



# New York City Police Department Proposed Revisions to NYPD Disciplinary System Penalty Guidelines

## Introduction

Effective July 15, 2020, the New York City Council passed, and the Mayor signed, Local Law 69 to amend the administrative code of the City of New York to require the New York City Police Department (NYPD) to develop an internal disciplinary matrix. In accordance with Local Law 69, the Department published the attached Guidelines which became effective on January 15, 2021. The Guidelines describe acts of misconduct, presumptive penalties for violations, and mitigating and aggravating factors that are considered by the Police Commissioner in adjudicating discipline for acts of misconduct. Semi-annually in the first year and annually thereafter the department will review the Guidelines and post any proposed changes for a 30-day public comment period.

In July 2021, the department began the semi-annual review of the NYPD Disciplinary Penalty Guidelines to determine the efficacy of the new penalty guidelines and identify any areas within the guidelines which require clarification, correction or additional information.

To conduct this review subject matter experts from within the department as well as external agencies were consulted and working groups were established. This included the Office of the First Deputy Commissioner, Internal Affairs, Department Advocate, Deputy Commissioner, Trials, Deputy Commissioner, Legal Matters, Deputy Commissioner, Strategic Initiatives, the Civilian Complaint Review Board (CCRB) and the Commission to Combat Police Corruption (CCPC).

Upon completion of the working groups’ review, substantive revisions are recommended under the following categories:

### Violations of Department Rules and Regulations

Three additional penalties for acts of misconduct are defined: misuse of technology specific to the Public Oversight of Surveillance Technology (POST) Act; residing outside of the residence counties as required under the New York State Public Officers Law; and failure to report a racial profiling or bias-based law enforcement action. In addition, the aggravating penalty for failure to take police action will be increased from 30 penalty days to termination. The mitigated penalty of instructions will be removed from Body Worn Camera-Unintentional failure to record a prescribed event or commencing/terminating a recording at an improper time.

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Misuse of technology listed under the POST Act	Training	15 Penalty Days	30 Penalty Days
Fail to report a racial profiling or bias-based law enforcement action	5 Penalty Days	10 Penalty Days	20 Penalty Days
Residing outside residence counties	N/A	20 Penalty Days	30 Penalty Days +DP
Fail to take Police Action	10 Penalty Days	20 Penalty Days	Termination
Body Worn Camera – Unintentional Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time	N/A	Training	1 Penalty Day

### Abuse of Authority, Discourtesy and Offensive Language

Five additional penalties for acts of misconduct are defined: the refusal to show a search or arrest warrant; wrongfully damaging a person’s property; failing to provide language interpretation service; wrongfully questioning a person’s immigration status. The improper questioning of a person related to an investigative encounter is incorporated into “improper/wrongful stop of a person”.

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
<b>Improper/Wrongful:</b>			
Stop and Question or Question of Person	Training	3 Penalty Days	15 Penalty Days
Refuse to show Arrest/Search Warrant	Training	3 Penalty Days	5 Penalty Days
Improper/Wrongful: Question of person's immigration status	Training	3 Penalty Days	15 Penalty Days
Fail to provide language interpretation service	Training	3 Penalty Days	5 Penalty Days
Improper/Wrongful: Damage Person's Property	5 Penalty Days	10 Penalty Days	20 Penalty Days

## Domestic Violence

For physical acts of domestic violence, the Guidelines list a number of factors that enhance the presumptive penalty for such misconduct to termination. Strangulation is added to this list of factors to highlight its impact on the penalty determinations in domestic violence incidents. Previously, this offense was incorporated under language referring to violations of criminal statutes.

## Domestic Violence Incidents

### Additional Definition for Domestic Violence Incidents

**Family/Household**<sup>63</sup> – Family/Household includes persons who are legally married to one another, were formerly legally married to one another, related by marriage (affinity), related by blood (consanguinity), have a child in common regardless of whether such persons have been married or have lived together at any time, not related by consanguinity (blood) or affinity (marriage) and who are, or have been, in an intimate

relationship regardless of whether such persons have lived together at any time, currently living together in a family-type relationship, or formerly lived together in a family-type relationship.

### Presumptive Penalties for Domestic Violence Incidents Involving Family/Household

Misconduct	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
Physical Act(s) of Domestic Violence/Family Offense <sup>64</sup>	N/A	30 Suspension Days + Dismissal Probation + Counseling – 24 week OASAS program <sup>65</sup>	Termination
Physical Act(s) of Domestic Violence/Family Offense with <sup>66</sup> : <ul style="list-style-type: none"> <li>• Previous determination by the Department that the member committed physical act(s) of domestic violence<sup>67</sup>; or</li> <li>• Clear and convincing evidence demonstrates that the member of the service previously committed physical act(s) of domestic violence whether or not previously reported and/or substantiated<sup>68</sup>; or</li> <li>• Found guilty in a criminal proceeding for a domestic violence crime<sup>69</sup>; or</li> <li>• The act results in a serious physical injury; or</li> <li>• The act results in significant physical injuries and/or injuries generally indicative of sustained or prolonged physical acts, or</li> <li>• Order of Protection violated.</li> <li>• Strangulation</li> </ul>	Forced Separation	Termination	N/A

<sup>63</sup> See Patrol Guide procedure 208-36, *Family Offenses/Domestic Violence*.

<sup>64</sup> See Commission to Combat Police Corruption, Eighteenth Annual Report of the Commission, August 2017 at p. 73.

<sup>65</sup> The 24-week counseling program may be imposed as a condition of probation even if the member of the service previously completed the 4-week or 8-week Domestic Incident Education Program administered by the NYPD Medical Division.

<sup>66</sup> Evidence of discipline for prior domestic violence event(s) will always be considered a relevant factor regardless of the length of time elapsed between the incidents.

<sup>67</sup> See Eighteenth Annual Report at p. 71.

<sup>68</sup> See Commission to Combat Police Corruption, Sixteenth Annual Report of the Commission, October 2014 at p. 53; See also Hon. Mary Jo White, Hon. Robert L. Capers and Hon. Barbara S. Jones, The Report of the Independent Panel on the Disciplinary System of the New York City Police Department, January 2019 at p. 55.

<sup>69</sup> See Eighteenth Annual Report at p. 53.

## Progressive Discipline

Clarifying language is incorporated into the Progressive Discipline section to better explain the goals and processes of progressive discipline.

### Progressive Discipline

Progressive discipline may be imposed for repeated acts of applicable misconduct within the timeframes specified below. In determining whether a current act of misconduct should be the subject of progressive discipline, the following framework applies:

- The current act of misconduct is the same as a prior act of misconduct, or
- The current act of misconduct is subject to a presumptive penalty that is equal to or greater than the presumptive penalty of the prior act of misconduct (19)
- If the prior act involved multiple violations arising from a single incident, it will be considered one prior act of misconduct
  - The most severe presumptive penalty associated with the prior violations will be used to determine the time limitation and the commensurate penalty increase relative to the current act
- The current act of misconduct must be committed before the end of the timeframe below to be considered
  - If the current act of misconduct involves multiple violations on separate dates, the date of the first violation chronologically shall be the date upon which the progressive penalty escalation is computed
- Acts of misconduct committed prior to the timeframe or adjudicated through Command Discipline may still be considered an aggravating factor in the calculation of penalties for the current act of misconduct

The presumptive time limitations<sup>20</sup> and penalty progressions<sup>21</sup> are as follows:

- If the prior misconduct resulted in training or instructions:
  - The time limitation is 3 years
  - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 1-3 days
  - The third incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 5 days
- If the prior misconduct resulted in 1 through 5 penalty days:
  - The time limitation will be 3 years
  - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 5-10 days

- The third incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 10-15 days

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(19) The primary principle of progressive discipline is that repeated acts of the same misconduct should be subject to greater penalties. Due to many factors that impact the imposition of discipline, there may be situations in which the progressive discipline schedule does not result in an increase in penalty for the subsequent infractions. This may be especially true for some cases adjudicated prior to the implementation of these Guidelines. In the event that the penalty in the progressive discipline schedule for a second incident is less than the presumptive penalty for the act of misconduct, the progressive penalty shall be greater than the presumptive penalty and up to the Aggravated Penalty or a penalty that is greater than the original penalty and is consistent with the goals of progressive discipline.

<sup>20</sup> Calculated from the date that the Police Commissioner approved the imposition of the final penalty for the prior act(s) of misconduct.

<sup>21</sup> The fourth or subsequent incidents of the same misconduct in the specified time frame may result in more severe disciplinary penalties, up to and including termination.

- If the prior misconduct resulted in 5 through 15 penalty days:
  - The time limitation will be 5 years
  - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 10-20 days
  - The third incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 15-30 days
- If the prior misconduct resulted in more than 15 penalty days:
  - The time limitation will be 10 years
  - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in a penalty increase to 20-30 days and Dismissal Probation
  - The third incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, shall result in termination or forced separation
- If the prior misconduct had a presumptive penalty of termination or separation but mitigating factors led to the imposition of a penalty less than separation and/or the prior misconduct resulted in the imposition of Dismissal Probation:
  - There will be no time limitation
  - The second incident involving the same misconduct or misconduct carrying an equal or greater presumptive penalty than the prior act of misconduct, may result in forced separation or termination

The above time limitations do not apply to prior disciplinary history establishing patterns of misconduct or serious misconduct, including but not limited, to False Statements, Driving While Intoxicated, Domestic Violence, Excessive Force or acts constituting criminal conduct. In addition, a third substantiated incident of

excessive force will have a presumptive penalty of termination regardless of the penalties imposed in the first two instances.

## Conclusion

The changes outlined here are meant to provide greater clarity to the members of the Department and to provide transparency to the public. The Department believes that the proposed changes help achieve the purpose for which they were intended: to ensure that any discipline imposed will be fair, consistent, and based on reasonable standards. However, the Guidelines are meant to be a living document, open to further improvements as the application of the Guidelines is assessed and as the needs and expectations of the police and the public evolve. Furthermore, the Guidelines do not exist in a vacuum. They are part of a number of reforms to the disciplinary system that includes the publishing of disciplinary records and case outcomes. Overall, these Guidelines reflect the Department's commitment to continue to build upon the reforms made over the last several years, increase transparency into the disciplinary system, and to hold officers accountable to the highest standards, in furtherance of its mission to serve the community and provide for public safety.

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