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**NYC Civilian Complaint Review Board
September 17, 2020 Board Meeting**

**Testimony of the Legal Aid Society
Special Litigation Unit
Cop Accountability Project**

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The Legal Aid Society thanks the Board for the opportunity to provide testimony on the New York Police Department’s proposed disciplinary matrix.

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles more than 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of low-income people prosecuted in the State court system. The Cop Accountability Project within the Special Litigation Unit at The Legal Aid Society works to improve police accountability and transparency through litigation and advocacy against problematic policing policies. In this capacity, and through our role as counsel in several civil rights cases, the Legal Aid Society is in a unique position to testify about the draft disciplinary matrix released for public comment by the NYPD.

BACKGROUND

On July 15, 2020, the City of New York enacted the NYPD Accountability Package, a set of police reforms aimed at increasing transparency within the NYPD and addressing longstanding patterns of police harassment and violence predominantly affecting Black and Latinx New Yorkers. One of those reforms mandated the creation “a disciplinary matrix that sets forth an advisory schedule of violations, penalties, and mitigating and aggravating circumstances, or any other factors considered by the commissioner to be relevant”.¹ The NYPD published a proposed disciplinary matrix on August 31, 2020, which is open for public comment for 30 days until September 30, 2020.

Historically, the police department’s failure to impose swift and serious discipline on officers who commit misconduct, as well as the lack of transparency surrounding NYPD disciplinary decisions, has perpetuated police misconduct. Seemingly arbitrary and opaque decision-making in NYPD discipline has substantially eroded trust between the police department and the communities it serves.² One of the most egregious examples in recent memory is the disciplinary process surrounding Eric Garner’s death. For five years following Mr. Garner’s

¹ Int. No. 1309-B

² MARY JO WHITE, ROBERT L. CAPERS & BARBARA S JONES, *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (2019), <https://www.independentpanelreportnypd.net/assets/report.pdf>.

death, none of the officers involved had been disciplined despite repeated calls from the family, advocacy groups, and elected officials. Recently, newly released data following the repeal of Police Secrecy Law 50a is starting to shed the light on dozens of high-ranking NYPD officers who have risen through the ranks and promoted despite multiple allegations of misconduct.³

While most other serious New York City employee disciplinary issues are handled by the New York City Office of Administrative Trials and Hearings (OATH) — an independent administrative tribunal — the NYPD is unique in that final discipline is vested in the Police Commissioner, who has complete discretion in determining which, if any, penalties are ultimately imposed for misconduct. The reluctance of NYPD leadership to discipline officers has led to a culture of impunity that has thrived within the department for decades. It has also bred mistrust and anger among New York families affected by police violence and harassment who no longer trust NYPD leadership to keep them safe and ensure they are treated fairly.

ANALYSIS OF NYPD'S DRAFT DISCIPLINARY MATRIX

Police disciplinary matrices are intended to provide police departments, community members, and officers with clear and consistent expectations and guidance in the determination of penalties for substantiated allegations of misconduct.⁴ Clear and trustworthy decision-making, along with transparency, may reduce tensions and mistrust between police and the community, as well as increase the overall fairness of the disciplinary process by eliminating secrecy and arbitrariness.⁵ Fairness and transparency within police departments in turn may reduce misconduct, including officer support for excessive force.⁶

Given the deeply rooted culture of impunity within the NYPD, including the well-established and long-standing reluctance of police and City leaders to impose meaningful discipline on officers found to have committed even gross misconduct, it is up for debate whether any disciplinary matrix can bring procedural or substantive justice to the NYPD's disciplinary

³ “McCormack is just one of dozens of high-ranking NYPD officers who have risen despite allegations of misconduct in their records.” Joaquin Sapien, Topher Sanders, and Nate Schweber, *Over a Dozen Black and Latino Men Accused a Cop of Humiliating, Invasive Strip Searches. The NYPD Kept Promoting Him*, ProPublica (September 10, 2020) <https://www.propublica.org/article/over-a-dozen-black-and-latino-men-accused-a-cop-of-humiliating-invasive-strip-searches-the-nypd-kept-promoting-him>

⁴ Jon M. Shane, *Police Employee Disciplinary Matrix: An Emerging Concept*, 15 POLICE Q. 62–91, 72 (2012).

⁵ Darrel W Stephens, *Police Discipline: A Case for Change*, NEW PERSPECT. POLIC. 27 (2011).

⁶ Rick Trinkner, Tom R. Tyler & Phillip Atiba Goff, *Justice from Within: The Relations Between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing, and Officer Well-Being.*, 22 PSYCHOL. PUBLIC POLICY LAW 158–172 (2016).

system. The Legal Aid Society has long called for the City’s civilian oversight agencies to play an active role in officer discipline, and continues to urge the City’s elected officials to significantly strengthen the oversight roles of the Civilian Complaint Review Board (CCRB) and Office of the Inspector General for the NYPD (OIG-NYPD) by expanding their jurisdiction and authority, increasing their independence, providing them with adequate resources, and ensuring that they have direct and unfettered access to NYPD databases, personnel, and facilities. We have also supported calls to move NYPD disciplinary matters to an independent and impartial agency such as OATH, bringing it in line with the system used for adjudicating discipline for nearly every other New York City employee. However, to the extent that a matrix can improve upon the current system, even in a world where the NYPD retains internal control over discipline decisions, the current proposed matrix will fail to accomplish that goal.

Our analysis of the NYPD’s proposed disciplinary matrix draws from the collaborative efforts of large cities with more consistent and transparent police disciplinary processes. For example, an 80-member Disciplinary Advisory Group worked for three years with the Denver Police Department to develop and implement a more fair and transparent disciplinary process that includes detailed and definitive sanctions in the form of a disciplinary matrix.⁷ The Denver Police Department’s Discipline Handbooks (“DPD Disciplinary Matrix”) provides more comprehensive and consistent guidance on disciplinary decisions than the NYPD’s. In addition, we reference the Tucson Police Department’s Discipline Guide, which serves as another example of a more robust approach to police discipline.⁹

By contrast, the vagueness in the NYPD’s proposed disciplinary matrix fails to ensure true consistency and transparency and makes no meaningful effort to rein in the Police Commissioner’s discretion over discipline. As a result, this matrix replicates the status quo problem of leaving no way for the public, individual officers and affected communities to understand how misconduct will be addressed, if at all. The vast discretion permitted by the NYPD’s proposed matrix is unlikely to provide the level of consistency needed to promote the

⁷ Darrel W. Stephens, *Police Discipline: A Case for Change*, National Institute of Justice (June 2011) <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>

⁸ Denver Police Department and Manager of Safety, *Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines* (2018), <https://www.denvergov.org/content/dam/denvergov/Portals/744/documents/handbooks/dpd-discipline-handbook.pdf> (last visited Sep 11, 2020).

⁹ Tucson Police Department, *Operations Pamphlet: Discipline Guide* (2019). (on file with author)

accountability that New Yorkers call for and deserve. In sum, the NYPD’s draft disciplinary matrix does not achieve what disciplinary matrices are intended to do.

Failure to Include Penalty Ranges and Memorialize Escalating Penalties

Unlike nearly every other police disciplinary matrix, the NYPD’s proposed matrix fails to establish a clear **range** of penalties for misconduct and a schedule for progressive discipline. To achieve its stated goal of transparency and consistency, the NYPD’s disciplinary matrix must include, in addition to presumptive penalties, a minimum penalty for misconduct with mitigating factors and a maximum penalty for misconduct with aggravating factors. As currently proposed, the department’s broad list of aggravating and mitigating factors can far too easily justify frequent departures from the presumptive penalty range. Because the draft matrix’s mitigating and aggravating factors can be widely interpreted and applied, the inclusion of a range of presumptive penalties is rendered essentially meaningless and will do very little to reign in the Police Commissioner’s unfettered discretion in determining penalties.

Definitive penalty ranges that account for mitigating and aggravating factors and ensure both flexibility and consistency are included in other police disciplinary matrices. For example, the Vancouver Police Department’s disciplinary matrix includes minimum and maximum penalties for all offenses inclusive of aggravating and mitigating factors.¹⁰ Similarly, the DPD Disciplinary Matrix includes clearly defined mitigated, presumptive, and aggravated penalties for all violations.¹¹ An excerpt from the DPD Disciplinary Matrix demonstrating the use of clearly defined penalty ranges is included as Appendix A.

In addition, while the NYPD’s draft matrix purports to achieve progressive discipline in that “penalties are increased for subsequent violations of the same/similar misconduct or when a pattern of misconduct is demonstrated”¹², the department’s draft states that “prior misconduct may increase the disciplinary penalty for the current violation”¹³ — not that it *will* increase — and fails to include any formalized guidance on how penalties are to escalate with each subsequent repeat violation.

¹⁰ Stephens, *supra* note 4 at 11.

¹¹ Denver Police Department and Manager of Safety, *supra* note 8 at 26–27.

¹² New York City Police Department, *Disciplinary System Penalty Guidelines: Draft for Public Comment* 8 (2020), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf.

¹³ *Id.* at 8.

Furthermore, the NYPD’s draft matrix fails to clearly establish escalated penalties for repeat misconduct committed within definite timeframes. Repeat misconduct, particularly for similar offenses, warrants more stringent penalties and additional corrective action for officers demonstrating particularly problematic patterns of behavior. The inclusion of escalating penalties for repeat misconduct committed within a clearly defined timeframe would establish clear standards of conduct and serve as a meaningful deterrent for future misconduct.

By contrast, other cities’ disciplinary matrices include escalating penalties within particular time frames. Both the Tucson Police Department’s Discipline Guide and the DPD Disciplinary Matrix include one-year and three-year periods, respectively, for escalated penalties when violations are repeated.¹⁴ In the case of Denver, increased penalties for a repeat violation is automatic.¹⁵

Ambiguous Aggravating and Mitigating Factors

NYPD’s draft matrix includes a far-reaching list of mitigating and aggravating that fail to create any meaningful constraint on discretion. While mitigating and aggravating factors allow for flexibility and fairness, the sheer ambiguity of many of these factors replicates the status quo of arbitrary and irrational discipline.

For example, the NYPD characterizes encounters deemed “unpredictable, volatile, or unfold[ing] rapidly not allowing time for deliberate reflection”¹⁶ as a potential mitigating factor. Because every police encounter is unique, nearly every situation could justifiably be considered “unpredictable.” As such, this mitigating factor is applicable to virtually any and all police encounters. Officer training should provide sufficient guidance for officers to assess situations and formulate appropriate responses, eliminating the need for such a far-reaching mitigating factor.

Similarly, the draft confusingly identifies “knowledge, training, and experience” as both an aggravating and mitigating factor.¹⁷ The inclusion of this factor on both lists is inherently contradictory and does not detail how and when knowledge, training, and experience may be applied in one way or the other. This is likely to result in inconsistent penalty determinations. For

¹⁴ Tucson Police Department, *supra* note 9 at 6; Denver Police Department and Manager of Safety, *supra* note 8 at 21–22.

¹⁵ Refer to Appendix A.

¹⁶ New York City Police Department, *supra* note 12 at 7.

¹⁷ *Id.* at 7.

example, it is unclear if officers who have served for many years would receive mitigated penalties as a result of their tenure and experience or aggravated penalties because they should “know better.” Similarly, the way in which this factor may be interpreted could result in newer officers receiving either a mitigated penalty because of their relative inexperience or an aggravated penalty because they were more recently trained. Such ambiguity, which abounds throughout the draft document, detracts from the efficacy of a disciplinary matrix.

Fundamental Deficiencies within NYPD Practices and Policies Cannot Be Adequately Addressed by a Disciplinary Matrix Alone

In addition to these confusing aspects of the draft matrix, the proposal also misses crucial opportunities for NYPD to incorporate policing best practices in its policies and procedures. For example, while the draft matrix affirms an officer’s duty to intervene in excessive force,¹⁸ it fails to effectively promote “active bystandership” by establishing penalties for failing to intervene in non-force related misconduct.

Nationwide surveys of police officers indicate that the majority of police officers agree that “it is not unusual for a police officer to turn a blind eye to improper conduct by other officers.”¹⁹ Such failures to intervene can present significant legal liabilities for officers and the City as well as reduce public confidence in policing.²⁰ NYPD should incorporate penalties for failing to intervene in apparent misconduct committed by fellow officers as well as develop robust peer intervention programs such as the New Orleans Police Department’s EPIC (Ethical Policing Is Courageous) program.²¹ A policy that encourages peer accountability could ultimately reduce more egregious forms of misconduct, promote public trust in policing, and increase public safety.

Yet another example of missed opportunity relates to perjury. Perjury is absent from the list of offenses that would result in termination for officers on entry-level or dismissal probation.²²

¹⁸ *Id.* at 17.

¹⁹ Rich Morin, Kim Parker, Renee Stepler, and Andrew Mercer, *Behind The Badge: Inside American’s police departments*, Pew Research Center (January 11, 2017) available at <https://www.pewsocialtrends.org/2017/01/11/inside-americas-police-departments/>; see also David Weisburd and Rosann Greenspan with Edwin E. Hamilton, Hubert Williams, and Kellie A. Bryant, *Police Attitudes Toward Abuse of Authority: Findings From a National Study*, May 2000 National Institute of Justice Research in Brief available at <https://www.ncjrs.gov/pdffiles1/nij/181312.pdf>

²⁰ Jonathan Aronie & Christy E. Lopez, *Keeping Each Other Safe: An Assessment of The Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans’ EPIC Program As A Potential National Model*, 20 POLICE Q. 295–321 (2017).

²¹ New Orleans Police Department, *Home - EPIC - Ethical Policing Is Courageous - New Orleans Police Department*, <https://epic.nola.gov/home/> (last visited Sep 14, 2020).

²² New York City Police Department, *supra* note 12 at 10.

As public servants charged with upholding the law, honesty, integrity, and trust are integral to the work of policing.

By contrast to the NYPD's draft disciplinary document, DPD provides that, with regard to the commission of a deceptive act in connection with any investigation or any judicial or administrative proceeding, that "A first-time offender ... should expect to be terminated. Only with the existence of appropriate mitigating circumstances would the mitigated penalty of 90 days be imposed. Only with extraordinary mitigation would an offender of this section receive anything less than a 90-day suspension."²³ Furthermore, in Denver, a criminal conviction is not needed, as the burden of proof for disciplinary proceedings is a preponderance of the evidence. And conduct that violates the law, like perjury, is antithetical to a police officer's role as law enforcement.

False statements impact an officer's ability to effectively perform their job duties as their trustworthiness and integrity will be called into question. The matrix specifically addresses the issue of false or misleading statements by a member of service during an investigation and presumes termination if found guilty. However, an independent analysis of the NYPD disciplinary process found that there were several failures in accountability for making false statements, including the discretionary manner in which such allegations were charged more leniently as well as a complete to failure to charge at all.²⁴

A finding of incredibility by a court or district attorney's office should be considered as a critical aggravating factor. For too long, officers are able to rampantly make false statements – regardless of significance – with no consequences.²⁵ Rather than receiving reprimand for perjury, officers received promotions. Indeed, the practice is so prevalent that it has earned the moniker, "testilying."²⁶

Additionally, specific practices prevalent in policing culture such as "handing off" of arrests, whereby the actual arresting officer "hands off" an arrest to a colleague to prepare the requisite arrest paperwork in order to become the "arresting officer" to earn the overtime is tolerated by

²³ Denver Police Department and Manager of Safety, *supra* note 8 at Appendix D.

²⁴ White, *supra* note 2.

²⁵ Joseph Goldstein, *Promotions, Not Punishments, for Officers Accused of Lying*, NY TIMES (March 19, 2018) <https://www.nytimes.com/2018/03/19/nyregion/new-york-police-perjury-promotions.html>

²⁶ Joseph Goldstein, *Testilying by Police: A Stubborn Problem*, NY TIMES (March 18, 2018) available at <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html>

supervisors. An independent panel cited that stakeholders reported that this practice can promote a culture in which other, more serious falsehoods can occur.²⁷ Such routine practices should be reconsidered for its effect on the integrity of policing.

Furthermore, out of the 81 cases referred to IAB from the CCRB from 2010 to 2018, IAB substantiated just two allegations of making a false statement.²⁸ In the remaining 79 cases, NYPD found no wrongdoing or found the officer guilty of lesser conduct.²⁹ The prevalence of the problem—including the historic failure to substantiate these allegations—undermines the public’s trust in the police as well as their sense of substantive and procedural fairness in the criminal legal system at large. A disciplinary matrix will fail to adequately address the material issue of falsehoods without significant improvements in accountability and oversight of these issues.

Another example of a missed opportunity comes with the manner in which use of force violations are handled within the draft matrix. The matrix outlines penalties based on the outcome of a use of force (e.g. serious physical injury/death, physical injury, no injury) rather than the propriety of the force applied in the particular situation.³⁰ This standard in the determination of force-related penalties effectively rewards officers who continue to use excessive and inappropriate force but are nonetheless inadequately penalized due to that use of force’s outcome.

One related underlying concern with the adjudication of excessive force incidents more generally is the insufficient guidance provided by the NYPD’s Patrol Guide sections relating to use of force. The NYPD use of force policy offers vague guidance on the types of force to use when encountering a specific type of resistance and simply instructs officers to “apply no more than the reasonable force necessary to gain control”.³¹ These vague guidelines grant overly broad deference to officers that use excessive force and has long impeded accountability efforts.

The propriety of the use of force should instead be a primary consideration, with bodily outcomes such as injury or death serving as aggravating factors. Additionally, failure to de-

²⁷ White, *supra* at note 2. .

²⁸ Goldstein, *supra* note 25

²⁹ *Id.*

³⁰ New York City Police Department, *supra* note 12 at 17–18.

³¹ New York City Police Department Patrol Guide 221-02

escalate must be considered an aggravating factor when determining the appropriate penalty for excessive force. To truly provide meaningful accountability for excessive force, NYPD must adopt use of force guidelines that strongly emphasize de-escalation as well as proportionality in the use of force and provide unequivocal guidance on escalating the type of force applied through a force continuum.

Additionally, the draft specifically lists a “reasonable mistake of law” as a mitigating factor for improper conduct under the Fourth Amendment, including stop/question/frisk of persons.³² The inclusion of this factor as mitigation is particularly troubling as it means that officer conduct that violates the law will remain unaddressed by the Police Department simply because courts have erected barriers to the recovery of damages from officers whose mistakes caused those violations of law. This conflation of what is necessary to establish legal liability with what is appropriate to trigger police discipline is deeply disturbing and underscores the sense that this proposed matrix is not intended to seriously address police misconduct.

***Lack of Clear Procedural Requirements Undermines Legitimacy of
the Proposed Disciplinary Matrix***

The NYPD’s draft matrix fails to include any revisions to the disciplinary process that would provide additional transparency. For example, there is no requirement that aggravating and mitigating factors considered in the determination of penalties be documented, along with written justifications of how those factors influence the final penalty. There is also no language explaining how aggravating and mitigating factors are weighed and used to determine the penalty imposed.

Departures from presumptive penalties should be explained clearly for the benefit of clarity and to guard against inconsistencies that could undermine the legitimacy of the disciplinary process. Stakeholders would benefit from a better understanding of the rationale utilized in considering all aggravating and mitigating factors. More importantly, it will allow stakeholders to hold the Police Commissioner accountable for deviations from the presumptive penalties.

³² New York City Police Department, *supra* note 12 at 22.

In contrast, the DPD's Disciplinary Matrix includes a requirement that all mitigating and aggravating factors are documented.³³ It also ensures that aggravating and mitigating factors are appropriately weighed so as to determine the proper penalty.³⁴

CONCLUSION

The uprisings of this summer are resoundingly clear about the demand for transparency and accountability for police misconduct. While the implementation of a disciplinary matrix has the potential to contribute to such accountability, the proposed draft matrix fails in this goal.

Ultimately, this draft matrix fails to provide meaningful guidance and does not adequately reign in the Police Commissioner's wide discretion over discipline. The efficacy of a disciplinary matrix is easily blunted by its failure to establish a clearly defined range of penalties, define escalated penalties for repeat misconduct within a clearly defined timeframe, and use mitigating and aggravating factors for fairness and flexibility rather than complete arbitrariness. Such failures will continue to perpetuate the pervasive culture of impunity within the NYPD.

Inconsistent penalties are bound to result from this draft matrix and will continue to erode officer morale as well as public trust and confidence in the police department. Finally, there are numerous fundamental problems within NYPD's policies and procedures that will not and cannot be adequately addressed with a disciplinary matrix alone.

We continue to urge the City's elected officials to significantly strengthen the oversight roles of the CCRB and OIG-NYPD by expanding their jurisdiction and authority, increasing their independence, and providing them with adequate resources.

³³ Denver Police Department and Manager of Safety, *supra* note 8 at 22.

³⁴ *Id.* at 26.

Appendix F - Penalty Table and Discipline Matrix

Penalty Table

Discipline Level	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
1		Oral Reprimand	Written Reprimand
2	Oral Reprimand	Written Reprimand	1-3 Fined Days
3	Written Reprimand To 1 Fined Day	2 Fined Days	4-6 Fined Days
4	2-4 Fined Days	3 Days Suspension	5-7 Days Suspension
5	4-6 Days Suspension	10 Days Suspension	14-16 Days Suspension
6	18-22 Days Suspension	30 Days Suspension	38-42 Days Suspension
7	43-47 Days Suspension	60 Days Suspension	Termination
8	90 Days Suspension	Termination	



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

CATEGORY A

CONDUCT THAT HAS A MINIMAL NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT

<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>		1st Violation	2nd Violation	3rd** Violation
RR-102.1	Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	in 3 Years	in 3 Years	in 3 Years
RR-102.2	Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*	-Level-	-Level-	-Level-
RR-103	Aid Another to Violate Rule (A-F)*			
RR-105	Conduct Prejudicial (A-F)*			
RR-108.1	Plainclothes Officers - Identification			
RR-115.1	Conduct Prohibited by Law (A-F)*	1	2	3
RR-116	Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-121	Off Duty in Uniform (A-F)*			
RR-129	Giving Name and Badge Number			
RR-136	Use of Tobacco Products in Police Facilities			
RR-205	Giving Testimonials, Seeking Publicity			
RR-314	Providing Assistance Outside the City			
RR-501	Personal Appearance in Court			
RR-612	Answer to Official Communications			
RR-614	Publication of Articles			
RR-616	Police Bulletin			
RR-802	Uniform Restrictions While Off Duty			
RR-805	Equipment Carried on Person			
RR-1001	Testifying in Civil Cases			
RR-1002	Service of Civil Processes			
RR-1003	Initiation of Civil Cases			
RR-1104	Location When Ill			
RR-1105	Reporting During Illness or Injury			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

CATEGORY B

CONDUCT THAT HAS MORE THAN A MINIMAL NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT; OR THAT NEGATIVELY IMPACTS RELATIONSHIPS WITH OTHER OFFICERS, AGENCIES OR THE PUBLIC.

EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:

- RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*
- RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*
- RR-103 Aid Another to Violate Rule (A-F)*
- RR-105 Conduct Prejudicial (A-F)*
- RR-108.2 Protecting Identity of Undercover Officers
- RR-115.1 Conduct Prohibited by Law (A-F)*
- RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*
- RR-121 Off Duty in Uniform (A-F)*
- RR-122.1 Respect for Fellow Officer
- RR-126 Amusement Places Restrictions
- RR-127 Responsibilities to Serve Public
- RR-128.1 Impartial Attitude
- RR-132 Purchase of Forfeited Property
- RR-140.1 Discourtesy
- RR-206 Soliciting Business
- RR-303 Trivial Offenses
- RR-304 Traffic Enforcement When Not in Uniform
- RR-309.1 Suggesting Bondsmen or Attorneys
- RR-605 Removal of Reports and Records
- RR-607 Failure to Make, File, or Complete Official Reports
- RR-613 Unauthorized Use of Department Letterheads
- RR-703 Soliciting Money for Political Purposes
- RR-704 Soliciting for Promotion, Appointment
- RR-806.1 Alteration of Badge Prohibited
- RR-807 Loss or Damage to Badge
- RR-808 Equipment and Property Restrictions on Use
- RR-809 Rough or Careless Handling of City, Departmental, or Outside Agency Property
- RR-902 Department Vehicle Operation
- RR-1101 Reporting Absence Prior to Roll Call
- RR-1102 Reporting for Duty (B-D)*

1st Violation	2nd Violation	3rd** Violation
in 4 Years	in 4 Years	in 4 Years
-Level-	-Level-	-Level-
2	3	4

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

CATEGORY C

CONDUCT THAT HAS A PRONOUNCED NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT, OR ON RELATIONSHIPS WITH OTHER OFFICERS, AGENCIES OR THE PUBLIC.

<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>		1st Violation	2nd Violation	3rd** Violation
		in 5 Years	in 5 Years	in 5 Years
		-Level-	-Level-	-Level-
RR-102.1	Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	3	4	5
RR-102.2	Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*			
RR-103	Aid Another to Violate Rule (A-F)*			
RR-105	Conduct Prejudicial (A-F)*			
RR-107	Always on Duty			
RR-109.1	Commission of an Offensive Act While Intoxicated			
RR-115.1	Conduct Prohibited by Law (A-F)*			
RR-116	Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-117	Disobedience of an Order (C-F)*			
RR-119	Sleeping on Duty			
RR-121	Off Duty in Uniform (A-F)*			
RR-122.2	Abuse of Fellow Officers			
RR-138	Discrimination, Harassment and Retaliation (C-F)*			
RR-140.2	Verbal Assault and Abuse of the Public (C-D)*			
RR-141.2	Reporting of Prohibited Associations			
RR-142	Soliciting Preferential Treatment (C-F)*			
RR-204	Soliciting, Accepting Gifts, Gratuities			
RR-307	Posting Bail			
RR-310	Mistreatment of Prisoners/Suspects			
RR-401	Display of Firearms			
RR-402	Careless Handling of Firearms or Less Lethal Weapons (C-F)*			
RR-403	Restrictions on Auxiliary Weapons			
RR-702	Using Police Position to Gain Political Office			
RR-1004	Testifying for Defendant			
RR-1102	Reporting for Duty (B-D)*			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

CATEGORY D

CONDUCT SUBSTANTIALLY CONTRARY TO THE VALUES OF THE DEPARTMENT OR THAT SUBSTANTIALLY INTERFERES WITH ITS MISSION, OPERATIONS OR PROFESSIONAL IMAGE, OR THAT INVOLVES A DEMONSTRABLE SERIOUS RISK TO OFFICER OR PUBLIC SAFETY.

<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>		1st Violation	2nd Violation	3rd** Violation
RR-102.1	Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	in 7 Years	in 7 Years	in 7 Years
RR-102.2	Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*	-Level-	-Level-	-Level-
RR-103	Aid Another to Violate Rule (A-F)*			
RR-105	Conduct Prejudicial (A-F)*			
RR-106.1	Immoral Conduct			
RR-109.2	Unfit for Duty			
RR-112.1	Misleading or Inaccurate Statement (D-E)*	5	6	7
RR-115.1	Conduct Prohibited by Law (A-F)*			
RR-116	Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-117	Disobedience of an Order (C-F)*			
RR-121	Off Duty in Uniform (A-F)*			
RR 122.3	Insubordination			
RR-128.2	Impartial Attitude - Bias			
RR-130.1	Failure to Aid or Protect Fellow Officers – Unreasonable			
RR-138	Discrimination, Harassment and Retaliation (C-F)*			
RR-140.2	Verbal Assault and Abuse of the Public (C-D)*			
RR-141.1	Prohibited Associations (D-F)*			
RR-142	Soliciting Preferential Treatment (C-F)*			
RR-306	Inappropriate Force (D-F)*			
RR-311.1	Compromising Criminal Cases			
RR-312.1	Interfering with Case Assigned to Other Officers			
RR-402	Careless Handling of Firearms or Less Lethal Weapons (C-F)*			
RR-601.1	Communication of Confidential Information, Generally			
RR-603	Destruction of Evidence			
RR-806.2	Use of Badge by Person other than Officer			
RR-1102	Reporting for Duty (B-D)*			
RR-1106	Feigning Illness or Injury			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

CATEGORY E

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 OFFICER OR PUBLIC SAFETY OR TO THE PROFESSIONALISM OF THE DEPARTMENT.

EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:

	1st Violation	2nd Violation	3rd** Violation
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	No Time Limit	No Time Limit	No Time Limit
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*	-Level-	-Level-	-Level-
RR-103 Aid Another to Violate Rule (A-F)*			
RR-105 Conduct Prejudicial (A-F)*			
RR-109.3 Drinking on Duty or While in Uniform (E-F)*			
RR-112.1 Misleading or Inaccurate Statement (D-E)*			
RR-114 Intimidation of Persons			
RR-115.1 Conduct Prohibited by Law (A-F)*	6	7	8
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-117 Disobedience of an Order (C-F)*			
RR-120 Appropriating Property (E-F)*			
RR-121 Off Duty in Uniform (A-F)*			
RR-123 Assault of Fellow Officer			
RR-138 Discrimination, Harassment and Retaliation (C-F)*			
RR-141.1 Prohibited Associations (D-F)*			
RR-142 Soliciting Preferential Treatment (C-F)*			
RR-203 Accepting Gifts from Persons of Bad Character			
RR-302 Personal Family Disputes			
RR-305 Duty to Protect Prisoner			
RR-306 Inappropriate Force (D-F)*			
RR-309.2 Suggesting Bondsmen or Attorneys for Profit			
RR-402 Careless Handling of Firearms or Less Lethal Weapons (C-F)*			
RR-601.2 Communication of Confidential Information that Jeopardizes a Police Action (E-F)*			
RR-606 Destruction of Reports or Records			
RR-609 Altering Information on Official Documents			
RR-1107 Physical or Mental Examination (E-F)*			
RR-1108 Release of Medical Information			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

CATEGORY F

ANY VIOLATION OF LAW, RULE OR POLICY WHICH: FORESEEABLY RESULTS IN DEATH OR SERIOUS BODILY INJURY TO ANOTHER PERSON; 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 OFFICER'S FITNESS TO HOLD THE POSITION OF POLICE OFFICER; OR INVOLVES EGREGIOUS MISCONDUCT SUBSTANTIALLY CONTRARY TO THE STANDARDS OF CONDUCT REASONABLY EXPECTED OF ONE WHOSE SWORN DUTY IS TO UPHOLD THE LAW; OR INVOLVES ANY CONDUCT WHICH CONSTITUTES THE FAILURE TO ADHERE TO ANY CONTRACTUAL CONDITION OF EMPLOYMENT OR REQUIREMENT OF CERTIFICATION MANDATED BY LAW.

EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:

- RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*
- RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*
- RR-103 Aid Another to Violate Rule (A-F)*
- RR-105 Conduct Prejudicial (A-F)*
- RR-106.2 Sexual Misconduct
- RR-109.3 Drinking on Duty or While in Uniform (E-F)*
- RR-109.4 Under the Influence
- RR-111 Controlled Substances
- RR-112.2 Commission of a Deceptive Act
- RR-115.1 Conduct Prohibited by Law (A-F)*
- RR-115.2 Aggravated Conduct Prohibited by Law
- RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*
- RR-117 Disobedience of an Order (C-F)*
- RR-120 Appropriating Property (E-F)*
- RR-121 Off Duty in Uniform (A-F)*
- RR-130.2 Failure to Aid or Protect Fellow Officers – Intentional or Reckless
- RR-137 Collective Bargaining Fair Share Fee
- RR-138 Discrimination, Harassment and Retaliation (C-F)*
- RR-141.1 Prohibited Associations (D-F)*
- RR-142 Soliciting Preferential Treatment (C-F)*
- RR-202 Soliciting or Accepting a Bribe
- RR-306 Inappropriate Force (D-F)*
- RR-308 Aiding an Escapee
- RR-311.2 Interference with Prosecution
- RR-312.2 Interfering with Internal Investigation/Questioning
- RR-312.3 Failure to Provide a Statement
- RR-402 Careless Handling of Firearms or Less Lethal Weapons (C-F)*
- RR-601.2 Communication of Confidential Information that Jeopardizes a Police Action (E-F)*
- RR-803 Uniform Restrictions for Officers Under Suspension
- RR-1107 Physical or Mental Examination (E-F)*
- RR-804 Exercise of Authority While Under Suspension
- RR-1103 Constructive Resignation
- RR-1201 POST Certification Required

1st
Violation

-Level-

8

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

Scheduled Discipline

The following violations are subject to Scheduled Discipline as set forth in the Denver Police Department Operations Manual, rather than the Disciplinary Matrix set forth above.

- 1) OMS 120.01(2)(d)(3) - Required Minimum Annual Continuing Education
 - 1st Offense – 8 Fined Hours
 - 2nd Offense (in subsequent calendar years) – 24 Fined Hours
 - 3rd Offense – “Subsequent violations may be dealt with more severely”

- 2) OMS 120.01(2)(d)(2) - CEP Cancellation / CEP Failure to Attend
 - 1st Offense – Written Reprimand
 - 2nd Offense (within 1 year) – 8 Fined Hours
 - 3rd Offense – “May be dealt with more severely”

- 3) OMS 105.08(5)(d) - Failure to Shoot for Efficiency
 - 1st Offense – 1 Fined Day
 - 2nd Offense – (within 12 months) - 3 Fined Days
 - 3rd Offense – (within 5 consecutive years) – Chronic Offender

- 4) OMS 103.02(5)(b) - Failure to Appear in Court (*filed under RR-502*)
 - 1st Offense – Oral Reprimand
 - 2nd Offense – (within 12 months) - Written Reprimand
 - 3rd Offense – (within 12 months) - 8 Fined Hours
 - 4th Offense – (within 12 months) - 40 Fined Hours

- 5) OMS 203.08(2)(d)(6) - Preventable Accidents (*filed under RR-809*)
 - 1-4 Points - Oral Reprimand
 - 5-9 Points - Written Reprimand
 - 10-15 Points - A fine of one to five days
 - 16-20 Points - Suspension from three to ten days without pay
 - 21+ points - Minimum 5-day suspension without pay or more stringent action as appropriate.

- 6) OMS 112.03(4) - Photo Radar and Photo Red Light
 - 3rd Offense - Oral Reprimand
 - 4th Offense - (within 12 months) - Written Reprimand
 - 5th Offense - (within 12 months) - 8 Fined Hours
 - Subsequent, or flagrant violations may result in more severe disciplinary recommendations

- 7) OMS 501.03(2)(b) - Punctuality (*filed under RR-125*)
- 1st Offense - Oral Admonition
 - 2nd Offense - Oral Reprimand
 - 3rd Offense - Written Reprimand
 - 4th Offense - 8 Fined Hours
 - “Subsequent violations may be dealt with more severely.”
 - 6 offenses within 12 months or 9 offenses within 3 years = Chronic Offender.
- 8) OMS 112.01(3)(c)(2) - Safety Restraining Devices
- 1st Offense - Oral Reprimand and Journal Entry
 - 2nd Offense (within 12 months) - Written Reprimand
 - 3rd Offense (within 12 months) – 1-day suspension
 - “Subsequent violations will be dealt with more severely.”
- 9) OMS 119.04(12) – Body Worn Camera
- 1st Offense (within 12 months) - Oral Reprimand, Policy Review, and Journal Entry
 - 2nd Offense (within 12 months) - Written Reprimand, Audit, and PAS Review
 - 3rd Offense (within 12 months) - 1 Fined Day
 - “Purposeful, flagrant, or repeated violations will result in more severe disciplinary action. At any time during review, if deemed necessary, violations can be removed from the scheduled discipline above and transitioned to a formal investigation governed by the discipline matrix”.
- 10) OMS 505.01(9)(c) – On-Call Requirements / Fail to Respond to a Call for Duty
- 1st Offense (within 12 months) - Written Reprimand
 - 2nd Offense (within 12 months) - Fine of 8-hours (1 day)
 - 3rd Offense (within 12 months) – Chronic Offender (violations will be dealt with more severely within the Discipline Matrix)
- 11) OMS 111.02(1)(d) – Uniform Cap / Failure to Wear as Directed
- 1st Offense – Oral Reprimand and Journal Entry
 - 2nd Offense (within 12 months) – Written Reprimand
 - 3rd Offense (within 12 months) – 1-day suspension without pay
 - “Subsequent violations will be dealt with more severely”