgment call on the part of the officer. The reasonableness standard will be the gauge by which their action will be judged.
- D. Personally Involved: An officer is deemed personally involved where the off-duty officer, a family member, or a friend becomes engaged in a dispute or incident involving a person connected with the incident. This does not apply to situations where the police officer, family member, or friend is a crime victim.

IV. PROCEDURE

A. General

1. There is no legal requirement for off-duty officers to take law enforcement action. However, instead of immediately intervening, officers should consider requesting and waiting for on-duty uniformed law enforcement personnel to arrive and, while waiting, gather as much accurate intelligence as possible.
2. If an officer decides to act, he/she must evaluate whether the action is necessary or desirable, and should take into consideration:
 - a. The potential to be misidentified by other law enforcement personnel.
 - b. The potential to be misidentified by members of the public, who may be armed or who may take action.
 - c. The tactical disadvantage of being alone and the possibility of multiple or hidden suspects.
 - d. The inability to communicate with responding law enforcement personnel.
 - e. Limited off-duty firearms capabilities and ammunition.
 - f. The lack of equipment, such as body armor, handcuffs, or control devices.
 - g. Unfamiliarity with the surroundings.
 - h. The potential for increased risk to bystanders by confronting a suspect or taking action.
3. If involvement is reasonably necessary, the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. If possible, the dispatcher receiving the call should obtain a description of the off-duty officer from the caller and broadcast that information to responding officers.
4. Whenever practical, the officer should loudly and repeatedly identify him/herself as an officer with the SAMPLE Police Department until acknowledged. A badge and department identification should also be displayed when possible.
5. Civilian members should not become involved in any law enforcement action while off-duty except to notify the local law enforcement authority, be a good witness, and remain at the scene, if safe and practical.

B. Officer Authority and Jurisdiction

1. Officers have law enforcement authority 24 hours a day throughout their jurisdiction. As such, officers may choose to carry department authorized firearms

when out of uniform and in an off-duty status. However, for safety and tactical reasons, when armed, it is recommended that off-duty officers conceal their weapon from public view and carry their badge and department identification with them.

- a. Off-duty officers should not carry their weapon when their ability or judgment to use a firearm or take a person into custody has or may be impaired by the use of alcohol, prescription drugs, or other medication.
2. In accordance with CODE of Alabama §15-10-1, law enforcement officers have arrest powers for state laws in any county in which their department has municipal limits.
 - a. Officers have arrest powers as private citizens anywhere in Alabama as granted by CODE of Alabama §15-10-7.
3. Discretion is encouraged when an officer is deciding whether to exercise their law enforcement authority while outside their jurisdiction. Officers should defer to local law enforcement officers when possible.
4. All arrests made outside the municipal jurisdiction require the notification of the appropriate local law enforcement agency as soon as practical.
 - a. An arrest outside the officer's jurisdiction must be processed within the county in which the offense was committed, as provided for CODE of Alabama §15-2-2 (Venue). The arrestee will be taken to the county jail of that jurisdiction and the officer will appear before the appropriate judge or magistrate to initiate court proceedings.

C. Off-Duty Arrests / Law Enforcement Action

1. Except as allowed by this policy, off-duty officers should not enforce minor violations such as traffic offenses, minor misdemeanors, or other nuisance offenses. On-duty personnel should be contacted to respond to the situation where an off-duty officer becomes aware of such violations.
2. When off-duty and within the legal jurisdiction of this department, an officer should take law enforcement action or make an arrest only when:
 - a. The officer is not personally involved in the incident underlying the arrest; and
 - b. There is an immediate need to prevent a serious crime or apprehend a suspect wanted for a serious crime; and
 - c. The crime would require a full custodial arrest; and
 - d. The officer possesses appropriate law enforcement identification; and
 - e. The officer is adequately prepared and equipped to handle the situation.
3. Where an arrest is necessary, the off-duty arresting officer shall abide by federal, state, and local laws, and department policies and procedures.
4. If prior notification to the appropriate local law enforcement agency is not reasonably possible before taking action, the officer shall notify the agency as soon as reasonably practical.

D. Reporting and Review

1. All law enforcement actions or arrests taken by an off-duty officer shall be reported to this department's on-duty supervisor regardless of jurisdiction, as soon as practical.

- a. The on-duty supervisor will review all off-duty law enforcement actions or arrests to ensure they conform to state law, department policy and procedures and all necessary reports are completed properly.
2. Investigation of complaints or violations of law or policy
 - a. All complaints, alleged violations of law or department policy will be investigated and any findings of violations, or other inadequacies shall be reported to the Chief of Police for resolution and/or disciplinary action.

E. Liability Protection

1. Officers of this department have liability protection for the on- and off-duty performance of official law enforcement duties. This protection does not extend to acts intended to cause injury or damage, or to those actions that the police officer knew, or reasonably should have known, conflicted with the law or the established policies of this department.

APPROVED: CHIEF OF POLICE

DATE

I HAVE READ AND UNDERSTAND THIS ORDER

SIGNATURE OF OFFICER

DATE

DISCLAIMER

NOTE: These documents are being provided to you from the AMIC/MWCF Loss Control Division and are not intended to be legal advice. They do not identify all the issues surrounding a particular topic. Laws and "Best Practices" change and policies must be continually reviewed and updated as needed. Public agencies are encouraged to review their procedures with an expert or an attorney who is knowledgeable about the topic. Reliance on this information is at the sole risk of the user.